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HOUSE BILL NO. 2434

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 10.1-1181.1, 10.1-1181.2 and 10.1-1181.3 of the Code of Virginia, relating to silvicultural activities.

Patrons—Dillard, Amundson, Petersen, Scott and Watts; Senators: Byrne, Puller and Ticer

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1181.1, 10.1-1181.2 and 10.1-1181.3 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1181.1. Definitions.

As used in this article unless the context requires a different meaning:

"Operator" means any person that operates or has operated or exercises or has exercised control over any silvicultural activity.

"Owner" means any person that (i) owns or leases land on which silvicultural activity occurs or has occurred or (ii) owns timber on land on which silvicultural activity occurs or has occurred.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters resulting from sediment deposition as will or is likely to create a nuisance or render such waters (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses.

"Silvicultural activity" means any forest management activity, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation.

"Special order" means a special order or emergency special order issued under subsection ~~B~~ E or ~~E~~ F of § 10.1-1181.2.

§ 10.1-1181.2. Conduct of silvicultural activities; issuance of special orders.

A. Silvicultural activities shall be conducted using appropriate best management practices as developed by the State Forester pursuant to § 10.1-1105.

B. If the State Forester determines that an owner or operator has conducted or is conducting or has allowed or is allowing the conduct of any silvicultural activity that does not comply with appropriate best management practices, he shall notify the owner or operator in writing, identifying the appropriate best management practice to be implemented, and specifying a time period within which to implement the best management practice. If the owner or operator fails to implement the appropriate best management practice, then the State Forester shall issue a special order pursuant to subsection E or F.

C. No owner or operator shall conduct silvicultural activities in a manner that causes or is likely to cause pollution.

D. If the State Forester believes that an owner or operator has conducted or is conducting or has allowed or is allowing the conduct of any silvicultural activity in a manner that is causing or is likely to cause pollution, he may notify the owner or operator regarding the activity that is causing or likely to cause pollution and recommend (i) corrective measures and (ii) a reasonable time period to prevent, mitigate, or eliminate the pollution. If the owner or operator fails to take action to prevent, mitigate, or eliminate the pollution, the State Forester shall issue a special order pursuant to subsection ~~B~~ E or ~~E~~ F. Failure of the State Forester to notify an owner or operator of such corrective measures shall not impair the State Forester's authority to issue special orders pursuant to subsection ~~B~~ E or ~~E~~ F.

BE. The State Forester shall have the authority to issue special orders to any owner or operator who has conducted or is conducting, or has allowed or is allowing to be conducted, any silvicultural activity in a manner which is causing or is likely to cause pollution, to cease immediately all or part of the silvicultural activities on the site, and to implement specified corrective measures within a stated period of time. Such special orders are to be issued only after the owner or operator has been given the opportunity for a hearing with reasonable notice to the owner or operator, or both, of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection ~~DG~~.

EF. If the State Forester finds that any owner or operator is conducting any silvicultural activity in a

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59 manner which is causing or is likely to cause an alteration of the physical, chemical or biological
60 properties of any state waters resulting from sediment deposition presenting an imminent and substantial
61 danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a
62 public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, the
63 State Forester may issue, without advance notice or hearing, an emergency order directing the owner or
64 operator, or both, to cease immediately all or part of the silvicultural activities on the site, and to
65 implement specified corrective measures within a stated period of time. The commencement of
66 proceedings by the State Forester for the issuance of a special order pursuant to subsection ~~B~~ *E or F*
67 shall not impair the State Forester's authority to issue an emergency special order pursuant to this
68 subsection. The State Forester shall provide an opportunity for a hearing, after reasonable notice as to
69 the time and place thereof to the owner or operator, to affirm, modify, amend or cancel such emergency
70 special order.

71 ~~DG.~~ The owner or operator to whom such special order is directed shall be notified by certified mail,
72 return receipt requested, sent to the last known address of the owner, or operator, or by personal
73 delivery by an agent of the State Forester, and the time limits specified shall be counted from the date
74 of receipt.

75 ~~EH.~~ The State Forester shall not issue a special order to any owner or operator who has incorporated
76 generally acceptable water quality protection techniques in the operation of silvicultural activities, which
77 techniques have failed to prevent pollution, if the State Forester determines that the pollution is the
78 direct result of unusual weather events which could not have been reasonably anticipated.

