

## **Request for Review**

Of Ontario Ministry of Natural Resources Crown Timber Allocation Regime

An application for review of policy made to the Environmental Commissioner of Ontario pursuant to section 61, *Environmental Bill of Rights*.

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### **Submission to:**

ENVIRONMENTAL COMMISSIONER OF ONTARIO  
Suite 605, 1075 Bay St.  
Toronto ON M5S 2B1

### **Subject of review:**

Given the significant volumes of Crown timber that are likely to be re-allocated in the near future from the extensive mill closures in this province, we respectfully request a review of: **the extent and sufficiency of the current processes for the allocation of Crown timber**, through the mechanism of the *Environmental Bill of Rights*.

This request is to ensure that the current process for allocating Crown timber to third parties is sufficient, transparent, and accountable in policy, reporting, and practice. Decisions on a) how timber is allocated to third party mill licence holders from any given forest, and b) on how mills are licenced by the Minister of Natural Resources can both negatively impact the ecological and societal values associated with Crown forests. These decisions occur within the framework of the sustainable forest management Undertaking, as overseen by Declaration Order MNR-71, issued by the Minister of the Environment and approved June 25, 2003 as “MNR’s Class Environmental Assessment Approval for Forest Management on Crown Lands in Ontario”.

Key documents that should be included in this review:

- ***Crown Forest Sustainability Act*** – Statutes of Ontario, 1994
- **Declaration Order MNR-71**, issued by the Minister of the Environment and approved June 25, 2003 as MNR’s “Class Environmental Assessment Approval for Forest Management on Crown Lands in Ontario.” MOE, 2003.
- **Crown Timber Allocation Policies** – all MNR documented policies, processes and/or protocols for the licensing of management units and wood processing facilities and for the allocation of Crown timber.
- **Provincial Wood Supply Strategy** – MNR, 2004
- **Mill Statistics**, 1999-2003 – MNR document

▪ **Forest Accord, 1999**

*Case study:*

- **Wood Supply Competitive Process** in the Kenora, Red Lake and Dryden Area – Prospectus, October 13<sup>th</sup>, 2006
- **Wood Supply Competitive Process** in the Kenora, Red Lake and Dryden Area – Prospectus, **Addendum No. 1**, October 25, 2006
- **Annual Reports** for Kenora, Red Lake, Whiskey Jack, Trout Lake, Wabigoon, Dryden, and Crossroute forests
- **Independent Forest Audits Reports** for Kenora, Red Lake, Whiskey Jack, Trout Lake, Wabigoon, Dryden, and Crossroute forests
- **Forest Management Plans** for Kenora, Red Lake, Whiskey Jack, Trout Lake, Wabigoon, Dryden, and Crossroute forests
- **Sustainable Forest Licences** and **Forest Resource Licences** for Kenora, Red Lake, Whiskey Jack, Trout Lake, Wabigoon, Dryden, and Crossroute forests
- **Wood Processing Facility Licences** for all mills using the Kenora, Red Lake, Whiskey Jack, Trout Lake, Wabigoon, Dryden, and Crossroute forests for wood supply (including: Kenora – Abitibi, Trus Joist, Devlin, Kenora Forest Products; Red Lake – LKGH Contracting, Ear Falls – Weyerheuser; Dryden – Weyerheuser mills; Hudson – McKenzie Forest Products; Thunder Bay – Bowater Pulp and Paper, Bowater Sawmill; Fort Frances – Abitibi; Ignace – Bowater).
- **Independent Sustainability Report** – “Out of Balance” report on the Whiskey Jack forest – CPAWS Wildlands League

**Rationale for review:**

This review is warranted in the public interest and in order to protect the environment, because:

