

Legal Issues

- SAF Policy/Law Update
 - <http://www.eforester.org/fp/policy.cfm>
- Antitrust Laws
- Other Laws and Regulations (Affecting WV's Logging Business)
 - http://www.wvforestry.com/Laws_and_Regs_for_WV_Loggers.pdf
 - Clean Water Act (CWA)
 - Endangered Species Act
 - State Access Road Permits

Antitrust Laws

- Prior to the turn of the 19th century and early on into the 20th, the United States Congress enacted three laws to preserve and enhance America's free enterprise system.
- These laws are:
 - The Sherman Act (enacted July 2, 1890)
 - The Clayton Act (enacted October 15, 1914)
 - The Federal Trade Commission Act (enacted Sept. 26, 1914)

What are the Antitrust Laws?

- On June 19, 1936, the Clayton Act was amended. This amendment is popularly known as the Robinson-Patman Act.
- The Sherman Act, Clayton Act, Federal Trade Commission Act, and Robinson-Patman Act are the basic federal antitrust laws.

Antitrust Laws

- The following logging business conducts are subject to the Federal Antitrust Laws:
 - every wood producing, supplying, or consuming company and
 - all personnel, especially those actively engaged in:
 - buying or selling pulpwood, chips, standing timber, and
 - harvesting or transportation services.
- Penalties for violations of the federal antitrust laws are extremely serious.

The Sherman Act

- Is the most important of the antitrust laws.
- Its violation carries the most serious consequences.
- Has two primary provisions:
 - **Section 1** simply states that every contract, combination, or conspiracy in restraint of trade is illegal.
 - **Section 2** states that every person who monopolizes, attempts to monopolize, or conspires with others to monopolize interstate or foreign commerce is guilty of a felony.

The Sherman Act (Agreements)

- The essence of a contract, combination, or conspiracy is agreement, whether formal or informal.
- Business agreements normally fall into one of two classifications:
 - Horizontal agreements – agreements among or between competitors.
 - Vertical agreements – agreements between a supplier and a customer.

The Sherman Act (Agreements)

There are also two legal classifications for agreements:

- **“Per Se” illegal** – simply means that certain kinds of agreements (such as price fixing) have been held by the courts to be illegal.
- **“Rule of Reason”** – means that an agreement’s legality is judged by balancing the agreement’s economic and business justification against its anticompetitive effect.

The Clayton Act

- The Clayton Act supplements the Sherman Act.
- It is designed to “nip” certain potential Sherman Act violations “in the bud”.
- The following arrangements normally receive close scrutiny under the Clayton Act.

The Clayton Act

- **Exclusive dealing** – normally, these are agreements between a manufacturer or supplier and a distributor in which the distributor agrees to handle only the product line of the manufacturer or supplier.
- **Tying arrangements** – normally, tying arrangements are unilateral actions in which one refuses to sell to a customer or buy from a supplier product A unless the customer or supplier also agrees to buy or sell product B.

The Robinson-Patman Act

- The Robinson-Patman Amendment was intended to promote competition by preventing discriminatory pricing practices.
- “Discriminate in price” means “differentiate in price”.

Federal Trade Commission Act

- The Federal Trade Commission Act is the most “general” of the antitrust laws.
- The Act:
 - created the Federal Trade Commission, and
 - gave it the power to prevent:
 - unfair methods of competition, and
 - unfair or deceptive trade practices

Other Laws and Regulations Affecting WV's Logging Business

- AHC -
http://www.wvforestry.com/Laws_and_Regs_for_WV_Loggers.pdf
 - Environmental Regulations
 - Labor and Occupational Safety & Health Regulations
 - Transportation and Highways Regulations
 - Tax Regulations

Environmental Regulations

State Regulations

- Logging Sediment Control Act
- Septic Tanks
- West Virginia Gypsy Moth Quarantine
- Disposal of Lead Acid Batteries
- Motor Vehicle Pollution
- Underground Storage Tanks (UST's)
- Water Quality Standards
- Stormwater Permits

Environmental Regulations

Federal Regulations

- Clean Water Act
- Endangered Species Act
- Resource Conservation and Recovery Act
- U.S. Gypsy Moth Quarantine
- ...

Labor and Occupational Safety & Health State Regulations

- Labor-management Relations Act
- Meal Breaks
- Required Medical Exams
- Equal Pay for Equal Work
- Minimum Wage
- Maximum Hours
- Offenses and Penalties
- Child Labor

Labor and Occupational Safety & Health Federal Regulations

- Wage and Hour Requirements
- Occupational Safety & Health Regulations

Transportation and Highways Regulations

State Regulations

- Access Road Permits
- Motor Vehicle Registration
- Motor Vehicle Driver's License Act
- Traffic Regulations and Rules of the Road
- Motor Vehicle Safety Responsibility Act
- Uniform Commercial Driver's License Act
- HazMat Vehicle Operator Registration

