

LIABILITY

GENERAL

Questions concerning liability range from property boundaries to personal injury and worker injury. Most of these should be covered in provisions of the timber sale contract, including workers' compensation, property boundaries, landowner property damage, and the West Virginia Logging Sediment Control Act.

According to the Guidelines for Controlling Soil Erosion and Water Siltation from Logging Operations in West Virginia, April 1996, "... landowners have a responsibility in preventing sedimentation of the state's streams. Under Chapter 22 of the Code of West Virginia and enforced by the Office of Water Resources of the W. Va. Division of Environmental Protection, landowners can be held legally responsible for allowing or contributing to stream sedimentation or even stream turbidity due to logging."

Personal injury liability is of vital concern to the landowner and logger. Liability in relation to access to the logging area during harvest depends on two factors. One factor is whether the landowner charges a fee for the use of the land, such as hunting and fishing. The other factor is whether hazards are present.

In 1965, the West Virginia Legislature enacted a law that reduced the duty landowners owe toward individuals having free access to their property (West Virginia Code 19-25-1-5). The landowner's chances of being liable for injuries to the visitor are similarly reduced.

The law states that there are two situations in which the landowner will be liable for injuries that occur to the user:

- 1) if landowners willfully or maliciously fail to guard against a dangerous or hazardous condition, use, structure or activity, or if they willfully and maliciously fail to warn the user of such danger, or
- 2) if landowners "charge" the user for the use of property.

Although West Virginia law does offer protection against liability to landowners who allow free use of their land, landowners can doubly protect themselves by thoroughly inspecting their property to see if dangerous conditions exist. If such conditions do exist, they should be corrected or warning signs posted at the location.

DUTIES TOWARD CHILDREN

There is a higher duty of care owed to children regardless of their status as a visitor. If the property has a dangerous instrument or condition located in an area where children are known to visit, the owner of the dangerous instrument may be liable for injuries it causes to children. The "dangerous instrumentality" rule is applied even if the child is a trespasser. Posting the property or installing warning signs will not serve to reduce liability.

To reduce the chances of liability under the dangerous instrumentality rule, the landowner should determine if children frequent a particular area of the property. If so, then the area should be inspected to determine if any dangerous conditions exist. After the property is inspected, any dangerous or hazardous instrument or condition found in any area frequented by children should be repaired, removed, or otherwise rendered safe.

OWNER PROTECTION

Legal requirements, such as furnishing certificates of insurance for workers' compensation, being responsible for local permits and licenses, and complying with regulations, are vital to the protection of the landowner.

With the use of high-tech equipment and the danger of falling trees, branches, and other possible injury-

causing factors, all those visiting or working the active timber site should wear the same safety equipment that is required of the harvesters. This includes hard hat and safety shoes. Safety precautions are vitally important to all forestry activities.

Another concern of the landowner is the location of any water, gas, or sewage lines through the property. Contact local utility companies to determine the location of such lines. Give the harvester all locations to eliminate possible damage and liability.