

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 578

An Act to amend and reenact §§ 10.1-1181.1 and 10.1-1181.2 of the Code of Virginia, relating to silvicultural activities affecting water quality.

[H 1132]

Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1181.1 and 10.1-1181.2 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 or C of § 10.1-1181.2.

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

A. 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 in a manner which is causing or is likely to cause pollution, he may ~~advise~~ *notify* the owner or operator of corrective measures needed to prevent or cease the pollution. Failure of the State Forester to ~~advise~~ *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 of this section.

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 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 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 of this section.

C. If the State Forester finds that any owner or operator is conducting any silvicultural activity in a manner which 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 of this section 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 which could not have been reasonably anticipated.

F. Any hearing required under this section shall be conducted in accordance with § 9-6.14:12 unless the parties consent to informal proceedings.

G. The State Forester shall not issue a notice under subsection A of this section or a special silvicultural order or emergency special order under subsection B or C of this section more than one year after the silvicultural activity has occurred on the property.

H. Prior to or not later than three working days after the commencement of an operation, the owner or 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 purpose of transporting to another site for additional manufacturing. The notification may be verbal or written and shall (i) specify the location and the actual or anticipated date of the activity and (ii) be made in a manner prescribed by the State Forester.