WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED
Com. Sub. for

HOUSE BILL No. 1466.9

(By Delegate Mr. Speaker, Mr. Chamley
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-
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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 Sediment Control Act.”

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

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

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

§19-1B-3. Definitions.

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

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

9 (c) “Director” means the director of the division of forestry of the department of commerce, labor and environmental resources, or his or her authorized
(d) "Operator" means any person who conducts timbering operations.

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

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

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

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

(b) An applicant for a license shall submit an application on a form to be designed and provided by the director. A fee of fifty dollars shall be submitted with each application and with each annual renewal of
the license. The application shall, at a minimum, contain
the following information:

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

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

(3) Any other information required by the director.

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

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

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

(a) Upon a finding by the chief that failure to use a
particular best management practice is causing or
contributing, or has the potential to cause or contribute,
to soil erosion or water pollution, the chief shall notify
the director of the location of the site, the problem
associated with the site, and any suggested corrective
action. Upon the failure of the director to take approp-
riate action within three days of providing notice to the
director, the chief may seek relief through the conference panel in accordance with section eleven of this article.

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

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

(d) The director may suspend the license of any person conducting a timbering operation or the certification of any certified logger supervising a timbering operation, for no less than thirty nor more than ninety days, if the person is found in violation of this article or article five-a, chapter twenty of this code, for a second time within any two-year period: Provided, That one or more violations for the same occurrence may constitute only one violation for purposes of this subsection.
(e) The director may revoke the license of any person conducting timbering operations or the certification of any certified logger if the person is found in violation of this article or article five-a, chapter twenty of this code, for a third time within any two-year period: Provided, That one or more violations for the same occurrence may constitute only one violation for purposes of this subsection. A revoked license shall not be subject to reissue during the licensing period for which it was issued.

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

§19-1B-6. Notification of duration of timbering operations; requirements thereof.

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

1. The specific topographic location where the timbering operations are to be conducted;
2. The approximate dates that the timbering operation will begin and end;
3. The approximate acreage over which timbering operations are contemplated;
4. The names and addresses of the owner or owners of the timber to be harvested and, if different, the names and addresses of the owner or owners of the property upon which the timber is located;
5. A sketch map of the proposed logging operation, including haul roads, landings and stream crossings;
6. A description of the sediment control practices to be used by the logger during the timber harvesting
operation;

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

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

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

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

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

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

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

(b) The director is responsible for the development of standards and criteria for establishment of a regularly scheduled program of education, training and examination that all persons must successfully complete in order to be certified to supervise any timbering operation. The program for certified loggers shall provide, at a minimum, for education and training in the safe conduct of timbering operations, in first aid procedures, and in the use of best management practices to prevent, in-so-
far as possible, soil erosion on timbering operations. The
goals of this program will be to assure that timbering
operations are conducted in accordance with applicable
state and federal safety regulations in a manner that is
safest for the individuals conducting the operations and
that they are performed in an environmentally sound
manner.

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

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

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

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

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

(h) The director shall, at no more than three year intervals after the effective date of this article, convene a committee to review the best management practices so as to ensure that they reflect and incorporate the most current technologies. The committee shall, at a minimum, include a person doing research in the field of silvicultural best management practices, a person doing research in the field of silviculture, two loggers certified under this article, a representative of the water resources section of the division of natural resources, and a representative of an environmentally active organization. The director shall chair the committee and may adjust the then current best management practices according to the suggestions of the committee in time for the next certification cycle.

§19-lB-8. Timbering operations enforcement fund.

There is created in the state treasury a special revolving fund designated the "Timbering Operations Enforcement Fund." All fees collected pursuant to this article shall be deposited into the fund: Provided, That amounts deposited in the fund which are found from time to time to exceed the amounts necessary to effectuate the purposes of this article may be redesignated for other purposes by appropriation by the legislature.

This fund shall be appropriated to the division of forestry to be used for the administration and enforcement of the provisions of this article and for no other purpose.


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

§19-lB-10. Orders of the director.

Notwithstanding the provisions of section five of this article, whenever the director determines that any
person has violated a provision of this article or any rules promulgated pursuant thereto, he or she may enter an order directing the person to cease the violation and, where appropriate, to take such action to remediate damage created or to take action appropriate for the specific site.

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

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

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

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

(c) A party aggrieved by a decision of a panel may appeal to the circuit court of the county wherein the cause for the order arose. Such appeal must be filed with the circuit court within twenty days of the date of decision of the panel and shall be heard de novo by the court. The court may reverse, vacate or modify the decision of the panel. The decision of the circuit court shall be final unless reversed, vacated or modified on
appeal to the supreme court of appeals. Any such appeal
shall be sought in the manner provided by law for
appeals from circuit courts in other civil cases.

§19-1B-12. Civil penalties.

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

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

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

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

All state agencies shall cooperate with the director in
the director’s efforts to ensure that persons conducting
timbering operations are doing so in compliance with all
applicable provisions of state law, and the director shall
cooperate with such other state agencies to enforce their
statutory and regulatory responsibilities and duties. The director shall notify the
chief of commencement of timbering operations. The
chief and the director each shall submit an annual
report on the progress and effectiveness of the programs
incorporated in this article to the governor, the speaker
of the House of Delegates and the president of the
Senate.

§19-1B-14. Effect on other laws.

Nothing in this article relieves any person conducting
timbering operations from complying with any other
provision of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor