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C.C.S.M. c. D107

The Dutch Elm Disease Act

(Assented to June 29, 1998)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1 In this Act,

"disposal" means

- (a) the removal of all of the bark from an elm tree by burning or other means,
- (b) the chipping of all of the branches or the main stem of an elm tree, resulting in chips that have a thickness of wood adhering to the bark in one dimension of not more than 5 centimetres,
- (c) the burial of all parts of an elm tree to a depth of not less than 25 centimetres below the soil line, or
- (d) the treatment of elm wood with a registered insecticide that prevents the survival of the elm bark beetle; (« destruction »)

"Dutch elm disease" means the disease caused by the fungus *Ophiostoma ulmi*; (« graphiose »)

"elm tree" means a tree of the *Ulmus* genus; (« orme »)

"infected" means infected with Dutch elm disease; (« atteint »)

"inspector" means

- (a) a person appointed as an inspector under section 5,
- (b) a person appointed as an officer under The Wildlife Act, or
- (c) a peace officer; (« inspecteur »)

"minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; (« ministre »)

"municipality" means

- (a) a municipality as defined by The Municipal Act, or

(b) a local government district incorporated or continued under The Local Government Districts Act; (« municipalité »)

"person" means an individual, corporation, unincorporated association or partnership; (« personne »)

"pruning" means removing dead or diseased material from a tree to enhance its growth, vigour or form; (« émondage »)

"tree inventory" means a record of elm trees with trunks larger than five centimetres diameter at breast height (DBH), which shows their location within a designated area, their size and their condition. (« inventaire »)

Application

2 This Act applies to all land in Manitoba except land administered and controlled by the Crown in right of Canada.

Management and prevention of Dutch elm disease

by minister

3(1) The minister may implement a program or measure for the management and prevention of Dutch elm disease in all or part of Manitoba.

Management and prevention of Dutch elm disease

by person

3(2) Where the minister, after receiving the advice of an inspector, has reasonable grounds to believe that elm wood, an infected elm tree, or an elm tree in danger of becoming infected is situated on land owned or occupied by a person, the minister may order the person to implement a program or measure for the management and prevention of Dutch elm disease before a date specified in the order.

Content of programs and measures

3(3) A program or measure under subsection (1) or (2) may provide for one or more of the following:

(a) applying disinfecting, preventive or therapeutic treatments to infected elm trees or those in danger of becoming infected;

(b) removing and disposing of elm trees, elm stumps or elm wood;

(c) planting trees that are not susceptible to, or are tolerant of, Dutch elm disease;

(d) planting elm trees where the maintenance or enhancement of native forest systems is appropriate and where a management program for Dutch elm disease exists;

(e) establishing elm wood disposal sites by municipalities and private landowners;

- (f) taking a tree inventory;
- (g) monitoring the health of elm trees through surveillance;
- (h) pruning elm trees;
- (i) managing elm bark beetle populations by basal insecticide spray programs or otherwise;
- (j) developing educational and research programs to promote the management and prevention of Dutch elm disease.

Service of order

3(4) The minister shall serve a person with an order made under subsection (2) by personal service, or if personal service cannot be effected within a reasonable time, by

(a) serving an adult individual at the last known residence of the person with a copy of the order;
or

(b) forwarding a copy of the order by registered mail to the person at his or her last known residence.

Time to serve order

3(5) The minister shall serve a person under subsection (4) no less than 14 days before the date specified in the order for implementation of the program or measure.

Failure to comply with order

3(6) Where a person fails to comply with an order under this section, a justice may issue a warrant authorizing an inspector, together with a peace officer and any other individual under the direction of the peace officer whose presence is necessary to enforce the order, to enter on the land of the person named in the warrant, and implement, at the person's expense, a program or measure which, in the opinion of the inspector, is necessary for compliance with the minister's order.

Expense of implementation

3(7) Where the minister orders a person to implement a program or measure under this Act, the minister may

(a) direct that the person bear its expense; or

(b) provide financial assistance to the person to assist in its implementation.

Exemptions

3(8) The minister may exempt a person or a category of persons from a program or measure under this section.

Expense of damage to public trees

4 Where the minister finds that a person has damaged an elm tree on land owned by the province or a municipality in a way that would predispose the tree to become infected or be a disease hazard, the minister may

- (a) order the person to implement a program or measure to correct the damage at the person's expense; or
- (b) take remedial action to correct the damage at the person's expense.

Appointment of inspectors

5(1) The minister may appoint inspectors for the purpose of enforcing this Act and the regulations.

Officers may act as inspectors

5(2) A person appointed as an officer under The Wildlife Act or a peace officer has the power to perform the duties of an inspector under this Act.

Inspector's power of entry and inspection

6(1) An inspector may, without the consent of an owner or occupier, enter on and inspect any land, building, vehicle or other place, other than a dwelling house, where the inspector has reason to believe that an elm tree or elm wood is located.

Inspector's report to minister

6(2) An inspector who in the course of an inspection under subsection (1), finds elm wood or an elm tree that he or she believes is infected or is in danger of becoming infected, shall prepare and submit a written report to the minister.

