

FOREST PRACTICE NOTES

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THE FOREST PRACTICES PROGRAM
OREGON DEPARTMENT OF FORESTRY
2600 STATE STREET
SALEM, OREGON 97310
<http://www.odf.state.or.us>

Your cooperation can minimize civil penalty assessments.

Measures can be undertaken to minimize the amount of a civil penalty that is assessed following a Forest Practices Act (FPA) violation in Oregon. If the activities that are in violation are ceased and damage is repaired in a timely manner, where feasible, your cooperation will be considered in assessing a civil penalty.

A primary goal of the Board of Forestry and the Oregon Department of Forestry (ODF) is to protect forest resources.

Even though civil penalties are used to discourage operators, landowners and timber owners from committing violations that could result in resource damage, ODF's Civil Penalty program is primarily focused on preventing and correcting damage to Oregon's forest resources. The program is set up so that resource enhancement and mitigation measures can be substituted for all or part of a civil penalty. Of course, the extent and feasibility of such mitigation depends not only upon your level of cooperation, but your previous record in abiding by the FPA's rules and regulations.

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CIVIL PENALTIES

By making an investment in enhancing the resources protected by the Forest Practices Act that include air quality, water, soil productivity, fish, wildlife and scenic resources, you may be able to offset some or all of the civil penalty you have been assessed.

This is accomplished by entering into an agreement with ODF to perform a resource enhancement project. Projects may include, but are not limited to:

- Planting a greater number of trees per acre in a set timeline for a reforestation violation
- Reconstructing, relocating or vacating roads that present a higher risk to the protection of water quality than if they had been located and designed to current forest practice rule standards
- Restoring or enhancing upstream/downstream fish passage, including replacing crossing structures not designed to current forest practice rule standards
- Restoring or enhancing fish habitat by placing large woody debris or other structures in or adjacent to stream channels
- Retaining conifers adjacent to streams to supplement current forest practice rule requirements that are consistent with forest health considerations
- Restoring or enhancing threatened or endangered habitat or other wildlife habitat
- Restoring or enhancing the protection of salmonid spawning areas
- Controlling noxious weeds or exotic species

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- Reducing the risk of catastrophic fire, or insect or disease damage

In addition, you may also agree to donate all or an agreed-upon portion of the penalty to a local watershed council or other program that does habitat enhancement projects.

Forest practices foresters (FPFs) issue written statements in an attempt to avoid resource damage and citations or penalties.

Forest practices foresters who work in ODF district and unit offices are responsible for administering FPA rules and monitoring forest operations on state and private forestlands. If a forest practices forester discovers you have not followed the forest practice rule, but determines there is still time to correct the action and prevent damage, you will receive a *written statement of an unsatisfactory condition*. The FPF will consider:

- Local site conditions
- Weather forecasts
- Availability of equipment
- Your expertise to accomplish the job
- Access to the site.

Although a written statement is *not* a citation, a citation will follow if steps aren't taken to correct the situation or resource damage occurs before action is taken. The written statement will include:

- A description of the problem
- The corrective action that should be undertaken
- A deadline for the work to be completed
- A notice that enforcement action will be initiated if damage results before the corrective action is completed or if the action is not completed by the date specified.

When written statements are followed and damage is avoided, you are considered to have complied and no citations or penalties are issued. Written statements are also often appropriate for administrative violations such as failure to notify, failure to obtain prior approval or failure to have an approved written plan.

If resource damage has already occurred, citations are issued.

If the FPF determines damage has already occurred, or there is not enough time to correct a situation before damage occurs, a citation will be issued. The determination of resource damage is not necessary for administrative violations. The citation will be accompanied by an order to

The Forest Practices Act (FPA)

The 1971 Forest Practices Act (FPA), administered by the Oregon Department of Forestry (ODF), requires landowners to use specific forest management practices to protect forest resources. There are regulations for:

- Reforestation
- Constructing & maintaining roads
- Timber harvesting
- Applying chemicals
- Disposing of logging slash

Forest resources protected by the FPA include:

- Air
- Water
- Soil
- Fish and wildlife
- Scenic resources along Oregon's highways

Enforcing the FPA

ODF emphasizes education and planning to achieve the purposes of the FPA. This is accomplished through operator education programs, on-site inspections, written recommendations for avoiding resource damage and requiring prior notification of operations and written plans.

In 1987, the FPA was amended to include civil penalties for enforcement. Prior to this change, criminal penalties were the only enforcement method.

The Civil Penalty program is very effective. Throughout the 1990s, the Board of Forestry continued to improve the program by addressing new rules, making administrative corrections and refining enforcement policies. In 2002, the board adopted additional administrative and policy changes, and the Central Hearing Process was initiated.

Forest Practices Foresters (FPFs) and the Oregon State Forester's Office Enforce the Forest Practices Rules

Forest practices foresters in ODF district and unit offices are responsible for administering FPA rules and monitoring forest operations on state and private forestlands in Oregon. Each FPF is responsible for an assigned geographic area. Civil penalties staff, under the direction of the Forest Practices program director, directs the policy of the program and provides support to FPFs around the state.

FPFs review operation notifications filed in their administrative area and prioritize them based on the type of resources requiring protection. Inspections are concentrated on operations with the highest potential for damage.

