

In the Matter of Violation
of Forest Practices Act,
OAR 629-24-108(1)
by ROBIN HENDRICK
Case Number 95-KL131
**NOTICE OF CIVIL PENALTY;
FINDINGS OF FACT; PROPOSED
AND FINAL ORDER**

AFFIDAVIT OF JUDGMENT

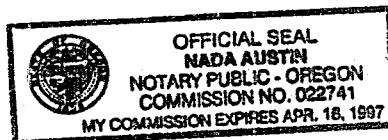
State of OregonCounty of Union

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 three pages, is attached hereto as Exhibit A, was served personally and in person to Robert Bitzer of Bitzer Logging for Robin Hendrick on March 17, 1996. No request for hearing was received within 20 days of mailing, so the order became final on April 6, 1996. 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 \$227.74. This includes interest at the rate of 9% starting 10 days after the final order (April 16 through September 20, 1996; total \$7.74) and Klamath County Clerk recording fees at \$5.00 per page (total \$20.00).

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



L.S.

Robert T. Lundblad
Subscribed and sworn/affirmed before
me by Robert T. Lundblad,
this 16th day of September, 1996.

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
OAR 629-24-108(1))	AND FINAL ORDER
by Robin Hendrick)	

TO: ROBIN HENDRICK
95-KL131

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

OAR 629-24-108 NOTIFICATION TO THE STATE FORESTER - WHEN, WHERE AND HOW. Under the provisions of ORS 527.670:

(1) The operator, landowner or timber owner shall notify the State Forester as required by ORS 527.670(6), at least 15 days prior to commencement of an operation.

II. FINDINGS OF FACT

On or about April 24, 1995, Robin Hendrick or his agents conducted an operation on forest land located in Section 25, Township 39 S., Range 7 E., W.M., in Klamath County, Oregon; without waiting 15 days after notifying the State Forester.

Mr. Hendrick cooperated by ceasing further violation and by taking action to correct the unsatisfactory condition.

Mr. Hendrick had previous knowledge of the Forest Practices Act, as well as previous conversation with Department of Forestry personnel regarding the practice of waiting 15 days after notifying the State Forester prior to commencing this operation. Mr. Hendrick and Bob Bitzer came into the Klamath Department of Forestry office at approximately 9:30 a.m. on April 24, 1995 to submit a notification of operation. They were told they could not begin unless they were granted a waiver of the 15-day waiting period by Mike Townsend, the forest practices forester (FPF) for the area of the operation, and that Mr. Townsend would not be available until later. Mr. Townsend drove by the area of the proposed operation at approximately 11:15 a.m. and discovered a logging operation in progress.

The State Forester has determined that Mr. Hendrick'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 Robin Hendrick a civil penalty in the amount of \$200.00. 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 \$100.00 for violation of OAR 629-24-108(1) [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. Hendrick 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 2 because Mr. Hendrick had correspondence or conversation with Department of Forestry personnel, previous to the violation regarding the required practices or action involved in the violation [see OAR 629-55-040(3)(c)].
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)].

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 \$200.00 should be made payable to "State Forester" and should be sent to the 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

March 7, 1996
Date

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 25th day
of September A.D., 19 96 at 2:18 o'clock P.M., and duly recorded in Vol. M96
of _____ County Lien Docket _____ on Page 30371

FEE \$20.00

Bernetha G. Letsch County Clerk
By Robert T. Lundblad