79 ~~FI.~~ Any hearing required under this section shall be conducted in accordance with § 2.2-4020 unless
80 the parties consent to informal proceedings.

81 ~~GJ.~~ The State Forester shall not issue a notice under subsection ~~A~~ *B or D* or a special silvicultural
82 order or emergency special order under subsection ~~B~~ *E* or ~~C~~ *F* more than ~~one~~ 1 year after the
83 silvicultural activity has occurred on the property, *unless the State Forester has issued a notice or*
84 *special order or emergency special order, in which case the authority of the State Forester shall*
85 *continue until dismissal of said order.*

86 ~~HK.~~ Prior to completion but not later than three working days after the commencement of an
87 operation, the operator shall notify the State Forester of the commercial harvesting of timber. For the
88 purpose of this section, commercial harvesting of timber means the harvesting of trees for the primary
89 purpose of transporting to another site for additional manufacturing. The notification may be verbal or
90 written and shall (i) specify the location and the actual or anticipated date of the activity and (ii) be
91 made in a manner prescribed by the State Forester. If an operator fails to comply with the provisions of
92 this subsection, the State Forester may assess a civil penalty of \$250 for the initial violation and not
93 more than \$1,000 for any subsequent violation within a ~~twenty-four~~ 24-month period by the operator.
94 All civil penalties assessed under this subsection shall be recovered in a civil action brought by the
95 Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into the state
96 treasury and credited to the Virginia Forest Water Quality Fund pursuant to § 10.1-1181.7.

97 § 10.1-1181.3. Civil penalties.

98 A. Any owner or operator who violates, or fails or refuses to obey any special order may be assessed
99 a civil penalty by the State Forester. Such penalty shall not exceed \$5,000 for each violation. Each day
100 of a continuing violation may be deemed a separate violation for purposes of assessing penalties. In
101 determining the amount of the penalty, consideration shall be given to the owner's or operator's history
102 of noncompliance; the seriousness of the violation, including any irreparable harm to the environment
103 and any hazard to the health or safety of the public; whether the owner or operator was negligent; and
104 the demonstrated good faith of the owner or operator in reporting and remedying the pollution.

105 B. A civil penalty may be assessed by the State Forester only after the owner or operator has been
106 given an opportunity for a hearing. Any hearing required under this section shall be conducted in
107 accordance with § 2.2-4020, unless the parties consent to informal proceedings. If the owner or operator
108 fails to avail himself of the opportunity for a formal hearing, a civil penalty shall be assessed by the
109 State Forester after the State Forester finds that a violation of a special order has occurred and the
110 amount of the civil penalty warranted, and issues an order requiring that the civil penalty be paid.

111 C. If a person who is required to pay a civil penalty fails to do so, the State Forester may transmit a
112 true copy of the final order assessing such penalty to the clerk of circuit court of any county or city
113 wherein it is ascertained that the person owing the penalty has any estate; and the clerk to whom such
114 copy is sent shall record it, as a judgment is required by law to be recorded, and shall index the same in
115 the name of the Commonwealth as well as of the person owing the penalty, and thereupon there shall be
116 a lien in favor of the Commonwealth on the property of the owner or operator within such county or
117 city in the amount of the penalty. The State Forester may collect civil penalties which are owed in the
118 same manner as provided by law in respect to judgment of a court of record. All civil penalties shall be
119 paid into the state treasury and deposited by the State Treasurer into the Virginia Forest Water Quality
120 Fund pursuant to § 10.1-1181.7.

121 D. With the consent of any owner or operator who has violated or failed, neglected or refused to
122 obey any special order of the State Forester issued pursuant to subsection ~~B~~ *E* or ~~C~~ *F* of § 10.1-1181.2,
123 the State Forester may provide, in an order issued by the State Forester against such owner or operator,
124 for the payment of civil charges for violations in specific sums, not to exceed the limit specified in
125 subsection A of this section. Such civil charges shall be in lieu of any civil penalty which could be
126 imposed under subsection A of this section, and shall be placed in the Virginia Forest Water Quality
127 Fund pursuant to § 10.1-1181.7.

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