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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

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ENROLLED

Com. Sub. for

HOUSE BILL No. 4669

(By ~~Delegate~~ *Mr. Speake, Mr. Chamblin,*
and Delegate J. Marten

— ● —

Passed *March 6,* 1992

In Effect *From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4669

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE J. MARTIN)

[Passed March 6, 1992; in effect from passage.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-b, relating to sediment control during timber operations generally; providing for a short title and legislative purpose of article; defining certain terms; requiring timber operations licensure; providing application requirements; imposing an application fee and an annual fee; providing for suspension and revocation of license; authorizing the imposition of compliance orders; authorizing the imposition of cease and desist orders; requiring notification of timbering operations and the contents and methods thereof; requiring certification for supervisors of timbering operations; providing for a certification program; imposing application and annual certification fees; providing for renewal of certification and requiring triennial completion of certification program; authorizing the creation of a committee on best management practices; creating the timbering operations enforcement fund; providing for a right of entry; permitting the director to issue orders; creating conference panels; providing for the powers and duties of the conference panels; establishing civil penalties; providing an appeal process; authorizing the promulga-

tion of rules; requiring cooperation of state agencies; requiring an annual report; and providing for the effect on other laws.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-b, to read as follows:

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

§19-1B-1. Short title.

1 This article shall be known and cited as the “Logging
2 Sediment Control Act.”

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

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

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

§19-1B-3. Definitions.

1 (a) “Best management practices” means sediment
2 control measures, structural or nonstructural, used
3 singly or in combination, to reduce soil runoff from land
4 disturbances associated with commercial timber
5 harvesting.

6 (b) “Chief” means the chief of the section of water
7 resources of the division of natural resources, or his or
8 her designee.

9 (c) “Director” means the director of the division of
10 forestry of the department of commerce, labor and
11 environmental resources, or his or her authorized

12 designee.

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

15 (e) "Timbering operations" means activities directly
16 related to the severing or removal of standing trees from
17 the forest as a raw material for commercial processes
18 or purposes. For the purpose of this article, timbering
19 operations shall not include the severing of evergreens
20 grown for and severed for the traditional Christmas
21 holiday season, nor the severing of trees incidental to
22 ground-disturbing construction activities, including well
23 sites, access roads and gathering lines for oil and
24 natural gas operations, nor the severing of trees for
25 maintaining existing, or during construction of, rights-
26 of-way for public highways or public utilities or any
27 company subject to the jurisdiction of the federal energy
28 regulatory commission unless the trees so severed are
29 being sold or provided as raw material for commercial
30 wood product purposes, nor the severing of trees by an
31 individual on the individual's own property for his or
32 her individual use provided that the individual does not
33 have the severing done by a person whose business is
34 the severing or removal of trees.

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

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

1 (a) After the first day of September, one thousand nine
2 hundred ninety-two, no person may conduct timbering
3 operations, purchase timber or buy logs for resale until
4 he or she has obtained the license pursuant to this article
5 from the division and met all other requirements
6 pertaining to his or her timbering operation or other
7 wood product business contained in this article.

8 (b) An applicant for a license shall submit an
9 application on a form to be designed and provided by
10 the director. A fee of fifty dollars shall be submitted
11 with each application and with each annual renewal of

12 the license. The application shall, at a minimum, contain
13 the following information:

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

19 (2) The applicant's West Virginia business registra-
20 tion number or a copy of the current West Virginia
21 business registration certificate. The division of forestry
22 shall submit such information and a list of all applicants
23 to the tax commissioner each quarter of the calendar
24 year to ensure compliance with payment of severance,
25 income withholding and all other applicable state taxes;
26 and

27 (3) Any other information required by the director.

28 (c) The director shall promulgate legislative rules
29 pursuant to the provisions of article three, chapter
30 twenty-nine-a of this code which provide procedures by
31 which a license may be acquired, suspended or revoked
32 under this article. The Legislature expressly finds that
33 such legislative rules are the proper subject of emer-
34 gency legislative rules which may be promulgated in
35 accordance with the provision of section fifteen, article
36 three, section twenty-nine-a of this code.