- **Public commons** – The activity of forest management, inclusive of allocating to industrial users timber resources from the public forests of Ontario, warrants an accountable and transparent process;
- **The harvest pressure** – Allocation of wood resources is a direct driver of pressures on the amount and locations of harvesting activities, with high potential for impacting the long-term health of Crown forests and their long-term ability to provide multiple benefits, including ecosystem services, to all Ontarians;
- **Lack of precaution** – Calculations of annual allowable harvest, as the base determinant for calculating the “window” of harvest volume available to be allocated is suspect, primarily for the apparent lack of precaution employed during the use of Ontario’s Strategic Forest Management Model (SFMM) tool, despite frequently cited limitations of the inputs utilized in the model, including poor base inventory data, lack of local growth and yield information, and poor knowledge of the baseline pre-industrial conditions. In the Ministry’s Best Practices for Wood Supply Modeling, it is acknowledged that “many of the factors used as inputs to the analysis are uncertain due in part to variations in physical, biological and social conditions.”

A common analogy is the writing of cheques against a bank account with poor knowledge of the real balance. If, for any reason the model is presenting an overly optimistic view of the future forest condition (and models are rarely perfect...), then any allocations can be expected to generate conflict with industry and pressures upon Ontario’s public resources that are difficult to manage effectively. In these instances, building-in additional precaution would seem a reasonable management tool. In instances where actual harvest levels are less than the determined allowable cut there is a buffer, yet the difference does not appear to be attributable to precaution, but rather practical harvesting limitations and/or market demand, meaning that the full harvest window would otherwise be cut.

- **Economic conflict** – Poor allocation of Crown wood resources can generate uncertainty, conflict, and supply problems for Ontario’s forest industry, and subsequent hardship for resource dependent communities. It can also impact negatively upon non-timber economic interests in Crown forests, again impacting local economies for northern communities;
- **Social conflict** – Poor allocation of Crown timber can reduce recreational and traditional lifestyle benefits available from Crown forests to Ontarians;
- **First nation conflict** – Poor allocation of Crown resources can impact traditional land use and exacerbate conflicts between first nations, industry and the Province, and can represent both a public and an business liability when appropriate consultation is not employed in a timely manner and/or in an honourable fashion;

- **Statement of Environmental Values** – An important component of the mandate of the Ministry of Natural Resources, as expressed in their Statement of Environmental Values and Strategic Direction, is their stewardship obligation to the limited forest resource available (MNR mission). This mandate includes *“Valuing resources, based on the full range of benefits provided, enable priorities to be set for land and resource use, to encourage the efficient allocation and use of resources, to protect limited resources, and to promote conservation.”*
  
- **Moving Ahead: Achieving Sustainable Development** (MNR vision) – to what extent is the Ministry vision of achieving “sustainable development” being implemented in allocation decisions? For example, How is their desired outcome of “Allocation of Natural Resources is Efficient and Fair” and the associated criteria below being achieved?
  - *The first priority in resource allocation will be to ensure the sustainability of the resource and associated natural processes;*
  - *obligations to Aboriginal people will be recognized in policy and practice;*
  - *allocation of available resources among alternative uses will be based on the best available information and science and will also recognize the full range of social, economic and environmental values of the resources, and that, in some cases, no development may be the best decision;*
  - *allocation of available resources among alternative users will recognize existing rights, reflect sound analysis and be procedurally fair;*
  - *assuming these four criteria are met, allocations which lead to higher value added products, and/or services, are preferred.*
  
- **Black-box process** – Based on the lack of publicly available information regarding the wood allocation process and any improvements that it may have experienced, and the long history of apparently ad hoc Crown timber allocation in the province, without this review it is unlikely that MNR will affect a timely review of its own. Furthermore, it is likely that historical mistakes may be repeated without timely review of the current approach;
  
- **Auditor concerns** – In several audits performed on operations in Ontario under the requirements of the CFSA, independent auditors of forest management units have raised concerns about various facets of allocation currently in place in the Province. The role of these observations in shaping actual improvements to wood allocation or to its process is not clear anywhere in the public domain. These concerns range from the usage of the SFMM model that determines annual allowable harvest, the limitations and errors in inputs and assumptions used, to the various problems that historical allocations can place upon a unit by way of conflicts, inefficient haulage, reduced usage, outdated species demands, etc; and
  
