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## Re: Complaint Regarding FSC Certification of Tembec's FML 01 by SmartWood

I am responding to the complaint you have raised in your October 13, 2007 letter to the Forest Stewardship Council (FSC) and also in emails to myself, Alexandre Boursier, SmartWood's Regional Manager for Canada, regarding FSC certification of Tembec's Forest Management Licence 01 in Pine Falls Manitoba. We are treating this as a formal complaint and accordingly have followed the SmartWood complaints and appeals process to investigate and respond. The SmartWood policy can be found on our website (<http://www.rainforestalliance.org/programs/forestry/SmartWood/dispute-resolution.html>).

I have provided a synopsis of the status of the Pine Falls certification to explain where we are in the process and have provided details on the considerations made by the auditors regarding the issues you have raised. The original 2004 certification assessment utilized the 10 principles and 56 criteria of the FSC Canada accredited National Boreal Standard dated August 6, 2004 which is available through the FSC Canada website ([www.fscCanada.org](http://www.fscCanada.org)).

Table 1 provides a summary of the current status of the Pine Falls certification. Public summaries of the original 2004 FSC audit assessment as well as the two, 2007 Pre-condition verification audits can be found at the SmartWood website ([http://www.rainforest-alliance.org/programs/forestry/SmartWood/public\\_documents.cfm](http://www.rainforest-alliance.org/programs/forestry/SmartWood/public_documents.cfm)). As you can see there are 36 Corrective Action Requests (CARs) that must be addressed by Tembec within the timelines provided in order for them to maintain their certificate. I believe you will find the CARs issued to Tembec address most of your concerns.

**Table 1 - Status of Pine Falls FRL01 FSC Certification**

Audit Stage	Assessment Date	Report Date	Status
Pre-Assessment	November 2001	December 2001	Gaps identified at FSC criterion level

Original Assessment	November/December 2004	October 2005	3 major non-compliances found (Pre-conditions) that needed to be addressed prior to certification (i.e. long term plan, current wood supply, dispute resolution), 33 CARs that need to be addressed within the timelines provided, and 21 observations for improvement (note that Observations do not represent non-compliances).
1st Pre-condition Verification Audit	January 2007	May 2007	3 major CARs closed, two new major CARs identified (i.e. improve compliance, incorporate public input from FSP and annual plan), and 2 new CARs were identified, 13 new observations
2nd Pre-condition Verification Audit	June 2005	September 2007	2 major CARs closed, one new CAR identified
FSC Certification		October 11, 2007	must address 33 CARs from 2004 assessment, plus 3 CARs from 2007 Pre-condition audits within timelines indicated

The seven issues you have raised are addressed below based on our investigations.

**1) Clear Cut Logging**

Clear cut logging, per se, was not raised as an issue by stakeholders or the auditors during any of the three FSC audits and this was likely due to the generally very small harvest block sizes being implemented. Auditors found that the current harvesting system applied by Tembec on FML01 does not represent a Major non-compliance with the FSC standards. Clear cutting is an acceptable practice for managing Boreal Forest tree species, however the FSC standard requires considerable change to this approach from historical practices in patch size and residual structure. The auditors were aware that Tembec is obligated to implement the Manitoba Conservation (MC) guidelines for clearcut size, green up, and residuals. We issued several CARs that resulted directly from the implementation of the guideline, and this is discussed below.

**2) Logging in Provincial Parks**

Comments about logging in Nopiming Park were received. Several groups and individuals feel that activities such as logging should not be allowed. There are currently several atypical uses in the park including logging, mining, hydro electric development, cottage subdivisions, and hunting. There have not been any interim decisions by the new Ease Side land use planning process. Logging is under scrutiny, but it, along with the other uses, is still permitted by the government. As long as the government allows forestry activities to take place on such tenure, it does not represent a Major non-compliance with the FSC standards.

Significant progress towards the designation of protected areas on FML01 has been made, however there are still gaps. There is a general agreement among all parties about the areas, which are not adequately represented, but not on how to achieve representation in these zones. A CAR was created to complete the protected areas network. The recent park buffer increase by MC and Tembec's voluntary protection of an additional 5,382 hectares both along the Manigotagan River and the completion of the High Conservation Value Forest reports were noted as evidence of Tembec's commitment to the protected areas network.

**3) Lack of Long Term Plan**

Since the 1999, Tembec has been operating under Annual Operating and Renewal Plans (AORPs) for the January 1 to December 31 periods each year. MC has asked Tembec to withhold the submission of the long term Sustainable Forest Management Plans (SFMP) until the province can conclude the Wide Area Land Use Planning being conducted on the east side of Lake Winnipeg. In late 2005, Tembec was instructed by MC to file a 2009-2028 SFMP on January 1, 2008 followed by the preparation of an Environmental Impact

Statement, and if necessary, hold Clean Environment Committee hearings. Approval was scheduled for January 1, 2009.

Prior to certification, Tembec was required to develop a long term Forest Management Plan (FMP) that meets the requirements of the FSC Boreal Standard Principle 7.0. This was a major CAR of the original assessment and it was satisfied during the Pre-condition verification audit in January 2007.

