

Minnesota Forest Resources Council Public Concerns Registration Process 2007 Annual Report

Overview

This is the ninth annual report of the Public Concerns Registration Process (PCRP) since it began serving the citizens of Minnesota in January of 1998. The Minnesota Forest Resources Council (MFRC) established the process to accept “comments from the public on negligent timber harvesting and forest management practices” (Minnesota Statutes 89A.07, Subdivision. 5). The PCRP allows citizens to register concerns about timber harvesting or forest management practices that they have observed. The MFRC worked closely with other environmental and forest management organizations to develop the process. The process is not punitive and the names of the parties involved are dealt with in a confidential manner. The focus of the PCRP is to inform and provide education to the involved parties. The involved parties are made aware of Minnesota’s *Voluntary Site-Level Forest Management Guidelines* (FMGs) and other information to help them protect Minnesota’s forest resources.

The Process

Citizens observing a practice that they object to or have concerns over, whether on public or private lands, initiate the process by calling MFRC’s 1-888-234-3702 phone number or by registering the concern on the web at <http://www.frc.state.mn.us>. If the citizen contacted the MFRC by phone, the MFRC office sends an information packet to the citizen requesting them to complete a “Public Concerns Registration Form.” The concern is tentatively registered when the completed “Form” is returned to the MFRC office or the concern is filed via the MFRC web site. MFRC staff determines whether the registered concern falls within the scope of the PCRP. If there is some uncertainty whether the concern is within the scope of the program, the MFRC staff will contact the citizen by phone as well as a neutral consultant retained by the MFRC to investigate concerns. If the concern is determined to be valid, the concern is officially registered and forwarded to the consultant for further investigation.

Investigation Protocol

Concerns are investigated under a protocol revised in April 2001 that was further revised in March 2004. The location of the concern and other information regarding the landowner are determined. The person who performed the forest management activity and the natural resource professional that supervised or was responsible for management of the property in question are also determined. If it involves a logger, the Minnesota Loggers Education Program (MLEP) is contacted to check on the logger’s status. If the concern involves a forester, their status with the Society of American Foresters is also checked. The concern also is reported to the organization that manages the property. For example, if the concern were over a harvest on state forestland, the Director of the Division of Forestry in the Minnesota Department of Natural Resources (DNR) would be informed.

During the investigation, any individual that may have information that relates to the concern or site in question may be contacted. The consultant attempts to ensure that those contacted provide accurate information by verifying the information with others knowledgeable about the site in question, the participants involved, or the particular practice that generated the concern. There are times when it becomes necessary for the consultant to personally visit the site that generated the concern.

Field Investigations

In September 2002, the MFRC established criteria to conduct a field investigation of a concern when the MFRC staff or PCRCP consultant feels that one or more of the following criteria justify an on-site visit:

- It is difficult to discern an accurate location or description of the area of the concern. This may result if there is no documentation of the activity, the parties involved will not make documentation available, or there are widely conflicting accounts of the situation that cannot be resolved with the parties.
- The harvest or forest management concern occurs on a visually sensitive site. This may apply to sites that are adjacent to heavily used recreation areas and travel routes.
- The concern is about a practice(s) that appears to be egregious – the degree of the issue may need to be validated on site. This may apply where application of site-level forest management guidelines have flexibility, and local factors that determine appropriate application should be assessed.
- The concern occurs in an area where timber harvesting and forest management are especially controversial. Investigation of the site may be considered necessary to alleviate any potential concerns about possible actions or inaction. This may be applicable in situations where high profile individuals raise a concern, or a concern is about a site that has high public visibility.
- Significant consideration in deciding on whether a field investigation or on-site visit is necessary will be given to photographs of the site or detailed first-hand observations from the site.

If a field investigation is warranted, the consultant will request the landowner's permission to conduct a site visit. If permission is granted, the consultant will invite MLEP staff to accompany the consultant during the site visit.

Confidentiality

The revised protocol includes measures to ensure the confidentiality of the registrant of the concern and other parties involved. Specifically, in the report to the MFRC that is generated after each investigation, the parties involved with the timber harvest or forest management activity are to be referred to as follows:

- Concern registrant
- Landowner (private or corporate); public agencies shall be identified by agency (e.g. DNR, USDA Forest Service, etc.)
- Forester, logger, land manager, or other appropriate title (not names or their gender). If more than one employee from the same agency or company is referenced, they shall be referred to numerically (e.g. forester #1 with the DNR).
- Other categories as necessary (e.g. concerned neighbor).

