

Subject <b>Post Disposition Compliance Monitoring</b>		Policy <b>PL 9.01.02</b>	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued September 21, 2004	
Replaces Directive Title	Number	Dated	Page 1 of 5

## 1.0 DEFINITIONS

In this policy,

“compliance” means to adherence to a set of terms and conditions in an instrument issued under the authority of the Public Lands Act;

“Crown land” means public land as referred to in the Public Lands Act;

“disposition” means the granting by the MNR of certain or all rights to Crown resources through such means as permits, licences, approvals, permissions, consents, leases, licences of occupation, or sale<sup>1</sup>;

“land use occupational authority “ includes a Ministers Order under subsection 37.1(1), Order in Council transferring administration and control, sale, conditional sale, Crown lease, water lot lease, licence of occupation, land use permit, beach management agreement, or easement, but excludes a work permit;

“work permit” means a work permit issued under section 14 of the Public Lands Act and required under Ontario Regulation 453/96, as amended, made under the Public Lands Act and excludes any other approval.

## 2.0 INTRODUCTION

The confirmation of compliance with the terms and conditions of an instrument issued under the Public Lands Act disposing of rights to Crown resources is an essential part of sustainable resource management. Compliance can be determined by site inspection, file review or utilizing intelligence gathering techniques.

The various forms of land use occupational authority are legally binding agreements between the Crown and the permittee, lessee, licensee, etc. They are issued under the authority of the Public Lands Act with terms and conditions. These range from land use conditions in some letters patent to the standard conditions in a land use permit. Terms and conditions dictate the permitted land use, the rent or fees charged, type of land use, permitted improvements, administrative matters (e.g. insurance requirements), etc.. In addition to ensuring compliance by the authority holder, MNR must ensure the Crown adheres to conditions that grant authority and opportunity (e.g. annual rent review) to the Crown.

Work permits also contain both standard and project specific terms and conditions. The latter are normally a combination of pre-approved (i.e. corporately vetted) and local conditions that often reflect the details of the work permit application.

For the terms and conditions to be meaningful they must be monitored and action must be taken where instances of non-compliance are discovered. A strategic approach to compliance monitoring is required to ensure the efficient allocation of staff and resources.

<sup>1</sup> Ministry of Natural Resources – A Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects, p.47

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### **3.0 PROGRAM DIRECTION**

#### **3.1 Application**

This policy applies to land use occupational authority and work permits issued under the authority of the Public Lands Act where such instruments contain mandatory terms and conditions.

#### **3.2 Guiding Principle**

The occupation/use of Crown land authorized by the issuance of land use occupational authority and work permits under the Public Lands Act will be monitored to ensure the terms and conditions are adhered to, thus ensuring that the subject lands are being used in an ecologically sustainable manner and the people of Ontario receive a fair return for the use of Crown land.

#### **3.3 Goal**

To ensure, through the strategic application of compliance monitoring efforts that all terms and conditions of land use occupational authority and work permits issued under the Public Lands Act are adhered to.

### **4.0 OBJECTIVES AND STRATEGIES**

- A. Ensure the authority/permit holder is aware of his/her responsibilities.
- B. All terms and conditions included in the documents must be enforceable and should be discussed with the authority/permit holder prior to the issuance of land use occupational authority or work permit. An authority holder acknowledges his/her acceptance of the terms and conditions by signing the document (e.g. land use permit, lease).

A work permit does not require the permittee's signature. However when the permittee signs the work permit application they "agree to rely solely upon the terms and conditions of the written work permit issued pursuant to this application". When a work permit is issued it should be reviewed with the permittee prior to work commencing. If this is not practical (e.g. the permit is being sent by mail to a remote location) the following alternative approaches may be used:

- require the permittee to sign and return a "Work Permit Acknowledgement" form (refer to the example in Appendix 'A');
- require the permittee to initial and return a duplicate copy of the work permit.

Results of subsequent compliance monitoring efforts should be shared with the authority/permit holder.

- C. The terms and conditions of the land use occupational authority must be reviewed prior to any renewals or the issuance of a new land use permit to ensure they are adequate and appropriate (e.g. site specific, enforceable).

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D. Strategically plan and undertake compliance monitoring activities.

Activities must be incorporated into the District Annual Compliance Operating Plan. The plan should identify a schedule of compliance monitoring (i.e. general frequency of file reviews, site inspections, and the focus of the inspections) and what is to be monitored.

A variety of approaches may be used to monitor compliance. The spectrum ranges from a file review to self-reporting<sup>2</sup> (e.g. authority holder submits a self-monitoring report, complete with affidavit and photographs of site – template available on Land Management Intranet Site) to site inspections by MNR staff. All review and inspections must be documented (e.g. notes, photographs).

