



The severe fire behavior of recent years, partly the result of a long-term climate trend, is driving up firefighting costs.

Learning more about liability

Oregon's laws concerning forest landowner liability are complex, and this brochure is merely a guide to highlight some of the most important sections. Additional liability laws apply to all landowners and to certain landowners in urban areas. As such, it is not a legal document and does not substitute for the actual laws and administrative rules. For more information, contact the nearest ODF or forest protective association office, or check the following websites:

- www.leg.state.or.us/ors/477.html
- www.oregon.gov/odf/fire/fire.shtml

Go to www.oregon.gov/odf for a list of ODF offices statewide. Click on "Area & District Offices" in the left navigation bar and scroll down to find the address and phone number of the one nearest you.

Also, when planning an activity on forestland that involves fire or power-driven machinery, check with the local ODF office.



Fire liability laws also classify burning of logging slash as a forest operation.

In this case, the liability of the landowner/operator is limited to \$300,000 in extra costs, and no district costs. (The costs of the district personnel and equipment sent to suppress the fire are not billed.) This liability cap was put in place in 1983 to enable landowners to obtain insurance for some known potential liability. The \$300,000 amount was determined based on the calculated average cost of an operation-related fire at the time.

Definitions

Operation – Any industrial activity, development or improvement on forestland. Examples include tree harvesting or thinning, road construction, herbicide spraying and burning of logging slash. A complete definition of a forest operation can be found in the ORS 477.001 (17).

Operator – The person conducting a forest operation is referred to as the operator.

Landowner – Oregon law considers the forest landowner and the operator as one entity, and it refers to either or both as landowner/operator.



Landowner Fire Liability

When a wildfire results from forest management or prescribed burning activities AM I AT RISK?

Forest ownership offers tremendous benefits – an outdoor treasure that is the envy of many, and a legacy that can be passed down from generation to generation. But owning forestland also carries a major responsibility: Any forest, large or small, is at risk from wildfire. The use of heavy equipment and chainsaws, particularly during fire season, increases not only the risk of fire and the resulting loss of resource value, but also potential landowner and operator liability for the costs of fire suppression.

Understanding Oregon's fire protection system

Under Oregon law, unlike other states, forest landowners are responsible to control and extinguish wildfires that occur on their land. The basic laws, paraphrased, include:

- **Uncontrolled fire declared nuisance** – When a fire on forestland burns uncontrolled and threatens life, forest resources or property, and proper action is not taken to prevent its spread, then the fire is considered a public nuisance, which is commonly defined as "unreasonable interference with the health, safety, peace or comfort of the community."
- **Landowner/operator responsible to put out the fire** – A forest landowner or operator has the duty to control and extinguish a wildfire on the landowner's land. If the landowner or operator hasn't sufficient personnel or equipment to provide fire protection, then the Oregon Department of Forestry or a forest protective association must step



in and extinguish it. (A person conducting a forest operation is referred to as the "operator.")

The landowner's fire protection responsibility is usually met by paying a forest patrol assessment to the local forest protection district (most commonly this is included in the landowner's annual property tax statement). Assessment rates for fire protection are set annually for

each of the state's 12 forest protection districts. The rates are adjusted every year, based on the incidence of fires and the dollars spent to fight them. To keep the rate that each landowner pays as low as possible, the law specifies that the party responsible for certain types of fires will pay some or all of the cost of suppression.

But landowner responsibility doesn't end there. In order to limit your exposure to resource loss and financial liability, it is important to understand landowner responsibilities within Oregon's fire protection system and laws.



Two sectors of responsibility

Non-operational fires – For fires caused by lightning or the public, forest landowners receive firefighting services from the Oregon Department of Forestry (ODF) or a forest protective association (FPA) at no additional cost to the landowners for those services (if they have paid their forest patrol assessment). When such a fire occurs, firefighters from ODF or an FPA extinguish it.

Operational fires – While ODF or an FPA will respond to every fire, landowners who conduct harvest or other operations must also provide firefighting resources at the site. By law, a landowner/operator must make “every reasonable effort” to suppress a wildfire resulting from an operation, at the landowner’s cost. To document what landowners must do to meet the “every reasonable effort” requirement, they will usually be asked to sign a “Record of fire condition” form.



With the expansion of Oregon’s population, forest landowners are coping with more escaped backyard debris burns and other non-operational fires.



Road-building is considered a forest operation under the laws that address fire liability.

Under Oregon Revised Statute (ORS) chapter 477 and related administrative rules, a landowner/operator at a work site must:

- Take all legally required fire prevention measures. The appropriate ODF or FPA office must be contacted before beginning an operation. The local office will provide information to help prevent a wildfire.
- If the activity causes a fire, provide all available resources (personnel and equipment), under the owner/operator’s direction and control, needed to extinguish the fire.
- Ensure personnel are trained and equipped to fight fire effectively, and that their equipment is adequate to the task.
- Maintain readiness so these resources can be quickly brought to bear on a fire.

The law presumes that if a fire occurs during a forest operation, the fire resulted from the operation. But, if the official investigation determines a cause that is unrelated to the operation, that finding takes precedence over the presumption.



Forest operators who are also trained and equipped to fight fire serve as first responders when an operational fire occurs.

Compliance and liability

How a landowner/operator conducts essential management operations is key to preventing wildfires and limiting fire cost liability when an operation-caused fire does occur. Depending on the circumstances, a landowner/operator can be subject to:

- total liability for firefighting costs, or
- limited liability.

Total liability - If investigation reveals that the landowner/operator did not follow the rules - such as failing to meet fire watch requirements after shutting down the operation for the day, not maintaining logging equipment in fire-safe condition, or even failing to have the required number of firefighting tools on site - the landowner may be billed for all of the costs to put out the fire.

Total liability results when one or more of the following occurs:

- The origin or subsequent spread of the fire is the result of negligence by the landowner/operator.
- Notice of the forest operation was not given to ODF or the FPA.



- The fire starts on or spreads through certain additional hazard areas designated, in writing, by the forester (areas in which the combination of elements such as vegetation and terrain increases the probability of a fire starting and/or spreading).
- The landowner/operator fails to make every reasonable effort to put out the fire.

If a basis for total liability is found, a landowner/operator may be billed for both district and extra firefighting costs. “District costs” are for the resources that the owner/operator already pays for through the annual fire patrol assessment. “Extra costs” are for any additional resources, such as air tankers and contract fire crews, that must be used if the district cannot control the fire with its own resources.

Limited liability - When a forest operation, such as timber harvest, road construction or prescribed burning, causes a fire and investigation finds that all applicable regulations were fully followed, the landowner may be required to reimburse up to \$300,000 of extra fire suppression costs.



By taking all legally required prevention measures, a landowner limits liability in the event of a fire.