

A.R.C.Q. FALL 1981 QUARTERLY

Journal of the Associated Reforestation Contractors of the Western United States



Inside: Workman's Compensation Update



ARC is a non-profit association of reforestation contractors. Begun in 1974, ARC has served as an effective voice on a wide range of pertinent issues. Members of ARC are concerned about growing regulations, workers' compensation, safety, regional and seasonal volume of available work and illegal alien labor. This quarterly is published from our office in Newport, Oregon. Complete copies of congressional legislation herein summarized is available on request.

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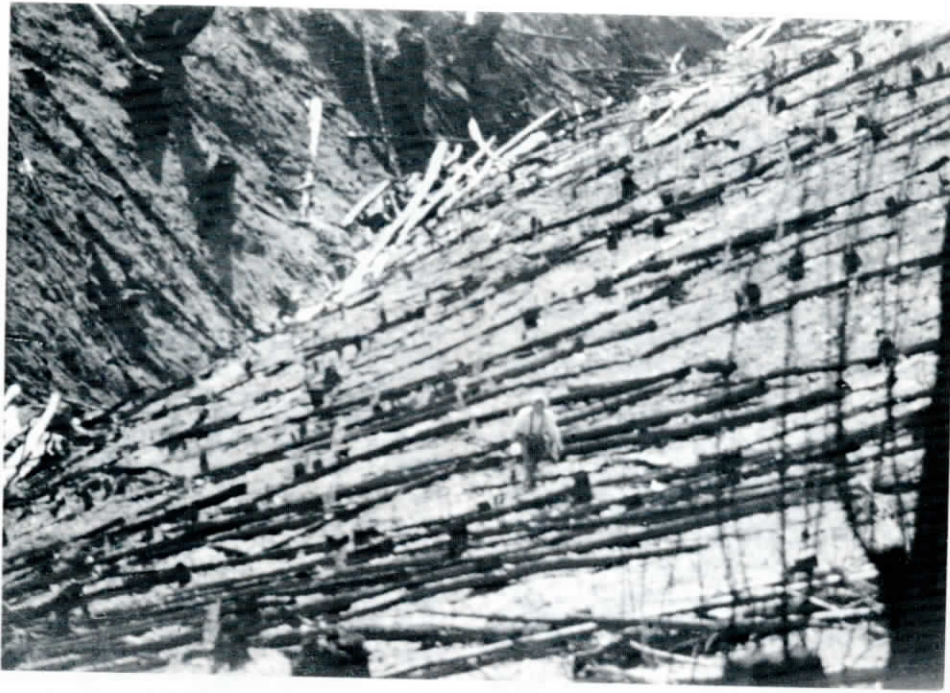
**Associated
Reforestation
Contractors
Inc.**

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Cover Photo: Bare Root Planting by B. Fraser
Photo Credits: B. Fraser and B. Zybach



Planting a broadcast burn on the Oregon Coast - 1979

General News

by John Foster
Forest Development, Inc.

CONTRACT-RELATED INTEREST RATES

Many contractors on Federal Government contracts fail to ask for interest on claims decided in their favor.

Under the Contract Disputes Act of 1978 (Public Law 95-563), (1) the Govt. must pay a contractor on a claim decided in the contractor's favor, and (2) a contractor must pay the Govt. under "payment of interest on Govt. claims".

The rate of interest is updated every six months. From July 1, 1980, thru Dec. 1980, the rate was 10½%; from Jan. 1, 1981, thru June, 1981, the rate was 14-5/8%; and the rate from July 1, 1981, until Dec. 31, 1981, is now 14-7/8%.

THE NEW REFORESTATION TAX INCENTIVES ACT

Public Law 96-451 includes a tax break for landowners on their Federal Income Tax for reforestation done after December 31, 1979.

Briefly, here is how the incentive program works. The landowner can subtract 10% (up to \$1,000) of their re-

forestation costs from the amount of Federal Income tax due for that year. Also, for the next seven years they may subtract from their yearly gross income a proportional amount of the total reforestation costs (up to \$1,428). The total reforestation costs eligible for this new tax break cannot exceed \$10,000 per year.

For a detailed guide on the law, contact the I.R.S.

