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| Subject Court Orders for Removal and/or Restoration | | Policy PL 9.03.02 | |
| Compiled by - Branch Lands and Waters | Section Land Management | Date Issued May 7, 2009 | |
| Replaces Directive Title Same | Number Same | Dated May 14, 2007 | Page 1 of 3 |

1.0 Definitions

In this policy and accompanying procedure,

"court orders" means the court orders mentioned in subsections 13 (5), 14 (7) and section 70.1 of the Public Lands Act;

"PLA" means the Public Lands Act, Chapter P.43, R.S.O. 1990; and

"POA" means the Provincial Offences Act, Chapter P 33, R.S.O. 1990.

2.0 Introduction

Subsection 13 (5) of the PLA states *"upon conviction of any person of an offence under this section, the court, in addition to the imposition of a fine, may order that person to dismantle and remove any building or structure erected or improvement made in contravention of this section within such time as the court orders...."*

Additionally, that subsection states *"if the person convicted fails to comply with the order, the Minister may cause the building, structure or improvement to be dismantled and removed and any cost or expense incurred thereby is a debt due the Crown and may be recovered by the Minister in a court of competent jurisdiction in an action against the person convicted."*

Subsection 14 (7) states... *"The court that convicts a person of an offence under this section may, in addition to imposing a fine, order the person,*

- (a) to cease the activity being carried on upon public lands or shore lands in contravention of the regulations made under clause (1) (a);*
- (b) to take action, within such time as the court may fix, to rehabilitate the lands,*
 - (i) in accordance with a plan approved by the Minister, or*
 - (ii) if the Minister has not approved a plan, in such manner as the court considers appropriate; and*
- (c) to obtain a work permit in order to effect the rehabilitation of the lands in accordance with the order of the court."*

Subsection 14 (8) states that... *"if the person fails to comply with an order under subsection 14 (7), the Minister may take such action as he or she considers appropriate to rehabilitate the land, and any cost incurred by the Minister is a debt due the Crown and may be recovered by the Minister in a court of competent jurisdiction in an action against the other person."*

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Section 70.1 states that ... *“In any prosecution under this Act, the court may, in addition to imposing a fine or imprisonment or making any other order authorized by this Act, make such order as the court considers proper to obtain compliance with the act or the regulations.”*

Section 72 of the Provincial Offences Act allows for the issuance of probation orders. Upon conviction of someone for an offence under this Act, the Crown can ask the court to impose a probation order on the convicted person. A probation order must include the three conditions prescribed in subsection 72 (2):

- the defendant cannot commit another offence under any provincial or Canadian statute,
- must appear before the court as and when required; and
- must notify the court of any change in address

In addition to the above conditions, a provision to carry out work as stipulated in subsections 13 (5) and 14 (7) and section 70.1 of the Public Lands Act can be imposed (refer to clause 72 (3) (a) of the POA).

The advantages of seeking a POA probation order, then, are that the courts can help to ensure that "riskier" convicted parties will carry out the actions specified in Public Lands Act court orders, or take action against anyone who does not carry out those actions.

In summary, it is important not to confuse Public Lands Act court orders with probation orders referred to in Section 72 of the Provincial Offences Act.

3.0 Program Direction

3.1 Goal

To ensure that court orders and probation orders when required are sought where MNR determines that illegal and unwanted improvements should be removed and in certain cases, the sites should be restored both at the expense of the convicted person.

3.2 Application

This policy applies provincially to situations where there has been a conviction and where the Ministry deems that it is necessary to have actions taken by the convicted party to obtain compliance with the PLA or the regulations.

This policy does not apply to the court orders for possession referred to in Section 24 of the PLA. See PL 3.03.02 Unauthorized Occupations of Public Land Policy and Procedure for guidance regarding these types of Orders.

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3.3 Objectives and Strategies

- A) To ensure that orders for removal and/or restoration are requested only where the Crown would not have approved the work had the person applied.
- B) To ensure that the request for the order is included in the sentencing portion of the Crown Brief for the offence being heard.

The request for a restoration and/or removal order, and/or a probation order, must be made by the Crown prosecutor after the decision has been rendered by the court and at the time the court speaks to sentencing.

It is necessary that the officer be prepared to assist the court in the issuing of a satisfactory order by having a draft of what is desired available to the prosecutor and the court at the time of sentencing.

- C) To ensure the order(s) being sought reflects the requirements in the individual sections of the PLA.

Specifics of the request in an order vary with the type of infraction. Therefore, the officer must be confident that the type of restoration or removal being requested is actually supported in the PLA.

- D) To ensure that the Minister (whose authority has been delegated to the Area Supervisor) is prepared to be involved in the review of any plan required in an order to rehabilitate any public lands cleared (an example is in subsection 14 (7) of the PLA.)

This subsection indicates specifically an example that upon conviction the Minister may request a court to order the rehabilitation of any public lands cleared, and to require such rehabilitation to be done in accordance with a plan approved by the Minister.

4.0 References

4.1 Statutory References

- Provincial Offences Act, Chapter P. 33, R.S.O. 1990 - section 72
- Public Lands Act, Chapter P. 43, R.S.O. 1990
 - Ontario Regulation 326/94, pursuant to the Public Lands Act
 - Ontario Regulation 453/96, pursuant to Public Lands Act

4.2 Directive Cross Reference

- PL 3.03.02 Unauthorized Occupations of Public Land Policy and Procedure