

In the Matter of Violation)
 of Forest Practices Act,)
 ORS 527.670(6))
 by ROBERT F. BITZER,)
DBA BITZER LOGGING)
 Case Numbers 94-KL220 and 94-KL225)
 NOTICE OF CIVIL PENALTY;)
 FINDINGS OF FACT; PROPOSED)
 AND FINAL ORDER)

AFFIDAVIT OF JUDGMENT

State of Oregon
 County of Douglas

SS.

Robert T. Lundblad, after first being by me duly sworn, declares that:

I, Robert T. Lundblad, am Civil Penalty Administrator for the Oregon Department of Forestry's Forest Practices Program, and in that capacity have responsibility for and control over the records regarding civil penalties assessed for violations of the Forest Practices Act. My review of the records shows that the above-referenced Notice of Civil Penalty, a true and exact copy of which, consisting of six pages, is attached hereto as Exhibit A, was mailed by certified mail on November 25, 1994, and received by Bob Bitzer on November 29, 1994. No request for hearing was received within 20 days of mailing, so the order became final on December 19, 1994. The order is final in accordance with the provisions of ORS 183.090(6). No request for hearing or to set aside the final order has been received to date. No portion of the penalty has been paid, leaving a balance of \$142.25. This includes interest at the rate of 9% starting 10 days after the final order (December 29, 1994 through October 27, 1995; total \$7.45) and Klamath County Clerk recording fees at \$5.00 per page (total \$35.00).

RETURN TO
 Doris VanDeKoppel
 Oregon Dept of Forestry
 2600 State Street
 Salem, Oregon 97310

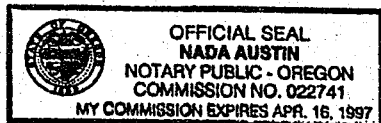
Robert T. Lundblad

Subscribed and sworn/affirmed before
 me by Robert T. Lundblad,
 this 25 th day of October, 1995.

L.S.

Nada Austin

Notary's Signature

My commission Expires: 4-16-97

Before the Board of Forestry
of the State of Oregon

In the matter of Violation)	NOTICE OF CIVIL PENALTY;
of Forest Practices Act,)	FINDINGS OF FACT; PROPOSED
ORS 527.670(6))	AND FINAL ORDER
by Robert F. Bitzer,)	
dba Bitzer Logging)	

TO: ROBERT F. BITZER, DBA BITZER LOGGING
94-KL220

Anyone conducting forest operations is required by ORS 527.630 et seq. to conform to Forest Practice Rules. A person who fails to conform to these rules is subject to a civil penalty as provided by ORS 527.683 through .687 and 527.992.

I. APPLICABLE LAW

ORS 527.670(6) An operator, timber owner or landowner, before commencing an operation, shall notify the State Forester. The notification shall be on forms provided by the State Forester and shall include the name and address of the operator, timber owner and landowner, the legal description of the operating area, and any other information considered by the State Forester to be necessary for the administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon receipt of such notice, the State Forester shall send a copy of the notice to whichever of the operator, timber owner or landowner did not submit the notification. The State Forester shall also send to the operator, the timber owner and the landowner a copy of the rules applicable to the proposed operation.

II. FINDINGS OF FACT

On or about August 17, 1994, Robert F. Bitzer, dba Bitzer Logging, or his agents conducted an operation on forest land located in Section 36, Township 39 S., Range 7 E., W.M., in Klamath County, Oregon; without first notifying the State Forester pursuant to ORS 527.670.

Mr. Bitzer cooperated by ceasing further violation and by taking action to correct the unsatisfactory condition, i.e., filing the necessary notification, upon notice of the violation.

Mr. Bitzer had previous knowledge of the Forest Practices Act, but had not had previous correspondence or conversation with Department of Forestry personnel regarding the practice of notifying the State Forester prior to commencing this operation.

The State Forester has determined that Mr. Bitzer's failure to notify the State Forester has not resulted and will not directly result in resource damage.