UNDERPRODUCTIVE FOREST LAND CONVERSION TAX CREDIT

For several years now the State of Oregon has given forest landowners of 10-500 acres of commercial forest land a 10% income tax credit for converting underproductive forest land into productive timberland.

For further information contact the Oregon State Department of Forestry or the Oregon Department of Revenue. Refer to ORS 316.094, ORS 317.102 and ORS 318.030.

TRAINING SESSIONS PROVIDED BY THE WESTERN FORESTRY CENTER

The Western Forestry Center at 4033 SW Canyon Road, Portland, Oregon 97221, telephone (503) 228-1367, offers from time to time, one and two day courses for a nominal fee on a variety of subjects such as forestry chemical use, slash burning, and tree planting. To get on their mailing list all you need to do is contact the center.

CONTRACTS TERMINATED FOR DEFAULT ON THE LOLO NATIONAL FOREST

Superior Ranger District on the Lolo National Forest in Montana has terminated for default Spring tree planting contracts in 1979, 1980 and 1981. Several contractors have complained about the inspectors compliance inspections on that Ranger District and have suggested that bidders beware.

SERVICE CONTRACT ACT COMPLIANCE

The Service Contract Act of 1965, as amended, applies to most tree planting, precommercial thinning, and other service contracts let by the Federal Government. The Act requires among other requirements that the contractor pay the prevailing wage rate and furnish or pay the equivalent of certain fringe benefits as listed in the contract. This Act also requires that records be kept on all employees that worked on the contract for a period of at least three years after the completion of the contract. The U.S. Department of Labor's enforcement branch, The U.S. Wage and Hour, conduct audits from time to time to check on compliance.

Many contractors have been required to pay the fringe benefits either to the employee or the U.S. Dept. of Labor a second time because in their records these fringe benefits were not separated from the prevailing wage in the documented records. This was done even though the total amount paid the employee was equal to or greater than the cumulative total of the prevailing wage and the equivalent of the fringe benefits.

An interesting side light to this is that the Director of the U.S. Wage and Hour Division in Portland, OR., informed a task force of the A.R.C. that the fringe benefits and prevailing wages under the Davis-Bacon Act (construction contracts) can be combined in the contractor's records.

TARGETED JOBS TAX CREDIT

According to the Research Institute Recommendations, a publication which specializes in tax information in their September 25, 1981, issue stated that "the targeted jobs tax credit" which was scheduled to expire at the end of 1981, has been extended. The credit is available for employers hiring targeted employees, such as the needy and Vietnam veterans, who begin work before 1983.

A few reforestation contractors have found this tax credit quite a windfall whenever they could get a representative from the State Employment Service out to interview their employees to start the certification process.



Douglas Fir Plug-1 Roots - G.P. stock

Regulation Reform

by Jim Bernau
NFIB-Oregon

PERMIT, LICENSING AND INSPECTION COORDINATION, AND PAPERWORK REDUCTION PLUS REGULATORY FLEXIBILITY

Two bills aimed to reduce paperwork for small businesses which were sponsored by the NFIB now are to become law in Oregon.

The "Regulatory Flexibility Act" adopts on a state level the concepts included in the federal regulatory reform which was adopted into law by Congress last year. The bill requires state agencies, when adopting rules, to consider any significant economic impact on businesses. State agencies are also required to reduce any significant adverse affect by establishing differing or simplifying compliance and reporting requirements, using objective criteria for standards (rather than design standards), or to exempt small businesses from some or all requirements of the rule. The Act requires state agencies to invite public comment and review all rules not less than every three years.

HB 2664 also became law in Oregon. It is a major regulatory reform effort which strengthens the state's permit and licensing center by making it easier for someone interested in starting a small business to wade through the state required paperwork. The bill directs the Executive Department, in

partnership with state agencies, to consolidate, coordinate, or simplify state rules and to reduce the mandated paperwork, permits, licenses, and inspections imposed upon small businesses.

HB 2664 also authorizes the state's Executive Department to intervene on the small-business owner's behalf, and to mediate a regulatory dispute.

APPEALS BOARD REJECTS DISCLAIMER CLAUSE IN GOVERNMENT CONTRACT

Condensed from an article in the Government Contractor publication from Federal Publications, Inc.

