

The Forest Practices Code: Review of Soil and Water Provisions by the Forest Practices Board - Review Panel Report.

Environmental Defenders Office (TAS) Submission

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Submission Points

Review of Soil and Water Provisions of the Code

The Environmental Defenders Office welcomes the review of the Forest Practices Code (1993) water and soil provisions, and recognises the difficulties encountered given the: lack of research in to many of the key areas, the multi-tenured status of catchment area management, waiting policy and developments from government agencies and the potentially large pool of industry and non-industry stakeholders. This submission is based upon both general concerns and issues affecting clients to date. (All page number references pertain to the Review panel Report).

1. Public Consultation Framework & Recognition of All Stakeholders. Although it is recognised that this issue awaits developments in DELM and DPIF, such arrangements should be made a priority in any consideration of Code water and soil revision, particularly:

- to facilitate the identification of stakeholders
- in providing information to stakeholders regarding operational details
- to facilitate public submissions concerning recommendations and objections.

Such a framework should be mandatory prior to any operation which may effect water quality in a catchment area¹. This issue is particularly poignant regarding the use of chemicals in forestry operations (see below). Given that misuse of chemicals may amount to a breach in a duty of care (negligence), nuisance (tort), and/or Code provisions/regulations, or the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995* the identification of *any potential* stakeholder should be recognised in the Code. Also, public consultation would assist in identifying important recreational and natural values in catchment areas that may be adversely effected by operations.

Especially in regard to chemical usage, current notification practice is limited and should incorporate a longer time window, recognised by the Code, to allow:

- public advertisement and consultation to identify stakeholders,
- allow stakeholders enough time to seek information (through consultations, correspondence and formally through the *Freedom of Information Act*),
- sufficient time for the research for alternative chemical usage (as adopted as a philosophical principle in the proposed changes), and
- stakeholder proposals regarding a more restricted use or prevention of chemical use.

Explicit recognition should be made in the Code regarding statutory obligations under the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*² for the notification of ground and aerial spraying to neighbours.

Ultimately public consultation could inhibit future legal action which may prove more costly than proceeding with the intended plan of forestry operation/chemical usage. This is highly desirable as compared to leaving the responsibility to 'the forest owners' to 'protect people, water courses, and stock from the application of chemicals' (see p.90) or leaving it to the discretion of the Forest Practice Officer to identify such stakeholders regarding how attention to soil and water care is needed when roading and logging (p.61). Results of the public consultation can then be incorporated into the planning process and overseen at a district level.

Identification should particularly include others beyond domestic/town water supplies and freshwater aquaculture regarding harvesting *vis-a-vis* water quality and stream protection (p.61). This should include 'all agricultural producers, industry, and commercial tour operators'. This is equally relevant regarding chemical use and is not limited to harvesting. For example, dairy products can readily absorb atrazine or organic farmers who are particularly susceptible to the presence of chemicals in their water supply. These stakeholders may not be in the immediate area of spraying or within 2km downstream of operations.

This responsibility should be proactively stated and ultimately part of the 'forest practices planning process', suggested by the report, to replace THPs and PTRs. Ultimately agricultural stakeholders, domestic and town water supplies could be scheduled in an appendix into THPs/PTRs. This would avoid the overlooking or contravention of legal rights of any stakeholders.

2. Removal of the words 'preferably not exceeding 5% in total' from the changes proposed regarding Code planning provisions (ie, under general principles at p.93). This would remove the possible implication and facilitation of areas being felled in catchment areas outside of town water catchments being greater than 5%. For this use of the word 'preferably' could be interpreted to imply that an area greater than 5% can be potentially logged/roaded in 'non major town catchments', ie rural catchments. The words 'should not exceed' should be employed instead. Besides definitional problems (of 'major town') this would eliminate the possibility for stakeholder complaints in the more rural areas (where the majority of logging occurs) than in urban areas. Also the provision regarding major town catchments should include 'roading' in the 5% limit.

3. Mopping up of Fuel and Chemical Spillage/Leakage. Though the changes are welcomed regarding the management of fuels etc (p.42) and use of chemicals (pp.89-92), they could be more specific. For example how far from a watercourse amounts to safe storage of fuel/chemicals to prevent 'inadvertent leaks entering water courses, karsts etc...?'

Also it appears the Code does *not* require remedial/mopping up action if a fuel or chemical leak occurs, although the removal of rubbish is required from production forest. The 'containment as soon as possible' of spills is too general and insufficient if a major leak were to occur. It is therefore desirable that if the 'Agrichemical, Silvicultural and Veterinary Chemicals Council's Code of Practice' does not cover this, that the Code adopt its own provisions in consultation with this, other relevant bodies/agencies and industry. 'Clean-up/remedial action' should also be specified.

4. Monitoring, Assessing and Training Industry participants with Code accreditation is to be encouraged. The application of the Code to all forest operations, no matter how small the commercial operator is, should also be recommended. Particularly since many of these operations (particularly firewood cutters) operate in dry eucalypt forest types, which are more threatened on a whole than many other forest types, and currently are not covered by any Code provisions. This point is equally valid with all Code provisions not just those pertaining to soil and water quality. It would appear counterproductive and result in

increased complication in determining the applicability of Code provisions and regulations, if only provisions relating to soil and water quality were made applicable to all small operators.

5. Streamside Reserves. The identification and adequate protection of streamside reserves, particularly class 4 streams, appears to be a significant concern of both the review panel and the public. The lack of consideration towards a possible public consultation process is, once again, of concern, as is the use (though now more limited) of weed control in streamside reserves. Until adequate and independent research is completed in Tasmania, streamside reserves for all classes, particularly class 4, should be increased to the maximum width purported to protect stream ecologies (terrestrial and aquatic).

6. 2km is insufficient to identify all downstream stakeholders regarding harvesting Currently any consultation is limited to "known authorised domestic water supply intakes within 2km downstream of the proposed harvesting area [in a THP] and will specify measures to protect water quality" (p.61). However the adequacy of 2km needs further qualification as does the term 'authorised', and does nothing to facilitate a consultation process and it is likely that key stakeholders (ie non-domestic water supply users) will be omitted for the existing limited process. The replaced provision formerly covered 'forest operations within Town Water Supply Catchments' which though broader, and hence vaguer, is less clinical and not restricted to 2km, and therefore arguably applies to the whole catchment area. All potential stakeholders downstream should be identified and should include all agricultural producers, commercial tour operators and industry which relies upon water quality for their livelihood. In addition, it is undesirable for local councils to approve of operations to clear within 50m of a bank of a class 1,2,3 streams- see p.69.

Footnotes

1. Such a framework could involve other public consultation frameworks regarding forest operations in general;
2. and the Agricultural and Veterinary Chemicals (Control of Use) Regulations 1996}

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