To address the major CAR Tembec prepared a 2006-08 Forest Stewardship Plan (FSP) for the January 1, 2006 to December 31, 2008 period. This plan was delayed to November 2006 as MC and Tembec needed to resolve the new 2006 wood supply. There was public input, and an independent peer review of the wood supply analysis. This plan also considers long term targets and meets that requirement of the standard. MC has not approved this FSP, however Tembec is implementing it via the AORPs for the three-year period. Much of the Pre-condition verification audit concentrated on the development and implementation of the 2006-2008 FSP. The 2006-2008 FSP and wood supply analysis will serve as a template to help prepare the 2009-2028 SFMP.

After a thorough review, the audit team concluded that the Pre-condition was satisfied, and no new CARs were identified. However, there were numerous outstanding CARs from the original assessment that would have to be addressed.

#### **4) Logging in Woodland Caribou Habitat**

Caribou management has received numerous comments during the FSC audit process. Shortly after the original 2004 FSC assessment, the original 1995 Caribou strategy (i.e. "*Landscape Management Strategy for the Owl Lake Boreal Woodland Caribou Herd Eastern Manitoba*") was replaced with the 2005 strategy: (i.e. "*Manitoba Model Forest (MBMF). 2005A. Landscape Management Strategy for the Owl Lake Boreal Woodland Caribou Herd, Eastern Manitoba: An Update of the Original 1995 Strategy. A report of the Eastern Manitoba Woodland Caribou Advisory Committee to the Manitoba Model Forest. April 2005. Manitoba Model Forest Report 04-2-33. 66 pp.*")

The 2005 strategy removed the constraint on experimental harvesting wholly within the high use area (zone 1a), and allowed for harvesting within the other parts of the winter habitat (zone 1b).

The audit team had to determine whether the strategy was being implemented and whether or not it was consistent with the FSC standard. The auditors conducted interviews with the Independent Science Advisory Team (ISAT), Tembec staff, MC staff, the public and stakeholders and there were many opinions expressed about the caribou strategy. The auditors acknowledged the worthy involvement of ISAT and the significant amount of work by the Manitoba Model Forest, Tembec, and Manitoba Conservation in developing and implementing the strategy.

There is no written consensus available from ISAT for the Caribou Strategy. A document called "*Recommendations for Caribou Management in FML-1. Manitoba Tembec & Western Canada Wilderness Committee Workshop. November 2005*" provides a good description of consensus and non-consensus items, and additional comments by ISAT. Comments by ISAT showed that they are very concerned about what is the appropriate thing to do. One member believes any logging is clearly wrong, and the other two see it as neither clearly right nor clearly wrong, but it would have to be strictly controlled. These latter members felt that if no logging were to occur, that too would probably be acceptable for some time to come. One ISAT member stated that precaution does not mean doing nothing, things are always moving forward, but one should assess whether any options have been precluded.

Genuine commitment is an important element of the assessment of the company. Two members of ISAT accepted that Tembec is genuine in their commitment to caribou and have funded the caribou work. Senior Tembec staff have made assurances that caribou is paramount in the critical habitat areas and that forest management is for the benefit of caribou and that timber is a secondary consideration. All ISAT members agreed there is some risk from a major disturbance such as fire and the strategic target of maintaining two thirds of the habitat in mature and old condition in perpetuity is probably a good one according to two members of the committee, however there is a great deal still to be learned from this herd of caribou. In summary, the ISAT and stakeholder comments regarding caribou have arguments for and against logging and the issue continues to be contentious.

The audit team believes based on the evidence that Tembec is genuinely committed to doing the right thing for Caribou. This may include no logging in any critical caribou habitat or additional deferrals in the area and the audit team believed there would be additional CARs for Caribou in the future.

The CAR from the initial assessment required the implementation of the caribou strategy. The audit team regards the process for building consensus with the use of the Caribou committee, and ISAT as an appropriate direction. We note that Tembec has committed in writing to maintaining ISAT and continuing to use the workshop format. This is viewed as evidence for the implementation of the CAR from the initial assessment, which requires "... collaboration with MC and other partners to finalize and begin implementation of a new approved caribou strategy". The auditors believed the CAR should remain and a review of the implementation of the Owl Lake Caribou strategy, and strategies for other Caribou herds will be an ongoing requirement of the certificate, even once the CAR is cleared. The January Pre-condition audit report stated that Tembec may be required to defer critical caribou habitat at some future time and this would be assessed during future audits. That has in fact happened with the 50 year deferral of forest operations in the 26,000 hectare winter core zone of the Owl Lake woodland Caribou herd announced by the Canadian Parks and Wilderness Society on October 10, 2007.

