

ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING OPERATIONS.

§19-1B-1. Short title.

This article shall be known and cited as the "Logging Sediment Control Act."

§19-1B-2. Legislative findings, intent and purpose of article.

The Legislature hereby finds that some activities associated with the commercial harvesting of timber results in the exposure of soil and that, if uncontrolled, such exposed soil can erode resulting in gulying, soil slippages and sediment deposition in streams.

It is the policy of this state to strengthen and extend the present sediment control activities of this state by implementing operator licensing, logger certification and logging operations notification programs through the division of forestry.

§19-1B-3. Definitions.

(a) "Best management practices" means sediment control measures, structural or nonstructural, used singly or in combination, to reduce soil runoff from land disturbances associated with commercial timber harvesting.

(b) "Chief" means the chief of the office of water resources of the division of environmental protection, or his or her designee.

(c) "Director" means the director of the division of forestry of the department of commerce, labor and environmental resources, or his or her authorized designee.

(d) "Operator" means any person who conducts timbering operations.

(e) "Timbering operations" means activities directly related to the severing or removal of standing trees from the forest as a raw material for commercial processes or purposes. For the purpose of this article, timbering operations do not include the severing of evergreens grown for and severed for the traditional Christmas holiday season, or the severing of trees incidental to ground-disturbing construction activities, including well sites, access roads and gathering lines for oil and natural gas operations, or the severing of trees for maintaining existing, or during construction of, rights-of-way for public highways or public utilities or any company subject to the jurisdiction of the federal energy regulatory commission unless the trees so severed are being sold or provided as raw material for commercial wood product purposes, or the severing of trees by an individual on the individual's own property for his or her individual use provided that the individual does not have the severing done by a person whose business is the severing or removal of trees.

(f) "Sediment" means solid particulate matter, usually soil or minute rock fragments, moved by wind, rainfall or snowmelt into the streams of the state.

§19-1B-4. Timbering license required; requirement for license; exemption; annual fee; rules.

(a) No person may conduct timbering operations, purchase timber or buy logs for

resale until he or she has obtained the license pursuant to this article from the division and met all other requirements pertaining to his or her timbering operation or other wood product business contained in this article: *Provided*, That a person who severs or removes, or hires or contracts with another to sever or remove, standing trees from his or her own land is specifically exempted from the timbering operations licensure requirement of this section during any calendar year in which all trees severed or removed by or for this owner have an aggregate stumpage value that does not exceed fifteen thousand five hundred twenty-eight dollars: *Provided, however*, That a person hired or contracted to sever or remove standing trees from the land of another is specifically exempted from the timbering operations licensure requirement of this section during any calendar year in which all trees severed or removed by this hired or contracted person have an aggregate stumpage value that does not exceed fifteen thousand five hundred twenty-eight dollars.

(b) An applicant for a license shall submit an application on a form to be designed and provided by the director. A fee of fifty dollars shall be submitted with each application and with each annual renewal of the license. The application shall, at a minimum, contain the following information:

(1) Name, address and telephone number of the applicant and if the applicant is a business entity other than a sole proprietor, the names and addresses of the principals, officers and resident agent of the business entity;

(2) The applicant's West Virginia business registration number or a copy of the current West Virginia business registration certificate. The division of forestry shall submit this information and a list of all applicants to the tax commissioner each quarter of the calendar year to ensure compliance with payment of severance, income withholding and all other applicable state taxes; and

(3) Any other information required by the director.

(c) The director shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code which provide procedures by which a license may be acquired, suspended or revoked under this article. The Legislature expressly finds that these legislative rules are the proper subject of emergency legislative rules which may be promulgated in accordance with the provision of section fifteen, article three, section twenty-nine-a of this code.

(d) The director shall prescribe a form providing the contents and manner of posting notice at the timbering operation. The notice shall include, at a minimum, the operator's name and license number.

§19-1B-5. Compliance orders, suspension of timbering operating license.