In a precommercial thinning contract on the Siuslaw National Forest for 800 acres divided into several units scattered throughout a 30 or 40 mile area, the contract had included a specification listing estimates of the density of stems per acre in the particular units.

The contractor claimed that the specification was defective and in fact they had encountered a stem density which varied from 100% to 400% above the solicitation estimate. The government countered that the claim is barred by so-called "exculpatory" language in the specification which stated that estimates "are for offeror's information only, and are not to be construed as terms or specifications of the solicitation."

The Dept. of Agriculture Board of Contract Appeals, however, observes that the Contracting Officer admits that the density information has to be

used by a bidder in conjunction with a site investigation and the contractor should expect the actual quantity might vary from that estimate within a reasonable range. Consequently, the Board of Contract Appeals indicates that the defective specification entitles the Contractor to recover an equitable adjustment under "differing site conditions" clause of the contract to the extent that the stem density the contractor encountered exceeded that reasonable range.

For more information on this decision refer to Willamette Timber Systems, Inc., AGBCA 77-112-4. A similar decision was made in another case titled Albert J. Demaris, AGBCA 437, 75-2/BCA 11359.

EQUAL ACCESS TO JUSTICE

From an article by Jim Bernau, Director, Governmental Relations / Oregon of the National Federation of Independent Business.

Senate Bill 452, written and supported by NFIB/Oregon, will now be law in Oregon. This bill was modeled after another NFIB-proposed federal law adopted by Congress last year. This bill allows any person reasonable attorney fees and court expenses when judged the prevailing party in court or administrative proceedings when it has been determined that the state agency acted without a reasonable basis in fact or law in bringing the charges. Currently, many small businesses simply don't have the money to pay the legal fees necessary to challenge government decisions and fines. As a result, many unjustified actions go uncontested. Awards made to a small-business owner who prevails in court against a state agency must come from that state agency's budget. The bill is not designed to increase the cost of government, but to reduce government actions taken against the small-business owner that do not have a reasonable basis in fact or law.

FEDERAL EQUAL ACCESS TO JUSTICE ACT

Condensed from an article in the GOVERNMENT CONTRACTOR, a publication from Federal Publications, Inc.

In October, 1980, the President signed an amendment to the Small Business Act which became effective on October 1, 1981, and applies to proceedings pending at any time between that date and September 30, 1984.

Entitled The Equal Access to Jus-

SAFETY CO-ORDINATION:

the Results Remain to be seen

by Bruce Fraser

The ARC, in conjunction with EBI, will be funding and staffing a safety officer for use by members. While most contractors recognize that high production is where they make money, anyone that overlooks the enormous cost savings available under a retrospective worker' compensation plan (just recently offered) is perhaps letting money slip through his fingers. A good safety record now translates into cash! I saw one plan where the contractors workers' compensation premiums would be \$30,000.00 less than normal if he ran an injury-free show.

Exactly how much safety we can live with or afford to live without is something this industry will be determining in the coming year. Contractors with established safety records may receive more than just personal satisfaction. As the bidding tightens in this bear market, these few contractors - benefiting from up to 50% lower WC rates - will be the most competitive and thus probably survive the downturn.

The safety coordinator would be traveling to job site locations doing loss analysis surveys and safety consultation in compliance with the ARC-EBI group plan contract. While visiting each crew he would possibly be video-taping work site situations in an effort to stimulate safety discussions among crew members and in an effort to develop a library for contractor borrowing to train inexperienced tree planters and other forest workers. A new application form, designed to weed out potential employees with high risk prior injuries will be studied. Elementary physical tests are being looked into to test pre employment conditioning and potentially uncover pre existing medical problems. In conjunction with EBI's Chuck Burkey, detailed computer printouts will be provided interfacing all aspects of existing injuries to see if any patterns exist that may be rectifiable. Guidance in pursuing suspected falsified claims will be provided.

I believe every prudent contractor will be able to see how devoting a small amount of time to safety training and communication will help both them and their crew by increasing efficiency and profits while reducing insurance costs.

Mr. Fraser has produced a number of excellent video tapes on various aspects of the reforestation process. One was shown at the last ARC summer meeting. Currently, Mr. Fraser is safety director for Phoenix Reforestation and is working in close concert with the officers of the ARC in our effort to fund and staff a permanent safety officer for use by our membership. — Ed.