### **5) Illegal Logging and Lobbying to Weaken Provincial Wildlife Guidelines**

Beginning in 2002 MC began including the following conditions in all work permits issued to Tembec based on the Forest Management Guidelines for Wildlife in Manitoba (MC, 1989):

*"...distance to thermal cover will not exceed 200 metres and line of sight within cutover will not exceed 400 metres. Visual barriers to break line of sight may include regenerated areas, topographical features and un-merchantable or immature stands, unless otherwise approved in writing"; and,*

*"a minimum of 20% cover will be maintained, unless otherwise approved in writing".*

The original guideline "should" was being enforced as a "will" and subject to penalties and public scrutiny. MC believes that it is a good guideline; however Tembec has been discussing with MC the possibility of removing these conditions from the work permit as it will continue to generate non-compliances because of a lack of clarity and flexibility in the work permit condition interpretation and a lack of clarity in how the condition will be enforced. Stakeholder interviews indicated that they believed the line of sight requirement is clear and that Tembec is not following the rules. MC does afford some flexibility over the line of sight and wildlife guideline implementation. Despite the difficulty in the work permit "line of sight" wording, the audit team feels that the concept has merit, and the compliance standard can be made more precise through discussion with MC, Tembec and stakeholder groups.

There were no line of sight non-compliances between 2002, and 2004; however the line of sight requirement was a guideline at the time, and consequently not strictly enforced by MC. In response to line of site issues by a stakeholder in the 2004 Shoe Lake block, MC began to rigorously enforce this work permit condition. Several stakeholders began to monitor the line of site issue on all Tembec harvest blocks.

The Shoe Lake, Euclid Lake, and Maskwa blocks line of site compliance and a trespass into the Manigotagan River buffer were the main compliance issues raised during the audit. Interviews with MC after the field audit indicated that there was one additional buffer trespass which resulted in a verbal warning. MC has stated that there are numerous other non-compliances where Natural Resource Officers could have laid charges and didn't.

Tembec has shown improvements in their operations since the 2004 audit despite the non-compliances. Tembec addresses their compliance record with numerous compliance procedures, training, and communication. Two significant compliance improvements implemented since the 2004 audit were the use of Global Positioning Systems (GPSs) and an increase in boundary and residual marking. All harvest blocks inspected during the January 2007 Pre-condition audit looked well laid out with residual appropriate for line of sight requirements. Tembec, MC and contractor staff interviewed all showed a strong emphasis on compliance, and especially line of sight compliance. All supervisors and operators interviewed were aware of the critical nature of line of sight requirements and compliance in general, and had a good knowledge of the procedures to follow.

MC recognizes that it is difficult to implement the line of sight work permit condition and it exposes Tembec to an increased potential for non-compliances, especially given the current level of public scrutiny. MC is developing a new landscape guide which may change the requirements.

Despite frequent good performance the audit team believed that there are several coincident factors resulting in a systemic problem with "occasional" work permit non compliances. There are sporadic lapses including imprecise residual planning, inadequate boundary marking, possible gaps in operator training, supervisor vigilance and a lack of focus of planned harvest areas to specific portions of operating blocks. A Pre-condition was included in the January 2007 verification audit. A review of the most recent timber inspection reports and interviews with four MC Natural Resource Officers during the June 2007 verification audit indicated that Tembec's compliance record has improved with no line of sight, block boundary or reserve buffer non-compliances since February 2006. The January 2007 Pre-conditions had been met. Obviously this will be an area of focus for future audits and there are CARS which relate to it indirectly.

#### **6) Old Growth Logging**

The Pre-Industrial Condition (PIC) Report was prepared to meet the FSC national boreal standard. The PIC report defined the proportion of old growth in the pre-industrial forest and these levels were used to define the old growth forest targets that were included in the updated 2006 wood supply and used to define objectives for old growth in the 2006-2008 FSP. The target old growth levels were generally higher than the PIC report levels and were to be achieved within 25 years. SmartWood auditors found this to be in compliance with the FSC standards. Future audits would likely concentrate on the qualitative and utility aspects of the old growth target achievement.

#### **7) Delay in responding by SmartWood**

Finally, I apologize for not responding to your concerns earlier and during the timeframe of the certification process. The SmartWood staff informed me that this was an oversight, and have shown me a string of emails that shows you did express concerns back in 2005 (and again now of course) and therefore should have been provided with an explanation of how your concerns had been addressed prior to the report being finalized. We are very proud of the transparency of our process. It is not an excuse, but the high level of response from stakeholders and First Nations in Manitoba has been a challenge for us. SmartWood has an open door policy for complaints (as this response indicates), so the certification is not the end of discussion; indeed it is just the beginning as the long list of CARs indicates.

Now that the public summary is available, I invite you to review the list of Corrective Action Requests (CARs) that Tembec now has to comply with. I hope that this demonstrates how SmartWood auditors have considered your concerns during their audits of Tembec's FRL01 against the FSC National Boreal Standard. I am aware that you attended the October 11, open house for the Forest Stewardship Plan in Winnipeg and provided similar written comments and raised additional issues regarding the FSP. Vince Keenan, Tembec Divisional Forester told me he was reviewing and would be responding to these comments as part of the public consultation for the FSP. We hope that you will continue to engage Tembec directly in discussions to address your issues.

Please do not hesitate to contact me if you require any further information regarding SmartWood's FSC certification of Tembec's FML01 in northeast Manitoba.

Sincerely,



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