(a) Upon a finding by the chief that failure to use a particular best management practice is causing or contributing, or has the potential to cause or contribute, to soil erosion or water pollution, the chief shall notify the director of the location of the site, the problem associated with the site, and any suggested corrective action. Upon the failure of the director to take appropriate action within three days of providing notice to the director, the chief may seek relief through the conference panel in accordance with section eleven of this article.

(b) Upon notification of the chief or upon a finding by the director that failure to use a

particular best management practice is causing or contributing, or has the potential to cause or contribute, to soil erosion or water pollution, the director shall issue a written compliance order requiring the person conducting the timber operation to take corrective action. The order shall mandate compliance within a reasonable and practical time, not to exceed ten days. The person subject to the order may appeal the order within forty-eight hours of its issuance to the conference panel in accordance with section eleven of this article.

(c) In any circumstance where observed damage or circumstances on a logging operation, in the opinion of the director, are sufficient to endanger life or result in uncorrectable soil erosion or water pollution, or if the operator is not licensed pursuant to this article, or if a certified logger is not supervising the operation, the director shall order the immediate suspension of the timber operation and the operation shall remain suspended until the corrective action mandated in the compliance order suspending the operation is instituted. The director shall not issue an order cancelling the suspension order until compliance is satisfactory or until overruled on appeal. Failure to comply with any compliance order is a violation of this article. The person subject to the order may appeal to the conference panel in accordance with the provisions of section eleven of this article.

(d) The director may suspend the license of any person conducting a timbering operation or the certification of any certified logger supervising a timbering operation, for no less than thirty nor more than ninety days, if the person is found in violation of this article or article eleven, chapter twenty-two of this code, for a second time within any two-year period: Provided, That one or more violations for the same occurrence is only one violation for purposes of this subsection.

(e) The director may revoke the license of any person conducting timbering operations or the certification of any certified logger if the person is found in violation of this article or article eleven, chapter twenty-two of this code, for a third time within any two-year period: Provided, That one or more violations for the same occurrence is only one violation for purposes of this subsection. A revoked license is not subject to reissue during the licensing period for which it was issued.

(f) The director shall notify the chief of any order issued or any suspension or revocation of a license pursuant to this section within three days of the date of the director's action.

§19-1B-6. Notification of duration of timbering operations or harvesting of timber for sale; requirements thereof.

(a) In addition to any other requirement of this article, no person may conduct timbering operations and no person may sever trees for sale unless the person notifies the director of the specific location on which the timbering operations or harvesting of timber are to be conducted. The notification shall be made in a manner designated by the director.

(1) All persons who conduct timbering operations or who harvest timber for sale, including those persons who are specifically exempted from the licensure requirements of section four of this article, shall provide to the director of the division notification of harvesting of timber, which shall include:

- (A) The name and address of the harvester of timber;
 - (B) The name and addresses of the owner or owners of the property upon which the timber is located;
 - (C) The business tax number or social security number of the harvester of timber;
- and
- (D) An acknowledgment that the harvester of timber will conduct the harvest according to best management practices.

(2) In addition to the requirements of subdivision (1) of this subsection, persons who are subject to the licensure requirements of section four of this article shall provide to the director of the division notification of timbering operations, which shall include, at a minimum, the following:

- (A) The specific topographic location where the timbering operations are to be conducted;
- (B) The approximate dates that the timbering operation will begin and end;
- (C) The approximate acreage over which timbering operations are contemplated;
- (D) The names and addresses of the owner or owners of the timber to be harvested and, if different, the names and addresses of the owner or owners of the property upon which the timber is located;
- (E) A sketch map of the proposed logging operation, including haul roads, landings and stream crossings;
- (F) A description of the sediment control practices to be used by the logger during the timber harvesting operation;
- (G) An acknowledgment that the operator will conduct the operations in compliance with the provisions of this article and any applicable rules promulgated pursuant to this article;
- (H) A certification satisfactory to the director that all permits required under state law have been obtained or applied for and that all pertinent requirements for obtaining any permit applied for, but not yet obtained, have been complied with; and
- (I) The name or names of the person or persons who will be supervising the timbering operations at the site of the operations and his or her logger certification numbers.