Styro-blocks on the unit. The planter is Rocky Polries.



Phil Hahn's styro-block method of plug planting. The planter is John Avila.

SAFETY AND PROFIT

by **BOB ZYBACH**

Unfortunately, one of the fastest ways to shift a worker's (or a contractor's) mind into neutral is to mention the words "safety" or "training" as if you were going to pursue the subject. I say "unfortunate" because I think that it can easily be demonstrated that in a service industry, such as ours, there is a direct link between safety and training, training and efficiency, and efficiency and profit. In other words, dollars invested by the contractor into safety and training programs should yield a profit. As with any investment, a great deal is dependent upon how those dollars are invested and of course upon a degree of luck.

Although the trend is varying, it has almost been traditional to hire reforestation workers through a phone call in answer to an ad or by a request sent to the local employment office. Thousands of workers will be hired this year merely through word of mouth or by showing up when the crummy arrives in the morning. No application. No physical. No training. This is O.T.J. Training in one of its purer forms. Most of these workers will be transported to work sites in vehicles in direct violation of chapter 47 division 57 of the Oregon Occupational Safety and Health Code. At the job site many of these men will be given a chain saw for the first time in their lives and with the benefit of a little instruction (or none at all) turned loose thinning or slashing trees. A few of these men will die or be seriously injured.

In the past there has been little trouble with this system as the workers - many of them foreign and in the country illegally - have been reluctant to file civil suits for damages due to contractors negligence or to demand compensation insurance for job-related injuries. Those times are in the past. With the exception of a few contractors willing to exploit illegal aliens, several co-ops and some partnerships, most contractors are beginning to carry legally required amounts of compensation insurance. This legitimacy carries with it at least one burden: costly malingering, faked accidents, faked injuries and physical and mental injuries inherited from other employers.

• Which brings us to our first example, a Case History. Too bad it was mine. I hired a worker last fall that was highly recommended by his neighbor, one of my better planters. No questions, no writing (except a



W-4), just Normal Hiring Practices. While the ground was scarified and the seedlings small he was everything his friend said; hard working, competent and reliable. When we took a two week Christmas planting break I put him on a cutting crew. After a couple of hours he said his hemorrhoids would keep him from doing any further cutting. This and a dubious case of malaria are the only excuses I've heard only one time. I should have been suspicious, but he'd been such a good worker I looked upon it as a humorous incident and little else. After a week of letting him set chokers (at a relaxed pace) on another job site we were ready to get back to planting, only this time we were planting the largest plug-1 seedlings we have ever handled. After a few hours work I saw him on the unit and asked him how it felt to be planting again. He said his back hurt. He's still on comp. Even though he has cost my company \$11,000 this year, he has hired a lawyer to appeal for more. He had hurt his back in California a few years before for another employer. It had taken him nearly six months of "fighting" to secure his claim there, but this was Oregon. Here he was an Instant Winner. Other workers could not help but be impressed at the length of the paid vacation being enjoyed by this apparently healthy man.

A well-worded application form would have probably screened out this man as a potential health (safety) problem. And our company would have been returned several thousand dollars under our existing insurance plan if this "re-injury" had not occurred. At this time Chuck Burkey, Loss Control Representative for E.B.I., is

working with Dean Pihlstrom, Bruce Fraser and I to develop a legal application form that our firms can use to help screen out workers with a greater than average potential to become injured on the job.

• My second example is more hypothetical and involves crew A and crew B, two pre-commercial thinning crews. Crew A features a foreman that periodically makes the rounds of the crew exhorting his men to work harder and to not mess with their saws: he will do that. If they dull their chain on a cable shortly after he leaves, they are still expected to keep working until he returns, at which time they are conditioned to really hump until he shuts them off. Then they ask him to sharpen their chain. As any experienced cutter knows, a dull chain will cause arm and back fatigue, will be more apt to "kick-back", more apt to bind or cause "barber-chairing," in fact, be more apt to do just about anything than cut fast. And yet the man will not even be given a file and will be told to do nothing on his saw but put the chain back on if it comes off. Crews like this really do exist. Obviously, this type of situation is more hazardous and less productive than it would be if the chains were sharpened immediately upon being dulled.