Reports on Registered Concerns

After the concern is investigated, the consultant prepares a report that is sent to the MFRC office. From there, copies of the report are sent with a cover letter to the involved parties. This report follows the protocols above and includes the following information:

- Front page
- Confidentiality measures
- Description of the concern(s)

- Description of the site
- Timber harvesting/forest management guidelines or BMP's that would have applied
- Permits/ordinances/laws/contractual obligations violated
- Contacts with the landowner, logger or other forest practitioner, and forester or other
- Findings

Information regarding the identities of the people contacted in regards to a registered concern is transmitted to the MFRC staff as part of a "Concern Summary" separate from the report. Requests for identities must be made directly to the MFRC.

Education

As determined by the consultant, educational materials about forest management in Minnesota are also sent directly by the consultant to the involved parties specifically matched to their needs. The consultant has obtained a number of publications that are available to address some of those information needs, including but not limited to:

- *Managing Water and Crossing Options* – Forest Management Practices Fact Sheet Series by the DNR and the University of Minnesota Extension Service (MES);
- *Protecting Water Quality and Wetlands in Forest Management (BMPs)* by the DNR;
- *Visual Quality Best Management Practices for Forest Management in Minnesota* by the DNR;
- Tree Management fact sheets (for individual species, e.g. aspen, birch) by the DNR;
- Timber Stand Improvement Fact Sheets by the DNR;
- *Marketing Timber from the Private Woodland*, by the MES;
- *2006 Minnesota Forest Resources Management Directory*, published by MLEP and the Minnesota Forestry Association;
- *Sustaining Minnesota Forest Resources: Minnesota Voluntary Site-Level Forest Management Guidelines*, DNR and MFRC (new addition, July 2005).

The MFRC approved guidelines for the sustainable removal of woody biomass from forest and brush lands at their May 16, 2007 meeting. The 2005 legislature mandated that best management practices for the removal of woody biomass be adopted by the DNR and the MFRC by July 1, 2007. The guidelines were developed to address concerns over woody biomass harvests' impacts on soil productivity, biological diversity, and wildlife habitat. These new woody biomass guidelines will be inserted as two chapters in the current FMGs.

The forestry community will need to address education of woodland owners, loggers, and natural resource professionals to effectively implement use of the new woody biomass guidelines. On one hand, increasing markets to use woody biomass as an energy source to generate power could help to improve the aesthetics of harvested sites by removing unsightly woody debris that, in the past, contributed to some PCRCP concerns being registered with the MFRC. On the other hand, taking too much of the woody biomass from sites that could affect their long-term productivity or wildlife habitat would result in a new focus to the PCRCP. Time will tell whether application of the woody biomass guidelines results in a change in the number of concerns registered with the MFRC.

Activities during 2006-2007

The MFRC renewed an agreement with the consultant, Bruce ZumBahlen, to provide service to the PCRP effective August 1, 2006. Three concerns were registered during this period. Since its inception in 1998, the PCRP has received a total of 24 concerns. Following is an activity summary for fiscal year 2007 ending June 30, 2007 based on the consultant's bi-monthly reports to the MFRC.

August 1 – August 31, 2006

One concern was registered during this period. The registrant had contacted the MFRC office in April 2006, but did not file the concern until late July, 2006. The concern was registered too late for an investigation to be completed before the end of this reporting period.

The concern was over timber harvesting on County administered lands in riparian management zones (RMZ) adjacent to a trout stream. The investigation found that some of the harvesting occurred on timber sales that had been designed and appraised prior to the development and adoption of the *Minnesota Voluntary Site-level Forest Management Guidelines* (FMGs). However, a more recent harvest that occurred during the 2004-2005 winter season did seem to be in non-conformance with the FMGs.

September 1 – October 31, 2006

There were no concerns registered during this period. But, as mentioned above, the concern registered during the previous reporting period was reported on during this period.

November 1 – December 27, 2006

There were no concerns registered during this period. However, the program consultant was contacted for advice by the Minnesota Logger Education Program on how to deal with an issue that appeared to be in violation of the Shore Land Management Act.

December 28, 2006 – February 28, 2007

One concern was registered on February 27, too late for any investigation to occur during the reporting period. The concern was related to possible violations of the Minnesota Environmental Policy Act (MEAP) over a timber sale on county administered wetlands that would be involved in a proposed mining venture. The timber was sold while an Environmental Impact Statement over the project was still being prepared – an apparent violation of the MEAP.

The concern also listed a number of practices associated with the timber harvest that appeared to be not in conformance with the FMGs. Results of the investigation were addressed during the next reporting period.

March 1 – May 22, 2007

There was one concern registered during this period. The concern came about through a complaint over the harvesting practices on private land by a logger certified under the Minnesota Certified Master Logger (MCML) program. The MCML program relies on the PCRP to investigate complaints. The complainant was referred to the MFRC to register their concern.