(b) The notification shall be made within at least three days of the beginning of the operation.

(c) Further notice shall be given if the operation is to be, for any reason, closed more than seven days before the estimated date for closing provided under paragraph (B), subdivision (2), subsection (a) of this section.

§19-1B-7. Certification of persons supervising timbering operations, timbering operations to be supervised, promulgation of rules.

(a) Any individual supervising any licensed timbering operation, or any individual supervising any timbering operation that is not exempted from the licensing requirements set forth in section four of this article, must be certified pursuant to this section.

(b) The director is responsible for the development of standards and criteria for establishment of a regularly scheduled program of education, training and examination that all persons must successfully complete in order to be certified to supervise any

timbering operation. The program for certified loggers shall provide, at a minimum, for education and training in the safe conduct of timbering operations, in first aid procedures and in the use of best management practices to prevent, insofar as possible, soil erosion on timbering operations. The goals of this program will be to assure that timbering operations are conducted in accordance with applicable state and federal safety regulations in a manner that is safest for the individuals conducting the operations and that they are performed in an environmentally sound manner.

(c) The director shall provide for such programs by using the resources of the division, other appropriate state agencies, educational systems and other qualified persons. Each inspector under the jurisdiction of the chief shall attend a certification program free of charge and complete the certification requirements of this section.

(d) The director shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code, which provide the procedure by which certification pursuant to this article may be obtained and shall require the payment of an application fee and an annual renewal fee of fifty dollars.

(e) Upon a person's successful completion of the certification requirements, the director shall provide that person with proof of the completion by issuing a numbered certificate and a wallet-sized card to that person. The division shall maintain a record of each certificate issued and the person to whom it was issued.

(f) A certification granted pursuant to this section is renewable only for two succeeding years. For the third renewal and every third renewal thereafter, the licensee shall first attend a program designed by the director to update the training.

(g) Every timbering operation that is required to be licensed under section four of this article must have at least one person certified pursuant to this section supervising the operation at any time the timbering operation is being conducted and all timbering operators shall be guided by the West Virginia forest practice standards and the West Virginia silvicultural best management practices in selecting practices appropriate and adequate for reducing sediment movement during a timber operation.

(h) The director shall, at no more than three-year intervals after the effective date of this article, convene a committee to review the best management practices so as to ensure that they reflect and incorporate the most current technologies. The committee shall, at a minimum, include a person doing research in the field of silvicultural best management practices, a person doing research in the field of silviculture, two loggers certified under this article, a representative of the office of water resources of the division of environmental protection and a representative of an environmentally active organization. The director shall chair the committee and may adjust the then current best management practices according to the suggestions of the committee in time for the next certification cycle.

§19-1B-8. Timbering operations enforcement fund.

There is created in the state treasury a special revolving fund designated the "Timbering Operations Enforcement Fund." All fees collected pursuant to this article shall be deposited into the fund: Provided, That amounts deposited in the fund which are found from time to time to exceed the amounts necessary to effectuate the purposes of this article may be redesignated for other purposes by appropriation by the Legislature.

This fund shall be appropriated to the division of forestry to be used for the administration and enforcement of the provisions of this article and for no other purpose.

§19-1B-9. Right of entry.

The director or the chief has the right to enter upon any property for the purpose of making inspections to ensure that the provisions of this article and any rules promulgated pursuant thereto are being complied with.

§19-1B-10. Orders of the director.

Notwithstanding the provisions of section five of this article, whenever the director determines that any person has violated a provision of this article or any rules promulgated pursuant thereto, he or she may enter an order directing the person to cease the violation and, where appropriate, to take such action to remediate damage created or to take action appropriate for the specific site.

Any person having an interest which is or may be adversely affected by any order of the director may file an appeal in accordance with the provisions of section eleven of this article.

§19-1B-11. Creation of conference panels; authority.