III. NOTICE OF PENALTY; ORDER

Now therefore it is ordered: There is assessed against Robert F. Bitzer, dba Bitzer Logging, a civil penalty in the amount of \$50.00. This penalty is assessed using the formula $\$B(C \times P) + [(\$B \times D) - (\$B \times D \times R)]$ (See Attachment 1 for details of formula and determination of values), where:

1. The base fine (\$B) is \$50.00 for violation of ORS 527.670(6) [see OAR 629-55-040(6)].
2. The cooperation factor (C) is 1 because further violation was ceased upon notice of the violation to Mr. Bitzer and action was taken to repair damage or correct any unsatisfactory condition where feasible [see OAR 629-55-040(2)(a)].
3. The prior knowledge or prior violation factor (P) is 1 because Mr. Bitzer had not had correspondence or conversation with Department of Forestry personnel previous to the violation regarding the required practices or actions involved in the violation [see OAR 629-55-040(3)(b)].
4. The damage factor (D) is zero because the violation will not result in resource damage [see OAR 629-55-040(4)(a)].
5. The repairability factor (R) (extent to which damage can be repaired and/or future damage avoided) is not applicable because the damage factor is zero. [see OAR 629-55-040(5)].

OAR 629-55-040(1)(e) states that any penalty of \$50.00 or less will be suspended pending no further violations within one year of issuance of the citation. However, since Mr. Bitzer was also found in another violation of Forest Practices Act, ORS 527.670, at this same time, the \$50.00 penalty is not suspended.

IV. RIGHT TO A HEARING

IF YOU DISAGREE WITH THE ABOVE FINDINGS, ORDER, OR ASSESSMENT YOU MAY REQUEST A HEARING BEFORE THE BOARD OF FORESTRY AS PROVIDED BY ORS CHAPTER 183 AND ORS 527.687 TO CONTEST FINDINGS OR TO SEEK MITIGATION OF A PENALTY. YOU MAY BE REPRESENTED BY COUNSEL AT THE HEARING. IF YOU ARE A CORPORATION AND YOU REQUEST A HEARING, YOU MUST BE REPRESENTED BY AN ATTORNEY. YOUR REQUEST MUST BE IN WRITING, DIRECTED TO THE STATE FORESTER, 2600 STATE STREET, SALEM, OREGON 97310 AND MUST BE RECEIVED WITHIN 20 DAYS OF SERVICE OF THIS NOTICE. (SEE ATTACHMENT 2). FOLLOWING RECEIPT OF YOUR

REQUEST, THE STATE FORESTER WILL NOTIFY YOU OF THE TIME AND PLACE OF THE HEARING.

V. REQUESTING A HEARING

If you request a hearing, you will be given information on the procedures, right of representation, and the rights of parties relating to the conduct of the hearing as required under ORS 183.413(2) prior to commencement of the hearing.

If you request a hearing, the record of the proceedings to date, including the Department of Forestry files on the subject of this violation, automatically becomes part of the contested case record upon default for the purpose of providing a prima facie case. **IF YOU DO NOT FILE A REQUEST FOR A HEARING WITHIN THE TIME ALLOWED, OR IF YOU FAIL TO APPEAR AT A SCHEDULED HEARING, THIS ORDER AND ASSESSMENT WILL BECOME FINAL.** The Order shall be entered upon evidence in the record of the Department of Forestry according to ORS 527.687(2) and OAR 629-55-030(3)(e) and (f) and thereafter shall not be subject to review by any agency or court.

VI. PAYMENT AND COLLECTION

The penalty is due and payable within 10 days after this order becomes final. Your check or money order in the amount of \$50.00 should be made payable to "State Forester" and should be sent to Department of Forestry, Mail Sort 62, P.O. Box 4100, Portland, Oregon 97208-4100.

Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. The clerk shall record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property situated in the county and owned by the person against whom the order is entered. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

Robert T. Lundblad
Robert T. Lundblad
Civil Penalty Administrator,
for:

JAMES E. BROWN,
STATE FORESTER

November 25, 1994
Date

Before the Board of Forestry
of the State of Oregon

In the matter of Violation)	NOTICE OF CIVIL PENALTY;
of Forest Practices Act,)	FINDINGS OF FACT; PROPOSED
ORS 527.670(6))	AND FINAL ORDER
by Robert F. Bitzer,)	
dba Bitzer Logging)	

TO: ROBERT F. BITZER, DBA BITZER LOGGING
94-KL225

Anyone conducting forest operations is required by ORS 527.630 et seq. to conform to Forest Practice Rules. A person who fails to conform to these rules is subject to a civil penalty as provided by ORS 527.683 through .687 and 527.992.