- **Historical context:** It is recognized that allocation of Crown timber has occurred in an evolutionary manner over time and implicitly contains a great deal of history. Because of this, the importance of regular review and adaptation of the

manner in which such decisions are made represent an important component to the accountability and utility of the system as a whole. However, it is not apparent that the policy and practices of allocation have been systemically considered, codified, or improved substantially over time, inclusive of the policy evolution of the undertaking and its Environmental Assessment.

This is unfortunate, because the resulting system lacks the coherence and accountability to achieve the kind of utility and credibility that would provide both the public and the financiers with confidence that this undertaking is on a predictable or sustainable path.

### **Some scoping questions to assist review**

**Case Study approach** – One timely way of examining the allocation and licensing questions of this review would be to examine the current re-allocation of timber from the closed Abitibi Kenora mill. MNR has already put this re-allocation on the “market” by way of tendering a “prospectus” for interested parties (attached, with addendum). On the current schedule, they will be receiving submissions back in mid-December, 2006. By investigating both the history and the current processes at play in its supply woodbasket, much of the highlighted rationale for this review can be observed in the Abitibi mill context.

This is a key case study, as it presumably represents a precedent for how the Ministry of Natural Resources will go about re-allocating public resources from the long list of mill closures that this province has experienced since 2004, and is continuing to experience today. To put the significance of this re-allocation in perspective, if all of the mills currently experiencing production shutdowns were to permanently close, the volume impact would represent one-third to one-half of all Crown timber currently harvested in the province.

Showcasing the current wood re-allocation tendering process from the Abitibi-Kenora closure, some sample questions for review include, but are not limited to:

#### **(A) Transparency and Accountability.**

**Where are the volume numbers that are being tendered coming from?**

**Why are these numbers for the proposed disposition of public resources from the Kenora case study not transparent and publicly accessible?**

**Why are these numbers not more clearly rationalized?**

**Why would these various sources of Ministry information researched below be so variable and difficult to attribute to the allocation process being undertaken?**

*It has been said that this allocation is to replace the demand of the closed mill cited, but there does not seem to be any clear connection, or rationale provided, between this 593,000m<sup>3</sup> number and:*

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- **531,000 m<sup>3</sup>** – the Ministry Recognized Operating Level (a theoretical maximum which assumes operation at full capacity) for the facility, or
- **368,930 m<sup>3</sup>** – a sample of the mill’s five-year average annual actual consumption from 1999-2003. [sourced from attached MNR mill statistics publication]

It should also be noted that the original Prospectus included 14,000 m<sup>3</sup> of additional volume, from the Dryden management unit, until it was realized that the mill did not ever source wood from there and a correction was issued in the Addendum (apparently even the Ministry staff involved finds the system challenging to unravel...).

The table below highlights additional apparent discrepancies, where:

- **SFL allocations** are MNR directions in the tenure licences for the various units,
- **AR-5 (2004)** is the actual volume received by the mill from each unit,
- **FMP-24 (2004)** is a required planning prediction about how much would be sent to the mill during the forest planning process, and
- **Tender Est.** is the MNR estimate of available volume for tendering in the prospectus itself).

Various Abitibi-Kenora supply descriptions (m<sup>3</sup>)...

Tenure	SFL allocations	AR-5 (2004)	FMP-24 (2004)	Tender Est.
Whiskey Jack	sustainable	**179,990	*260,856	267,000
Kenora	Part of 90,000*	22,559	*90,052	110,000
Red Lake	<b>NO Allocation?</b>	6,908	40,000	40,000
Trout	Part of 186,000*	38,018	0	176,000
Wabigoon	over Trout/Wabi.	1,343	0	
<b>Totals...</b>		<b>248,218</b>	<b>390,908*</b>	<b>593,000</b>

\*shared with Fort Frances mill...