(a) Each forestry district in this state shall contain an informal conference panel composed of three persons which shall act on behalf of the state to decide appeals of orders of the director. One member of the panel shall be selected by the director, one member shall be selected by the chief and one member shall be selected by agreement between the chief and the director. If a vacancy exists on the panel, the vacancy shall be filled by whomever made the initial selection. The members of the panel shall serve without compensation.

(b) Upon appeal of a decision under this section or upon petition by the chief, pursuant to the provisions of subsection (a), section five of this article, the panel shall hold an informal conference affirming, modifying or vacating an order of the director, or issuing an order in the name of the director. The panel shall forthwith notify the parties of its decision and as soon as practicable send written notice of its decision to the parties. The decision of the panel shall be final unless reversed, vacated or modified on appeal to the circuit court of the county wherein the cause for the decision arose.

(c) A party aggrieved by a decision of a panel may appeal to the circuit court of the county wherein the cause for the order arose. Such appeal must be filed with the circuit court within twenty days of the date of decision of the panel and shall be heard de novo by the court. The court may reverse, vacate or modify the decision of the panel. The decision of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases.

§19-1B-12. Civil penalties.

The director may seek and recover a civil penalty for a violation of any provision of this article, any rule, regulation or order of the director in the circuit court of the county in which the violation occurred, in an amount not exceeding two thousand five hundred dollars for the first offense and not exceeding five thousand dollars for any subsequent offense.

Any penalty recovered pursuant to this section shall be deposited in the state treasury to the credit of the timbering operations enforcement fund.

Any person aggrieved by a decision of the circuit court pursuant to this section may appeal the circuit court order to the supreme court of appeals.

§19-1B-12a. Criminal penalties.

(a) After the first day of July, two thousand two, any person who knowingly or willingly commits one of the following violations is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars and not more than five hundred dollars for each violation:

(1) Conducts timbering operations or purchases timber or buys logs for resale in this state without holding a valid license from the director of the division of forestry, as required by subsection (a), section four of this article;

(2) Conducts timbering operations or severs trees for sale at a location in this state, without providing the director of the division of forestry with notice of the location where the timbering or harvesting operations are to be conducted, as required by section six of this article;

(3) Conducts a timbering operation in this state that is not supervised by a certified logger who holds a valid certificate from the director of the division of forestry, as required by section seven of this article; or

(4) Continues to conduct timbering or logging operations in violation of an existing suspension or revocation order that has been issued by the director of the division of forestry or a conference panel under section five, ten or eleven of this article.

(b) For the purposes of this section, each day that a person conducts logging or timbering operations in this state without a license that is required by this article, without the supervision of a certified logger as required by this article, without providing notice of the location to the director of forestry as required by this article, or in violation of an outstanding suspension or revocation order shall constitute a separate offense. (c) In addition to any other law-enforcement agencies that have jurisdiction over criminal violations, any forester or forest ranger employed by the division of forestry, who, as a part of his or her official duties is authorized or designated by the director of the division of forestry to inspect logging or timbering activities, is hereby authorized to issue citations for any of the listed violations set forth above that he or she has personally witnessed. The limited authority granted by this section to employees of the division of forestry to issue citations to enforce the provisions of this section does not include the power to place any individual or person under arrest.

§19-1B-13. Cooperation of other state agencies.

All state agencies shall cooperate with the director in the director's efforts to ensure

that persons conducting timbering operations are doing so in compliance with all applicable provisions of state law, and the director shall cooperate with such other state agencies to enforce their statutory and regulatory responsibilities and duties. Cooperation shall include the sharing of information necessary or helpful to the accomplishment of such responsibilities and duties. The director shall notify the chief of commencement of timbering operations. The chief and the director each shall submit an annual report on the progress and effectiveness of the programs incorporated in this article to the governor, the speaker of the House of Delegates and the president of the Senate.

§19-1B-14. Effect on other laws.

Nothing in this article relieves any person conducting timbering operations from complying with any other provision of this code.