I. APPLICABLE LAW

ORS 527.670(6) An operator, timber owner or landowner, before commencing an operation, shall notify the State Forester. The notification shall be on forms provided by the State Forester and shall include the name and address of the operator, timber owner and landowner, the legal description of the operating area, and any other information considered by the State Forester to be necessary for the administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon receipt of such notice, the State Forester shall send a copy of the notice to whichever of the operator, timber owner or landowner did not submit the notification. The State Forester shall also send to the operator, the timber owner and the landowner a copy of the rules applicable to the proposed operation.

II. FINDINGS OF FACT

On or about August 23, 1994, Robert F. Bitzer, dba Bitzer Logging, conducted an operation on forest land located in Section 26, Township 38 S., Range 8 E., W.M., in Klamath County, Oregon; without first notifying the State Forester pursuant to ORS 527.670.

Mr. Bitzer was cooperative. The operation was complete when the violation was discovered and no corrective action was required.

Mr. Bitzer had previous knowledge of the Forest Practices Act, but had not had previous correspondence or conversation with Department of Forestry personnel regarding the practice of notifying the State Forester prior to commencing this operation.

The State Forester has determined that Mr. Bitzer's failure to notify the State Forester has not resulted and will not directly result in resource damage.

III. NOTICE OF PENALTY; ORDER

Now therefore it is ordered: There is assessed against Robert F. Bitzer, dba Bitzer Logging, a civil penalty in the amount of \$50.00. This penalty is assessed using the formula $\$B(C \times P) + [(\$B \times D) - (\$B \times D \times R)]$ (See Attachment 1 for details of formula and determination of values), where:

1. The base fine (\$B) is \$50.00 for violation of ORS 527.670(6) [see OAR 629-55-040(6)].
2. The cooperation factor (C) is 1 because the operation was complete and no further action was required [see OAR 629-55-040(2)(a)].
3. The prior knowledge or prior violation factor (P) is 1 because Mr. Bitzer had not had correspondence or conversation with Department of Forestry personnel previous to the violation regarding the required practices or actions involved in the violation [see OAR 629-55-040(3)(b)].
4. The damage factor (D) is zero because the violation will not result in resource damage [see OAR 629-55-040(4)(a)].
5. The repairability factor (R) (extent to which damage can be repaired and/or future damage avoided) is not applicable because the damage factor is zero. [see OAR 629-55-040(5)].

OAR 629-55-040(1)(e) states that any penalty of \$50.00 or less will be suspended pending no further violations within one year of issuance of the citation. However, since Mr. Bitzer was also found in another violation of Forest Practices Act, ORS 527.670, at this same time, the \$50.00 penalty is not suspended.

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If you request a hearing, the record of the proceedings to date, including the Department of Forestry files on the subject of this violation, automatically becomes part of the contested case record upon default for the purpose of providing a prima facie case. **IF YOU DO NOT FILE A REQUEST FOR A HEARING WITHIN THE TIME ALLOWED, OR IF YOU FAIL TO APPEAR AT A SCHEDULED HEARING, THIS ORDER AND ASSESSMENT WILL BECOME FINAL.** The Order shall be entered upon evidence in the record of the Department of Forestry according to ORS 527.687(2) and OAR 629-55-030(3)(e) and (f) and thereafter shall not be subject to review by any agency or court.

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Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. The clerk shall record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property situated in the county and owned by the person against whom the order is entered. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.


Robert T. Lundblad
Civil Penalty Administrator,
for:

JAMES E. BROWN,
STATE FORESTER

November 25, 1995
Date

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Oregon Department of Forestry the 1st day
of November A.D., 19 95 at 10:31 o'clock A M., and duly recorded in Vol. M95
of County Lien Docket on Page 29851.

Bernetha G. Letsch, County Clerk

By Annette Mueller

FEE \$35.00