FPFs are also responsible for granting prior approval and approving written plans for certain forest practices. Once an operation begins, an FPF will continue to monitor the operation for compliance with the FPA. Recommendations are made to the operator, when necessary, to avoid problems or rule noncompliance.

cease further violation and repair resource damage, if necessary and feasible. Copies of the citations are always sent to the landowner and timber owner.

If you disagree with a citation, the local ODF district office should be contacted *before* a penalty is assessed.

You may review the facts of your case with the FPF and supervisor before a civil penalty is assessed.

A consent order to do additional repair work or a mitigation project can potentially reduce a civil penalty assessment.

After the FPF issues a citation with orders to cease further violation and repair damage, you and the district, may discuss the possibility of doing

additional repair work or completing a mitigation project. The possibility of revising operational procedures to prevent future problems may also be discussed. Salem staff may be involved in this process. These actions could potentially offset a portion of the civil penalty or the entire civil penalty if the work is done in a timely manner.

If an agreement is reached, a "consent order" will be prepared. A consent order is a binding document indicating your commitment to perform mitigation. You also waive current appeal rights. When you meet the terms of the order, no additional penalty is assessed. Failure to meet the terms will most likely result in efforts to collect suspended penalties (or to impose additional ones).

In addition, the civil penalty staff may, after consultation with the district, contact you and offer a settlement prior to assessing a civil penalty.

However, if terms of the agreement are not met, additional action may be taken.

If you do not enter into a consent order and the deadline for completing repairs has passed, the civil penalty staff will assess a penalty.

You will be notified of the civil penalty by certified and first class mail or by personal service. The notice includes:

- A reference to the particular statute, rule, or standard.
- A short statement of the alleged violation
- A statement of the amount of the penalties imposed and how they were calculated
- Statements about how and when a hearing, collaborative dispute resolution or mitigation of the penalty can be requested.

ODF may be required to use other civil remedies to repair damage if corrective action was required and not completed in a timely manner.

These civil remedies could include ODF obtaining court orders to force compliance. The Board of Forestry can also complete the repairs and bill the costs to the landowner, timber owner or operator. If these charges are not paid, a joint lien can be held against the real and personal property of the operator, timber owner and landowner.

A formula is used to provide a uniform and consistent system of assessing forest practices civil penalties.

Copies of citations, along with any other information pertaining to the violations, are sent to the ODF Civil Penalty Administrator. The administrator reviews the circumstances of each violation and determines the amount of the penalty to be assessed by applying a formula set by the Oregon Board of Forestry.

The assessment begins with a base penalty of \$100 to \$1,000, depending upon the type of violation. Other factors are then applied to the base penalty, including:

- The operator's level of cooperation
- The operator's knowledge and record of previous violations
- The severity of the damage created by the violation
- The extent that damage has been repaired or mitigated.

The minimum penalty is \$25. However, any penalty less than \$100 will be suspended, unless additional violations occur within the next year. The maximum civil penalty is \$5,000.

***NOTE:** Violations involving the harvest of trees required to be left for resource protection can be regarded as multiple violations, each subject to a penalty of up to \$5,000.*

The civil penalty formula is designed to determine a penalty that is just enough to demonstrate that it is more cost efficient to conduct an operation in compliance with the forest practice rules than it is to violate them.

The objective of the rules is to have the penalties serve as a deterrent to prevent future violations. All monies collected through civil penalty assessments go directly to the state's General Fund account; the money is not directed to any particular agency or budget.

Besides being subject to a civil penalty, an operator can be cited to court. Criminal penalties, however, are usually only used for serious violations.

Criminal penalties may be sought in cases where, in the judgement of the State Forester, the operator acted intentionally, knowingly, or recklessly. This enforcement method can also be used when the operator has made

substantial financial gain in excess of the amount recoverable by a civil penalty.

When criminal penalties are sought, the citation is presented to the District Attorney where the violation occurred, along with a case brief, for the misdemeanor prosecution.

Contesting a civil penalty requires you to submit a written request to the Oregon Board of Forestry.

If you are issued a civil penalty, you have the right to contest the penalty before a hearing officer through the contested case hearing process. This process is established in statute with administrative rules set by the Attorney General. The Oregon Board of Forestry has adopted those rules for its hearing processes. To contest a penalty, *you must submit a written request for a hearing within 20 days from the day that the civil penalty notice is served.* In addition, you may request mitigation of the penalty, and/or collaborative dispute resolution.

When requesting a hearing, or within ten days of making the initial request, you must state in writing:

- What is true or false about the matters stated in the notice of penalty and
- Your arguments and facts that contradict the findings in the penalty notice.

In many cases, an agreement may be reached outside the formal hearing process, with all parties signing a consent order.

A hearing officer from the Central Hearing Panel will hear any case that cannot be settled informally or through mediation.

Hearings will be held not less than 45 days and not later than 180 days from the day the notice of penalty was served, unless all parties agree to set aside the time limit.

Hearings are held at an ODF field office or by telephone. The hearing officer will then summarize the facts and propose an order to the board. The proposed order is presented for action at the next scheduled board meeting.

After the board reviews the proposed order and any exceptions, it makes a decision and issues a final order. All involved parties receive a copy of the final order. The Oregon Court of Appeals may review final orders in contested cases. ◆