\*\* 2003/04 data for WJ

Note:

- *Flexible SFL allocations between mills in several SFLs*
- *MNR seems to either be suggesting a NEW allocation in the Red Lake unit, or has failed to acknowledge a past one in the Red Lake Sustainable Forest Licence, because Abitibi does not have a Ministry allocation on the current Red Lake SFL, despite identifying the 40,000 m<sup>3</sup> in the Red Lake Forest Management Plan (FMP-24) – of which Abitibi only utilized 6,908 m<sup>3</sup>. Further research has identified that Abitibi is likely a shareholder in the Red Lake tenure, and would presumably have some claim to the sustainable harvest, though these details are not clear anywhere in the Sustainable Forest Licence, which was issued to the Red Lake Forest Management Company with no mention of Abitibi anywhere in the document.*

- *Tender estimates (provided by MNR in the Prospectus) are significantly higher than even the predictive numbers of the Forest Management Plans (FMP-24) which include the Fort Frances utilization as well.*
- *A scan of Independent Forest Audits would collectively suggest that one likely reason for some of the discrepancies is the persistently poor track record that many SFL holders have for timely and accurate reporting.*
- *Another possible contributing reason is a complex forest management planning system that includes an inordinate amount of focus on historical demand-based targets, without the ongoing oversight and maintenance to contribute significant value. Overall, the FMP-24 data illustrates this, with an apparent lack of connectivity to operational realities and changes over time. Indications of this can be found by comparing FMP-24 data over time to actual harvest data over the same periods. Yet it would appear that this data is playing a role in generating the timber reasonably “available” for re-allocation in the Abitibi-Kenora case (though only for the Red Lake supply?).*

**(B) Increased Pressure on Area Forests.**

**In the Abitibi-Kenora case, the net effect of successfully tendering the total volume proposed would result in a larger volume target than is currently in place. Why would the Ministry wish to increase overall demand pressures on the forests in this area?**

Particularly:

- *So soon on the heels of an identified overall wood supply crisis (see Provincial Wood Supply Strategy, MNR 2004).*
- *With the potential to further exacerbate relationships with the Grassy Narrows first nation which has vocally decried the extent of harvesting in the principal tenure affected by this tender – the Whiskey Jack forest.*
- *With the potential to further exacerbate the questionable sustainability of harvesting in the Whiskey Jack forest as flagged by a number of independent environmental organizations including the Wildlands League (see the “Out of Balance” report – CPAWS Wildlands League, 2005).*
- *When the implementation of the Woodland Caribou management guidelines has been identified by Weyerheuser as an issue which “severely impacts” their wood supply, without Abitibi utilizing its wood supply agreement in the Trout Lake unit (see the Independent Forest Audit for the Trout Lake FMU, January 2005), a forest heavily used by caribou.*

*All of the management units implicated in this re-allocation example have historically provided habitat for caribou, though the species has been practically extirpated from the Kenora, Whiskey Jack and Wabigoon units. Now, woodland caribou are already experiencing similar pressure in the Red Lake and Trout Lake units. This is a key recovery zone for the species as*

*identified in the Draft Caribou Recovery Strategy. Putting additional pressures upon these units given this knowledge seems extremely counter-intuitive.*

**(C) Mill Closures vs Re-allocations.**

**Do the volumes being tendered in the Kenora case study include any other sources of wood other than the original allocations attributed to the closed mill?**

*In the Q&As of addendum No.1 of the prospectus it is indicated that the Devlin mill closure is specifically not included. So where does the additional volume being tendered come from...?*

*Does attributing newly available volume to a particular mill closure (ie: collective historical allocations assigned to a particular mill licence) make the most sense for re-allocations? The option for allocations to simply lapse back into the woodshed is a default that doesn't take the wood out of the system for current users – in fact, it could be expected to provide a more stable wood supply for existing operations on the open market, increase operational flexibility, and reduce overall pressures on the forests.*