Transportation and Highways Regulations

Federal Regulations

- Transport of Hazardous Materials
- HazMat Transportation Uniform Safety Act

Tax Regulations

State Regulations

- Business Regulation Tax
- Corporation License Tax
- Small Business Credit
- Personal Income Tax
- Corporation Net Income Tax
- Property Tax
- Unemployment Compensation
- Worker's Compensation

Tax Regulations

Federal Regulations

- General Reporting Requirements
- Federal Business Taxes
 - Federal Income Taxes
 - Self Employment Tax
 - Employment Taxes

Other Laws and Regulations

- Since we already covered the following state regulations:
 - Logging Sediment Control Act
 - Truck weight and size regulation
 - Worker's compensation
- I am going to talk a little bit more about:
 - Federal Clean Water Act,
 - Federal Endangered Species Act, and
 - State Access Road Permits

Clean Water Act (CWA)

- Was enacted in 1972 by the Congress.
- The CWA's primary objective is to restore and maintain the integrity of the nation's waters.
 - Eliminate the discharge of pollutants into the nation's waters, and
 - Achieve water quality level that is fishable and swimmable.

Clean Water Act (CWA)

Comparisons after 25 years

- In 1972,
 - Only 1/3 of the nation's waters were safe for fishing and swimming.
 - Wetlands losses at about 460,000 acres/year.
 - Agricultural runoff resulted in the erosion of 2.25 billion tons of soil and deposit of phosphorus and nitrogen into many waters.

Clean Water Act (CWA)

Comparisons after 25 years

- In 1997,
 - 2/3 of nation's waters were safe for fishing and swimming.
 - The annual rate of wetlands losses is estimated at about 70,000 to 90,000 acres.
 - The amount of soil lost due to agricultural runoff has been cut by one billion tons annually.

Clean Water Act (CWA)

- This legislation grants the federal government authority to regulate and protect navigable waters.
- The state of WV has developed and implemented its own programs to enforce the federal legislation.
- There are three sections that are related to logging operations.
 - Section 402, Section 404, and Section 405

CWA Section 402

- This section authorizes a federal system:
 - for regulation of water pollution sources
 - implemented by either EPA or through a state program approved by EPA.
- The CWA requires that permits be issued for the discharge of pollutants.
- The office of Water Resources of the WV DEP is responsible for implementing WV's National Pollutant Discharge Elimination System (NPDES) permitting program.

CWA Section 404

- Landowners and developers must obtain permits to conduct dredge and fill activities in navigable waters and wetlands.
- Silvicultural activities are exempted from this provision of the act if they:
 - do not modify U.S. waters or wetlands to new uses or
 - do not impair the flow, circulation, or range of the waters.

CWA Section 404

- Thus, the Act only applies to logging or forestry operations if their activities:
 - involve use of a wetland or
 - interfere with its natural functioning

CWA Section 405

- Amendment enacted in 1990 required that “point sources” of stormwater discharges must be permitted.
- Timber storage facilities comprise one group which are required to obtain a Storm Water General Permit.
- Most lumber and wood products operations require either an individual or a group permit.

Endangered Species Act

- The federal Endangered Species Act (ESA):
 - is intended to provide protection for species that are considered to be threatened or endangered by human activities.
- The U.S. Fish and Wildlife Service (FWS):
 - enforces the ESA, and
 - enacts programs for the species that have been added to the federal listing.

Endangered Species Act

- The National Environmental Policy Act (1972) requires that:
 - an Environmental Impact Statement (EIS) be drafted
 - whenever a development occurs on federal land, with federal funding , or under a federal permit.

Endangered Species Act

- When logging takes place on federal lands, it is possible that the FWS would place limitations on logging practices near the immediate range of a listed species.
- Most logging conducted in the state occurs in areas where conflict with an endangered/threatened species is unlikely.

Endangered Species Act

- Timber operators should contact the FWS:
 - if a logging activity is planned in an area where a listed species might be encountered, or
 - if a listed species is sighted during the course of conducting logging activities.

Access Road Permits

(Article 17, Article 2)

- WV DOT enforces State Transportation Regulations.
- Access Road Permits are contained in Article 17 - Chapter 17A – 17E.
- The Article 2A requires that the logging operations obtain permits for the entrances of all access roads onto roads of the State.

Access Road Permits

(Articles 17, 2)

- As a condition for issuing the permit, the Division of Highways may require the logging company :
 - to post a sufficient bond
 - to insure reimbursement for repairs of damages to the roads resulting from the construction and/or use of the permitted access.

Access Road Permits

Construction Requirements (Article 4)

- This Article defines the appropriate location, design, and construction of access roads to state highways for commercial or industrial purposes.
- The Division of Highways often requires that the access road be covered with stones.

Access Road Permits

Permits for Access Road Construction (Article 16)

- This article requires that:
 - a permit be obtained for any work conducted
 - on state highway rights-of-way
 - including construction of any driveway approaches that are not covered under Article 4.