Officer's power to stop vehicles

6(3) A person appointed as an officer under The Wildlife Act or a peace officer acting as an inspector may signal or request a person driving a vehicle or machinery to stop, and the driver shall immediately bring the vehicle or machinery to a stop and remain stopped as long as the officer considers necessary in order that the officer may inspect the vehicle or machinery for elm wood.

Inspector's power to seize elm wood

6(4) Where an inspector believes that a person is committing an offence under section 12, the inspector may seize elm wood possessed by the person by placing on the wood a notice of seizure in a form approved by the minister.

Detention of seized elm wood

6(5) The minister may detain all elm wood seized under this section until proceedings under section 12 are concluded.

Prohibitions

7 No person shall

- (a) obstruct an inspector in the course of duty;
- (b) give false or misleading information to an inspector in the course of duty;
- (c) move wood that has been seized under subsection 6(4), or deface or move a notice of seizure placed on wood;
- (d) fail to implement a program or measure when ordered to do so under subsection 3(2);
- (e) possess an infected elm tree or elm wood with bark that has not been kiln dried to a moisture content of 18% or less, or treated in another way satisfactory to the minister;
- (f) engage in a transaction to sell, barter or trade an infected elm tree or elm wood with bark that has not been kiln dried to a moisture content of 18% or less for any type of consideration;
- (g) transport an infected elm tree or elm wood with bark that has not been kiln dried to a moisture content of 18% or less, except to remove or dispose of it in a program or measure under subsection 3(2), or in another manner satisfactory to the minister; or
- (h) fail to stop a vehicle or machinery when requested to do so by an officer under subsection 6(3).

Order by municipality to destroy trees or wood

8(1) Where the council of a municipality, after receiving the advice of an inspector, has reasonable grounds to believe that elm wood, an infected elm tree, or an elm tree in danger of becoming infected, is situated within the municipality on land owned or occupied by a person, the council may order the person to dispose of the elm tree or wood in a manner satisfactory to the council before a date specified in the order.

Service of order

8(2) The council shall serve the person with an order referred to in subsection (1) by personal service, or if personal service cannot be effected within a reasonable time, by

- (a) serving an adult individual at the last known residence of the person with a copy of the order; or
- (b) forwarding a copy of the order by registered mail to the person at his or her last known residence.

Time to serve order

8(3) The council shall serve a person under subsection (2) no less than 14 days before the date specified in the order for the disposal of the trees or wood in a manner satisfactory to the council.

Failure to comply with order

8(4) Where a person fails to comply with an order under this section, a justice may issue a warrant authorizing an inspector, together with a peace officer and any other individual under the direction of the peace officer whose presence is necessary to enforce the order, to enter on the land of the person named in the warrant, and at the person's expense, dispose of the elm tree or elm wood.

Expense recovery by minister

9(1) An expense incurred by the minister to implement a program or measure under subsection 3(6) or to take remedial action under clause 4(b) is a debt due and owing to the Crown from the person charged with payment of the expense under those provisions, but in the case of a person who is the owner of land upon which the expense is incurred, the minister may charge the expense to the municipality in which the land is situated.

Expense recovery by municipality

9(2) Where an expense is charged to a municipality under subsection (1), the municipality shall pay to the Crown the amount charged, and the municipality may add the amount of the expense to the landowner's real property taxes, and may collect the amount as real property taxes.

Municipality to implement program or measure

10(1) The minister may require a municipality, at its expense, to implement a program or measure for the management and prevention of Dutch elm disease.

Financial assistance to municipality

10(2) The minister may enter into an agreement with a municipality to provide it with financial or other assistance to implement a program or measure.

Agreement for mutual programs

11 The minister may enter into an agreement for the development, implementation or cost sharing of a program for the management and prevention of Dutch elm disease with

- (a) the Government of Canada or one of its agencies;
- (b) the government of a province or territory of Canada, or one of its agencies;
- (c) the government of the United States of America or one of its agencies; or
- (d) the government of one of the United States of America or one of its agencies.

Offence and penalty

12 A person who does anything prohibited in section 7 is guilty of an offence and is liable on summary conviction

(a) in the case of an individual, to a fine of not more than \$5,000.; and

(b) in the case of a corporation, to a fine of not more than \$10,000.

L. G. in C. regulations

13 The Lieutenant Governor in Council may make regulations respecting fees for licences and permits issued under this Act.

Ministerial regulations

14

The minister may make regulations

(a) respecting programs or measures in all or part of Manitoba for the management and prevention of Dutch elm disease;

(b) respecting forms for use under this Act;

(c) respecting the issuance of tree pruners' and pesticide application licences under this Act;

(d) respecting the issuance of permits under this Act.

Repeal

15 The Dutch Elm Disease Act, R.S.M. 1987, c. D107, is repealed.

C.C.S.M. reference

16 This Act may be referred to as chapter D107 of the Continuing Consolidation of the Statutes of Manitoba.

Coming into force

17 This Act comes into force on a day fixed by proclamation.

NOTE: S.M. 1998, c. 17 was proclaimed in force September 15, 1998.