*Is replacing Abitibi as the management licensee for the Whiskey Jack Sustainable Forest Licence not the more concerning vacuum (ie: that the absence of the Abitibi-Kenora mill licensee has created? Why is this not the overt subject of the tender?*

*In any case, why would this re-allocation necessarily include all of the historical ancillary cross-allocations to other SFLs? Have these historical transactions received any kind of review before re-issuing them through the Prospectus?*

**(D) Assessing Supply before Re-allocation.**

**To what extent are re-allocations recognizing that the implicated tenures have already been extensively logged, that original conditions may have changed, or past information may not have been accurate?**

*For example: Is post-harvest species composition change on the implicated units being considered in allocation decisions? Is any kind of assessment occurring on how well second growth timber is replacing original unit volume? Is the potential need for relief from harvesting demands being reasonably considered as a management tool? On the Whiskey Jack unit, it was the opinion of the Wildlands League that the forest needed such relief, certainly not increased pressure (please see attached report: Out of Balance).*

*There is a documented species composition change occurring on cut-over forest management units (with particular challenges to conifer regeneration) in Ontario, and it is reasonable to assume that volume available from each unit may well change after decades of harvesting as well. It is not clear whether these questions are asked before initiating a re-allocation of timber cutting rights. In the current Kenora mill example, it appears that more conifer is being earmarked for*

*re-allocation than originally utilized – does this mean that conifer is actually renewing at a better rate than existed pre-cutting, or with more productivity?*

*Additionally, there is an unfortunate history of past inventory data being overly optimistic about potential harvest yield. How are allocations being evaluated/modified as better information is obtained?*

**(E) Currency and consistency of Sustainable Forest Licences.**

**What role do Sustainable Forest Licences (SFLs) play in documenting allocations of public timber resources?**

**Does each Licence consistently and accurately document all Ministry allocation decisions?**

**Is this documentation kept up to date?**

*For example, there are many SFLs in NW Ontario, including the Red Lake, Wabigoon, Trout, and Whiskey Jack licences, which to date still include a 1995 (11 years ago) allocation towards a mill (Columbia) that was never built:*

*The Company shall comply with the following wood supply commitments on the Red Lake Forest:*

*1) The Red Lake Forest is part of the supply area for hardwood fibre named in a conditional commitment letter dated March 31, 1995, from the Minister of Natural Resources to Mr. Harry Demorest, President and Chief Executive Officer of Columbia Forest Products Inc. The total commitment from the supply area is 175,000 cubic metres of hardwood fibre annually. The Red Lake Forest, through a long term memorandum of agreement, will contribute a portion of this volume. This supply of hardwood fibre is subject to and will commence upon the successful fulfilment, by Columbia Forest Products Inc., of conditions as described in the conditional commitment letter. A copy of this memorandum of agreement, negotiated as a result of this commitment and this term and condition of the SFL, must be provided by the Company to the Ministry upon request.*

*Many other such currency problems can be readily observed. Additionally, a high degree of variability, and perhaps a certain geography between MNR regions, also seems to exist between the use of the “open market” to distribute the harvest for some SFLs and a more comprehensive use of more prescriptive allocations documented within the SFL for others.*

**(F) Intersections between Licences.**

**Are Ministry allocations to mill licence holders related to Sustainable Forest Licences in a consistent manner?**

*For example, there are allocations attributed to this closed Abitibi mill in that are variably assigned to include disposition of timber to either of Abitibi’s mills (Kenora or Fort Frances) from either of Trout Lake or Wabigoon forest management units (Weyerheuser managed):*