E. To ensure that MNR staff involved in compliance monitoring are aware of their ability, or lack of ability, to set or change terms and conditions of the documents that are being monitored.

Periodically MNR compliance staff will determine during a compliance check that a non-compliance situation exists. While reviewing this situation the proponent may seek to have the staff person condone a certain action by the proponent as a remedy. Before agreeing to actions the staff person must consider whether those actions may vary from the approval already given and, in situations where that action can be approved, be clear that there can be no confusion as to what has been approved. In most cases this will require written confirmation of agreed to action.

## 5.0 **OPERATIONAL CONSIDERATIONS**

### 5.1 Land Use Occupation/Work Permit Compliance Monitoring Schedule

A recommended schedule would see all land use occupation files reviewed at a minimum of 5 year intervals based on an assessment of risks presented by the occupations. Risks are to be assessed based on the following criteria:

- perceived or known risk to the resource;
- potential liability to the Crown (e.g. waste disposal sites, fuel storage tanks);
- track record of the authority holder;
- possible outcomes of non-compliance (e.g. significant loss of revenue to the Crown, impacts on other users, inconsistency in eyes of other similar authority holders).

Files must always be reviewed when requests for assignment or the issuance of a new land use permit to the new owner of the improvements are being considered.

Work permit compliance monitoring should be scheduled with regard for the potential environmental and social risks presented by the project. The required site inspections should be undertaken during the project implementation and after completion.

All planned compliance monitoring activities should be documented in the district annual compliance operating plan.

<sup>2</sup> If a self-reporting form is used the subject authority (e.g. LUP) must include a condition such as the following: "The permittee is required to complete and return to the district manager any and all self-reporting forms as may be required during the term of the permit."

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## 5.2 Focus of Compliance Monitoring

- compliance with the terms and conditions of the document
- a fair return to the Crown for the use of the resource<sup>3</sup>
- sustainability of the resource
- to identify risks (e.g. forest fire risks associated with the occupation)
- to identify any administrative changes that may be required from time to time to reflect changes in MNR policy and the nature of the authorized use

## 5.3 Examples of Non-compliance with Terms and Conditions of Land Use Occupational Authority

- failure to remit rent/fee in full or on time
- construction and or modification of improvements without written authorization
- unauthorized use of location
- assignment of lease or licence of occupation without consent of Crown
- mortgage or charge without consent of Crown (Note: consent is not a requirement of all instruments)
- failure to adhere to terms and conditions of management agreement that forms part of authority. This is common when authorizing commercial tourism operations.
- failure to remit property taxes

## 5.4 Remedies for Non-Compliance

Refer to:

PL 3.03.04 – Public Lands Act Work Permits (Section 14) and PL 9.03.01 – Stop Work Orders for direction regarding non-compliance to work permit terms and conditions.

PL 2.05.03 – Breach of Terms and Conditions of Crown and Ministry Documents for direction and options in cases of non-compliance.

PL 3.03.02 – Unauthorized Occupations – Control and Removal for direction regarding options to resolve non-compliant and or illegal occupations.

Appendix I – Guide to Accounts Receivable in Ministry of Natural Resources, for direction regarding the collection of overdue fees/rents

## 6.0 **DIRECTIVE CROSS REFERENCES**

- PL 2.05.03 (POL & PRO) Breach of Terms and Conditions of Crown and Ministry Documents
- PL 3.03.02 (POL & PRO) Unauthorized Occupations – Control and Removal
- PL 3.03.04 (PRO) Public Lands Act Work Permits (Section 14)
- PL 4.02.01 (POL & PRO) Application Review and Land Disposition Process
- PL 6.01.02 (POL) Crown Land Rental Policy

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<sup>3</sup> Compliance with policy must be ensured. For example, rents/fees are to be reviewed regularly, and at time of renewal or assignment.

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## APPENDIX 'A'

Example of: Work Permit Acknowledgement Form

Area Supervisor  
North Area  
Ministry of Natural Resources  
123 Anywhere Street  
Town, ON, XXX XXX

Attention:

I, the undersigned, have read and understand the content of Work Permit No. 123-04.  
I agree to abide by the terms and conditions therein.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Permittee's signature

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*Note: This form letter would accompany the work permit and is to be signed and returned prior to the commencement of the approved work. If this type of form letter is used the work permit must contain a condition stating that the work permit is not valid if the acknowledgement form is not received by MNR within 15 days of the issuance of the work permit.*