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HOUSE BILL NO. 1021

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact § 10.1-1181.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1181.2:1, relating to notification and inspection of commercial silvicultural activities.

Patrons—Dillard; Senator: Ticer

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1181.2 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 10.1-1181.2:1 as follows:

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

A. 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 or C. 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 or C.

B. 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 that 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 D.

C. If the State Forester finds that any owner or operator is conducting any silvicultural activity in a manner that is causing or is likely to cause an alteration of the physical, chemical or biological properties of any state waters resulting from sediment deposition presenting an imminent and substantial danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, the State Forester may issue, without advance notice or hearing, an emergency order directing the owner or operator, or both, 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. The commencement of proceedings by the State Forester for the issuance of a special order pursuant to subsection B shall not impair the State Forester's authority to issue an emergency special order pursuant to this subsection. The State Forester shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the owner or operator, to affirm, modify, amend or cancel such emergency special order.

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

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

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

G. The State Forester shall not issue a notice under subsection A or a special order or emergency special order under subsection B or C more than one year after the silvicultural activity has occurred on the property. Any such notice, special order, or emergency special order shall remain in effect until the State Forester determines that corrective measures specified therein have been implemented.

H. Prior to completion but not later than three working days after the commencement of an operation, the operator shall notify the State Forester of the commercial harvesting of timber. For the

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59 purpose of this section, commercial harvesting of timber means the harvesting of trees for the primary
60 purpose of transporting to another site for additional manufacturing. The notification may be verbal or
61 written and shall (i) specify the location and the actual or anticipated date of the activity and (ii) be
62 made in a manner prescribed by the State Forester. Not less than 10 days before the commencement of
63 commercial silvicultural activity, the operator shall notify the Department of his intent to conduct
64 commercial silvicultural activity on a specified tract of land, and the expected date the commercial
65 silvicultural activity will begin. If the commercial silvicultural activity does not begin on the expected
66 date, the operator shall notify the Department of the new expected date of commencement. If the
67 operator intends to conduct such activity on more than one tract of land during a calendar year, he
68 may give notice of multiple tracts at one time. The notification shall provide such information and be
69 made in a manner prescribed by the State Forester. The notification shall provide a legal description of
70 the property on which the tract is located, including the property tax parcel identification number and a
71 plat showing the boundaries of the tract on the parcel, and the location of adjacent properties,
72 including their tax parcel identification numbers and owners' addresses. The State Forester shall make
73 provision for electronic submission of such notifications. If an operator fails to comply with the
74 provisions of this subsection, the State Forester may assess a civil penalty of \$250 for the initial first
75 violation and not more than \$1,000 for any subsequent violation within a 24-month period by the
76 operator. The State Forester shall have the authority to issue a summons, returnable to the appropriate
77 General District Court. All civil penalties assessed under this subsection shall be recovered in a civil
78 action brought by the Attorney General in the name of the Commonwealth collected by the Department
79 of Forestry. Such civil penalties shall be paid into the state treasury and credited to the Virginia Forest
80 Water Quality Fund pursuant to § 10.1-1181.7.

81 § 10.1-1181.2:1. Inspection of commercial silvicultural activity.

82 A. Within 10 days after the date the department is informed that a proposed commercial silvicultural
83 activity will begin, the State Forester shall inspect the proposed commercial silvicultural activity for
84 compliance with the provisions of this article and any other purpose deemed necessary by the State
85 Forester. The State Forester may waive the 10-day first inspection requirement if the operator has filed
86 with the Department a written preharvest plan prepared by a forester.

87 B. At least once during the operation of every commercial silvicultural activity, and within 30 days
88 after the cessation of such activity, the State Forester shall conduct an inspection to ensure compliance
89 with the provisions of this article, and for other purposes deemed necessary by the State Forester.

90 C. The Department may assess the operator a fee to recover the cost of inspections.