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

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

1 (a) Upon a finding by the chief that failure to use a
2 particular best management practice is causing or
3 contributing, or has the potential to cause or contribute,
4 to soil erosion or water pollution, the chief shall notify
5 the director of the location of the site, the problem
6 associated with the site, and any suggested corrective
7 action. Upon the failure of the director to take approp-
8 riate action within three days of providing notice to the

9 director, the chief may seek relief through the confer-
10 ence panel in accordance with section eleven of this
11 article.

12 (b) Upon notification of the chief or upon a finding by
13 the director that failure to use a particular best
14 management practice is causing or contributing, or has
15 the potential to cause or contribute, to soil erosion or
16 water pollution, the director shall issue a written
17 compliance order requiring the person conducting the
18 timber operation to take corrective action. The order
19 shall mandate compliance within a reasonable and
20 practical time, not to exceed ten days. The person
21 subject to the order may appeal the order within forty-
22 eight hours of its issuance to the conference panel in
23 accordance with section eleven of this article.

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

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

50 (e) The director may revoke the license of any person
51 conducting timbering operations or the certification of
52 any certified logger if the person is found in violation
53 of this article or article five-a, chapter twenty of this
54 code, for a third time within any two-year period:
55 *Provided*, That one or more violations for the same
56 occurrence may constitute only one violation for pur-
57 poses of this subsection. A revoked license shall not be
58 subject to reissue during the licensing period for which
59 it was issued.

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

**§19-1B-6. Notification of duration of timbering opera-
tions; requirements thereof.**

1 (a) After the first day of September, one thousand nine
2 hundred ninety-two, in addition to any other require-
3 ment of this article, no person may conduct timbering
4 operations unless the person notifies the director of the
5 specific location on which the timbering operations are
6 to be conducted. The notification shall be made in a
7 manner designated by the director. The notification
8 shall include, at a minimum, the following:

9 (1) The specific topographic location where the
10 timbering operations are to be conducted;

11 (2) The approximate dates that the timbering opera-
12 tion will begin and end;

13 (3) The approximate acreage over which timbering
14 operations are contemplated;

15 (4) The names and addresses of the owner or owners
16 of the timber to be harvested and, if different, the names
17 and addresses of the owner or owners of the property
18 upon which the timber is located;

19 (5) A sketch map of the proposed logging operation,
20 including haul roads, landings and stream crossings;

21 (6) A description of the sediment control practices to
22 be used by the logger during the timber harvesting

23 operation;

24 (7) An acknowledgement that the operator will
25 conduct the operations in compliance with the provisions
26 of this article and any applicable rules and regulations
27 promulgated pursuant to this article;

28 (8) A certification satisfactory to the director that all
29 permits required under state law have been obtained or
30 applied for and that all pertinent requirements for
31 obtaining any permit applied for, but not yet obtained,
32 have been complied with; and

33 (9) The name or names of the person or persons who
34 will be supervising the timbering operations at the site
35 of the operations and his or her logger certification
36 numbers: *Provided*, That no logger certification number
37 shall be required until after the certification program
38 has been developed.

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

41 (c) Further notice shall be given if the operation is to
42 be, for any reason, closed more than seven days before
43 the estimated date for closing provided under subdivi-
44 sion (2), subsection (a) of this section.

**§19-1B-7. Certification of persons supervising timbering
operations, timbering operations to be super-
vised, promulgation of rules and regulations.**

1 (a) After the first day of July, one thousand nine
2 hundred ninety-three, any individual supervising any
3 timbering operation must be certified pursuant to this
4 article.

5 (b) The director is responsible for the development of
6 standards and criteria for establishment of a regularly
7 scheduled program of education, training and examina-
8 tion that all persons must successfully complete in order
9 to be certified to supervise any timbering operation. The
10 program for certified loggers shall provide, at a
11 minimum, for education and training in the safe conduct
12 of timbering operations, in first aid procedures, and in
13 the use of best management practices to prevent, in-so-

14 far as possible, soil erosion on timbering operations. The
15 goals of this program will be to assure that timbering
16 operations are conducted in accordance with applicable
17 state and federal safety regulations in a manner that is
18 safest for the individuals conducting the operations and
19 that they are performed in an environmentally sound
20 manner.