Crew B also has a foreman that periodically visits each of his cutters. Not only is he making sure that each of his workers is alive and steadily working, but he is also checking for safety gear such as gloves, good boots, hard hat and chaps, correct positioning in relation to the other cutters and the operating condition of the machinery. If he observes a man



Too late to back out - Bruce Nelson and Ernie Oleman.

PUBLICATIONS

There are a number of publications available to assist the reforestation contractor keep abreast of current market conditions, tax & law changes, job opportunities, and scientific studies. Here is where you can find a few.

National Federation of Independent Business Research and Education Foundation "Mandate"
150 West 20th Avenue
San Mateo, CA 94403

Forest Log
State of Oregon Dept. of Forestry
2600 State Street
97301

Timber Service and Marketing Report
P.O. Box 10162
Eugene, Oregon 97440

Forest Contractor's Weekly
1021 Forrester N.W.
Albuquerque, New Mexico 87102

Tree Planter Notes
U.S. Department of Agriculture
Pacific Northwest Forest and Range Experiment Station
809 N.E. Sixth Avenue
Portland, Oregon 97232

Also, free copies are available from our Newport office of Oregon Dept. of Forestry's new brochure: "The New Reforestation Tax Incentives."

cutting with a dull chain he immediately shuts him off and, if necessary, shows him how to sharpen it. After a few weeks even the newest men are operating their equipment near peak capacity. This is bound to lower the injury rate over the long haul, dramatically lower saw maintenance costs due to vibration caused by dull teeth (burned bars, clutch bearings, sprockets, etc.) and keep the saws cutting

faster, thereby adding to the potential to increase production. Each of these factors directly relates to a contractor's profit margin.

All other things being equal, it would seem that even the slightest amount of training (How To Sharpen Your Chain) would give an obvious bidding edge to crew B over crew A.

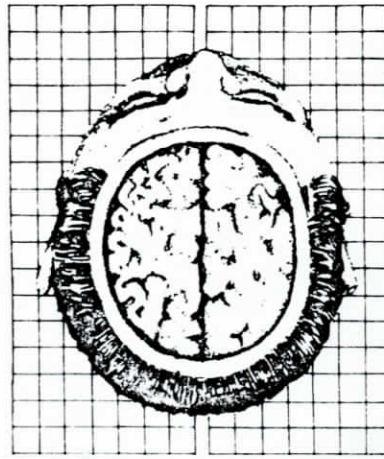
- To summarize these two points (and simultaneously attempt to avoid the nether void of "mods", "retro plans," and "deviated premiums") I have attempted to show how even the most modest of investments in the area of safety and training can realize good returns. In the first example, if I had invested a few hundred (or even a few thousand) dollars into a workable application form I could have screened out a potential injury fairly easily and earned several thousand dollars return on my present insurance plan. Or I could have placed the applicant in a position that would not have placed a strain on his back (if I had one). In the second example I have tried to show how even the most rudimentary instruction can almost immediately lead to a more productive (and profitable) man-day's work. Also safer.

I believe that a safer working environment, or even an attempt at a safer working environment, is good for crew morale and that morale is directly tied to productivity and work quality, often two of the most obvious characteristics of profitable operations.



Treeplanters Brain-Damaged

Left Hemisphere
Right Side Body
Controls
Visual * Speech * Verbal
 Logical, Mathematical
 Linear, Detailed
 Sequential
 Controlled
 Intellectual
 Dominant
 Worldly
Quantitative
 Active
 Analytic
 Reading, Writing, Naming
 Sequential Ordering
 Perception of Significant Order
 Complex Motor Sequences



Right Hemisphere
Left Side Body
Controls
Spacial * Musical * Acoustic
 Holistic
 Artistic, Symbolic
 Simultaneous
 Emotional
 Intuitive, Creative
 Minor - Quiet
 Spiritual
Qualitative
 Receptive
 Synthetic, Gestalt
 Facial Recognition
 Simultaneous Comprehension
 Perception of Abstract Patterns
 Recognition of Complex Figures

The problem of what to do with your brain while treeplanting has plagued planters for some time. Some planters have attempted to waste as much of their brain as possible before entering the profession in the hopes that it would increase their chances of success in the field. Others have tried lobotomies in order to upgrade their skills. But still the problem remains. The cerebral cortex is often capable of producing thoughts for extended periods of the work day, seriously interfering with productivity. Some planters complain that they cannot do both operations at once since thinking and planting are two highly incompatible activities.

