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**HOUSE BILL NO. 947**

Offered January 14, 2004

Prefiled January 14, 2004

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

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Patron—Ingram

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Referred to Committee on Agriculture, Chesapeake and Natural Resources

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**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-1181.2 and 10.1-1181.3 of the Code of Virginia are amended and reenacted 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 purpose of this section, commercial harvesting of timber means the harvesting of trees for the primary

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59 purpose of transporting to another site for additional manufacturing. The notification may be verbal or  
60 written and shall (i) specify the location and the actual or anticipated date of the activity and (ii) be  
61 made in a manner prescribed by the State Forester. If an operator fails to comply with the provisions of  
62 this subsection, the State Forester may assess a civil penalty of \$250 for the initial violation and not  
63 more than \$1,000 for any subsequent violation within a 24-month period by the operator. ~~All civil~~  
64 ~~penalties assessed under this subsection shall be recovered in a civil action brought by the Attorney~~  
65 ~~General in the name of the Commonwealth.~~ Such civil penalties shall be paid into the state treasury and  
66 credited to the Virginia Forest Water Quality Fund pursuant to § 10.1-1181.7.

67 § 10.1-1181.3. Civil penalties.

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

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

81 C. If a person who is required *under this article* to pay a civil penalty fails to do so, the State  
82 Forester may transmit a true copy of the final order assessing such penalty to the clerk of circuit court  
83 of any county or city wherein it is ascertained that the person owing the penalty has any estate; and the  
84 clerk to whom such copy is sent shall record it, as a judgment is required by law to be recorded, and  
85 shall index the same in the name of the Commonwealth as well as of the person owing the penalty, and  
86 thereupon there shall be a lien in favor of the Commonwealth on the property of the owner or operator  
87 within such county or city in the amount of the penalty. The State Forester may collect civil penalties  
88 ~~which that~~ are owed in the same manner as provided by law in respect to judgment of a court of record.  
89 All civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the  
90 Virginia Forest Water Quality Fund pursuant to § 10.1-1181.7.

91 D. With the consent of any owner or operator who has violated or failed, neglected or refused to  
92 obey any special order of the State Forester issued pursuant to subsection B or C of § 10.1-1181.2, the  
93 State Forester may provide, in an order issued by the State Forester against such owner or operator, for  
94 the payment of civil charges for violations in specific sums, not to exceed the limit specified in  
95 subsection A of this section. Such civil charges shall be in lieu of any civil penalty ~~which that~~ could be  
96 imposed under subsection A of this section, and shall be placed in the Virginia Forest Water Quality  
97 Fund pursuant to § 10.1-1181.7.