**The Company shall comply with the following wood supply commitments on the Trout Lake Forest:**

2. To make available, through long term memorandum of agreement, up to 186,000 cubic metres of conifer fibre, from the Trout Lake and Wabigoon Forests, annually to Abitibi-Consolidated Inc. for use in their mills located at Kenora and Fort Frances, Ontario. This is consistent with a letter dated June 19, 1997, from the Minister of Natural Resources to Mr. Lorne Crawford, Vice President, Woodlands Operations, Avenor Inc. and a letter dated November 3, 1998 from M. L. Willick, Regional Director of the Ministry of Natural Resources, Northwest Region to Bill Roll, Manager, Forestry and Government Affairs, Bowater Pulp and Paper Canada Inc. A copy of this memorandum of agreement negotiated as a result of this commitment and this term and condition of the SFL, must be provided by the Company to the Ministry upon request.

*This is clearly beneficial to operational flexibility for the company, but a further strain on accountability for the use of Crown resources.*

*Mill allocations under Sustainable Forest Licences in the province are variably present, with many such flexibilities provided to mill licencees. It could be suggested that these operational flexibilities for the mill licencees have the potential to negatively impact the operational flexibility of the Sustainable Forest Licence licencees who are tasked with managing Ontario's public forests sustainably.*

*This licensing of both the demand and the supply side of wood flow in Ontario would seem to attribute some degree of liability to those regulating the whole system should a forest be harvested unsustainably, particularly if the primacy of mandate is explored for the Ministry (ie: primacy of "forest health" mandate, while sustainable development for forestry is a related policy vision...).*

**(G) Depth of Business Involvement by Ministry.**

**Does the Ministry of Natural Resources have the mandate and/or capacity to be involved in industrial development decisions, particularly down to the byproduct level?**

**Do these additional layers of involvement contribute to the apparent transparency and accountability shortcomings of the system?**

**Is this prudent depth of effort for the Ministry in a time of notable capacity constraint for the Ministry's conservation and oversight functions?**

**Does this level of economic development involvement attribute any liability to the Ministry, where promoting specific wood demands by allocations and the issuance of mill licenses has the potential to generate management conflict / competition to its stewardship responsibility to long term forest health?**

*From the Abitibi-Kenora case study: Does the stipulation in the Kenora Prospectus for wood chip byproducts to go to Abitibi Fort Frances represent an appropriate level of business involvement for the Ministry of Natural Resources?*

*A clear indication that the Ministry of Natural Resources is severely under-funded for their core work is that MNR staff have taken to holding bake sales (see below) to raise funds to put gas in their vehicles. How much front line work is falling through the cracks while the Ministry is immersed in business plans for industry?*

**“Cookies for gas”: Local 638 members raise \$500 to Save the MNR; Local 635 hits the front page** - The Save the MNR Bake Sale on Dec. 14 was a huge success for the members of Local 638 in Hearst.

[http://www.opseu.org/campaign/savemnr/eventphoto/dec1506\\_local638.htm](http://www.opseu.org/campaign/savemnr/eventphoto/dec1506_local638.htm)

**(H) Room to Grow process.**

**How is the Ministry addressing “Room-to-Grow” obligations attributable from mill closures such as Abitibi (under the Forest Accord and Declaration Order MNR-71)?**

**How well is it monitoring harvest levels against the 1999 benchmarks established from the Forest Accord?**

**What protocols has it developed on this subject since the Forest Accord was struck 7 years ago?**

**How many Room to Grow “triggers” have occurred in that period?**

**How many resulting new protected areas have been created in that period?**


*The Abitibi-Kenora supply tendering process does put potential proponents on notice that the Room to Grow process will have to be “considered” but does not provide additional details (see attached Prospectus and addendum). No publicly available information is available on how MNR is making the Room to Grow process operational in allocation decisions anywhere in Ontario.*

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*Request for Review – Allocation of Crown Timber Resources*

**Submitted by:**

The following two residents of Ontario...

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**NB:** Please note that we wish our lawyer to also receive all correspondence on this Application for Review:

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