Surveys have shown that many treeplanters are high school graduates and carry with them brains commensurate with this significant level of educational achievement. Others have even aspired to greater academic heights and for them the problem is worse. Will there be any relief to this cranial burden that affects so many treeplanters? Unfortunately there is no relief in sight. In fact the government plans to expand its reforestation program, no doubt at great cerebral expense to treeplanters.

The problem becomes even more complex in the light of recent studies on right and left brain activities. The one sided nature of treeplanting resulting from the continual use of one set of motor activities can produce harmful effects on the lower spine. What is there to stop this adverse effect from moving up the spine and creating a grossly lopsided brain? A right handed planter would develop an exaggerated left hemisphere and vice versa for a left handed person since each half of the brain controls the motor activities of the opposite side of the body. In the light of more complex brain activity, suggested by the theory that our faculties for creativity, intuition, and emotion may reside in one half while abstractions, analysis and logic live in the other side, it seems there are some frightening implications for those of us who are not ambidextrous. Continuous exposure to treeplanting may cause severe personality changes, warping treeplanters into left-brain monsters or right-brain space cases. Consult the diagram to see which category you may be falling into.

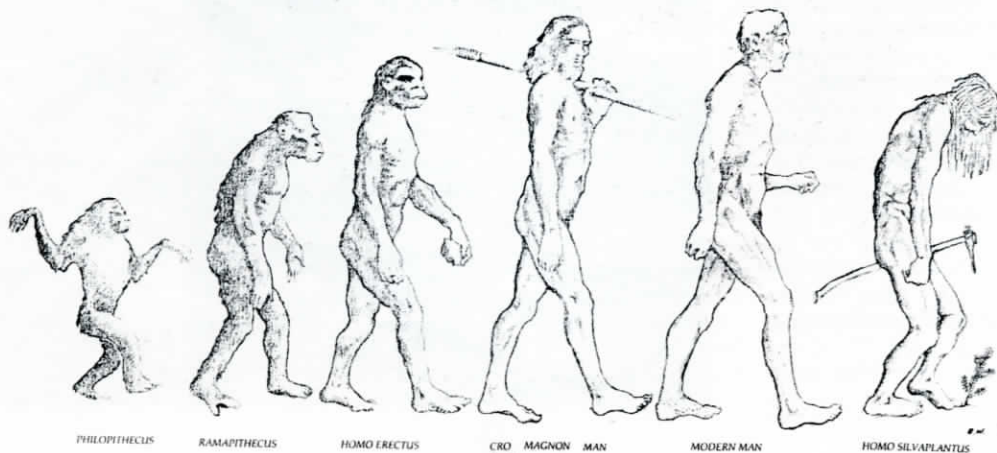
The information resulting from split-brain research is of no help here. Surgically severing the nervous tissue

which joins the two halves of the brain only produces a treeplanter who continually argues with himself on the slopes and can't decide which hand to pick up the mattock with. One of the chronic symptoms of having too much brains is the phenomenon known as "burning out." This happens usually near the end of the season when many planters begin to complain that their brain hurts. "Burn-outs" have glazed eyes and perform their treeplanting tasks in a zombie-like stupor. In most cases the only cure is quitting. Clearly their cerebral cortexes are fried. One researcher compares "burning-out" to a mental "charliehorse" due to the fact that the brain has remained in a cramped position too long.

Even more fascinating is the effect treeplanting seems to have on the brain's memory capacity. Treeplanters seem to have extremely short memories for they return each fall to work at a most unenviable and difficult task as if they can't remember a thing from the year before.

Have a good season gang.

The Descent of Man



CREW OF THE MONTH PHOTO



Salmon River Firefighter's, Inc.
Rob Hackworthy (kneeling), foreman.

*Do you have any good photo's? Send them in, we'll print the best.
(enclose self addressed stamped envelope if return requested)*