The concern was primarily over use of the registrant's property by the MCML logger without permission. The trespass involved disturbances on the registrant's property caused by clearing a road to access a state timber sale and secondly, storing wood on the registrant's property at another location. Normally, the PCRP does not get involved in issues that could end up in civil

court. However, MCML protocol relies on the PCRPR for independent investigations of its members. For that reason, the PCRPR investigated the complaint.

After some initial work by the consultant, the investigation of the concern over the proposed mining venture that was registered during the previous reporting period was halted by the MFRC office. This was due to questions on the utility or application of the FMGs on a site likely to be converted to another land use and the fact a lawsuit had been filed to stop the timber sale.

May 23 – June 30, 2007

There were no concerns registered during this period.

Descriptive Information on Registered Concerns

St. Louis County trout streams

This concern was over the potential harm that county land department timber harvests adjacent to trout streams might have on trout populations. The registrant had provided numerous photographs that depicted harvest scenes adjacent to the streams. Many of the timber sales had been designed and sold prior to development of the FMGs. However, the FMG's did apply to the most recent sale harvested during the 2004-2005 winter season. The investigation found there doesn't appear to be an effect on the trout populations from the recent timber sale based on DNR fisheries census data on the streams.

The issue with the more recent harvest was caused by the county foresters' misinterpretation of the FMGs regarding the distribution of residual timber to be left in the riparian management zones (RMZ) after harvest. The timber to be left after the harvest is supposed to be evenly distributed throughout the RMZ's, not averaged to allow clear cutting to the streams' edges balanced by leaving other areas undisturbed. The FMGs clearly state that the amount of residual timber should be evenly distributed throughout the RMZ.

A letter clarifying interpretation of the FMGs was sent to the county land department.

Mining proposal on St. Louis County lands

The concern was over violation of the Minnesota Environmental Policy Act and harvesting practices that appeared to be in non-conformance to the Voluntary Site-level Forest Management Guidelines (FMGs).

The investigation was halted due to two reasons. The first reason was that the timber sale was intended to salvage the value of timber on a site before its land use would be changed. The FMGs are intended to address forest management of sites that would be managed for their long term sustainable management. A change in land use would make application of the FMGs moot.

The second reason was that a lawsuit had been filed in opposition to the mining proposal and the future use of the timber sale area. The plaintiffs had sought an injunction to halt the timber sale. PCRPR is not intended to be used as a means to stop logging or resolve disputes that become issues in a court of law. The PCRPR is intended to be educational in nature. Use of the PCRPR's investigations for litigation purposes would discourage cooperation with future investigations, out of fear that those providing information could become involved in court proceedings.

Until the litigation is resolved, the MFRC office determined it best to discontinue the investigation. On April 19, 2007 – the Minnesota Sixth Judicial District Court granted an

injunction to halt the timber sale, though the timber harvest has been completed by then. The court found that the plaintiffs have a reasonable likelihood of success on the merits that the county may have been in violation of state and federal law in approving the harvest of timber before an Environmental Impact Statement were completed. The court ruled that no further work on the site can proceed until the environmental impact statement is completed.

Private Land Trespass in St. Louis County

The concern was registered over use of the registrant's property by a member of the Minnesota Certified Master Logger (MCML) program without permission and alleged harm to wetlands. The registrant originally complained to the MCML program office, but was referred to the PCRCP. As stated previously, the PCRCP is not intended to address issues that have a likelihood of ending up in civil courts. However, the MCML program relies on the PCRCP to independently investigate complaints against its members and for that reason the concern was investigated.

The root cause of the trespass caused by clearing the road to access the state timber sale was due to a DNR forester incorrectly identifying the property line between the registrant's property and the adjacent state land. The logger had purchased the state timber sale and had begun operations after the DNR forester had flagged what was assumed to be the boundaries between the properties in question. The forester marked a corrected line between the properties with paint after the access road had been cleared.

The trespass from storing wood on the registrant's property resulted from poor instructions from the logger to the logger's crew on where to pile wood so that it could be picked up by truckers. The logger had permission to pile the wood on another landowner's property across the road from the registrant's property, but the crew placed the wood on the registrant's property by mistake.

Appendix A

Public Concerns Registration Process Log

Date	Description of Concern	Location	Type of Communications and Materials Sent
August 2006	Harvesting timber in riparian management zones adjacent to trout streams.	MFRC Northeast Landscape Region, St. Louis County	Letter to the county land department personnel involved.
February 2007	Possible violations of the MN Environmental Policy Act and harvest practices not in conformance with the FMGs.	MFRC North Central Landscape Region, St. Louis County	Investigation halted by MFRC office due to converting the site to another land use and a lawsuit to halt the timber sale.
February 2007	Trespass from disturbances caused by clearing a road and piling wood on property without the owner's permission	MFRC Northeast Landscape Region, St. Louis County	None – the completed report on the investigation sent to the logger and the registrant sufficed.