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

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

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

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

45 (g) After the first day of July, one thousand nine
46 hundred ninety-three, every timbering operation must
47 have at least one person certified pursuant to this section
48 supervising the operation at any time the timbering
49 operation is being conducted and all timbering opera-
50 tors shall be guided by the West Virginia forest practice
51 standards and the West Virginia silvicultural best
52 management practices in selecting practices approp-
53 riate and adequate for reducing sediment movement

54 during a timber operation.

55 (h) The director shall, at no more than three year
56 intervals after the effective date of this article, convene
57 a committee to review the best management practices
58 so as to ensure that they reflect and incorporate the most
59 current technologies. The committee shall, at a min-
60 imum, include a person doing research in the field of
61 silvicultural best management practices, a person doing
62 research in the field of silviculture, two loggers certified
63 under this article, a representative of the water
64 resources section of the division of natural resources,
65 and a representative of an environmentally active
66 organization. The director shall chair the committee and
67 may adjust the then current best management practices
68 according to the suggestions of the committee in time
69 for the next certification cycle.

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

1 There is created in the state treasury a special
2 revolving fund designated the "Timbering Operations
3 Enforcement Fund." All fees collected pursuant to this
4 article shall be deposited into the fund: *Provided*, That
5 amounts deposited in the fund which are found from
6 time to time to exceed the amounts necessary to
7 effectuate the purposes of this article may be redesign-
8 nated for other purposes by appropriation by the
9 legislature.

10 This fund shall be appropriated to the division of
11 forestry to be used for the administration and enforce-
12 ment of the provisions of this article and for no other
13 purpose.

§19-1B-9. Right of entry.

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

§19-1B-10. Orders of the director.

1 Notwithstanding the provisions of section five of this
2 article, whenever the director determines that any

3 person has violated a provision of this article or any
4 rules promulgated pursuant thereto, he or she may enter
5 an order directing the person to cease the violation and,
6 where appropriate, to take such action to remediate
7 damage created or to take action appropriate for the
8 specific site.

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

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

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

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

22 (c) A party aggrieved by a decision of a panel may
23 appeal to the circuit court of the county wherein the
24 cause for the order arose. Such appeal must be filed
25 with the circuit court within twenty days of the date of
26 decision of the panel and shall be heard de novo by the
27 court. The court may reverse, vacate or modify the
28 decision of the panel. The decision of the circuit court
29 shall be final unless reversed, vacated or modified on

30 appeal to the supreme court of appeals. Any such appeal
31 shall be sought in the manner provided by law for
32 appeals from circuit courts in other civil cases.

§19-1B-12. Civil penalties.

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

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

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

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

1 All state agencies shall cooperate with the director in
2 the director's efforts to ensure that persons conducting
3 timbering operations are doing so in compliance with all
4 applicable provisions of state law, and the director shall
5 cooperate with such other state agencies to enforce their
6 statutory and regulatory responsibilities and duties.
7 Cooperation shall include the sharing of information
8 necessary or helpful to the accomplishment of such
9 responsibilities and duties. The director shall notify the
10 chief of commencement of timbering operations. The
11 chief and the director each shall submit an annual
12 report on the progress and effectiveness of the programs
13 incorporated in this article to the governor, the speaker
14 of the House of Delegates and the president of the
15 Senate.

§19-1B-14. Effect on other laws.

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

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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Lomer Beck

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect from passage.

Harrell Adams

Clerk of the Senate

Donald L. Kepp

Clerk of the House of Delegates

Walter Sandette

President of the Senate

Robert C. Bell

Speaker of the House of Delegates

The within is approved this the 30th
day of *March*, 1992.

Yastin Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/19/92

Time 12:47 pm