

W. VA. LOGGING SEDIMENT CONTROL ACT

INTRODUCTION

In 1992, the West Virginia Legislature enacted the Logging Sediment Control Act. The purpose of the act is to protect and maintain forest water and site productivity by minimizing soil erosion from areas disturbed during timber harvesting operations. Provisions of this act include:

- Logger Licensing
- Logger Certification
- Notification
- Job Posting
- Enforcement

The West Virginia Division of Forestry was designated by the Legislature as the agency responsible for carrying out the mandates and provisions of the Logging Sediment Control Act.

LOGGER LICENSING

After September 1, 1992, anyone **conducting a logging operation, buying standing timber, or buying logs for resale** is required to be licensed by the West Virginia Division of Forestry. The annual fee is \$50 and includes any one, or any combination of, the three categories. One requirement for licensing is that the person or company be registered by the West Virginia Department of Tax and Revenue; the registration number must be supplied with the application for licensing. Acceptance of the license implies that the logging operator will protect environmental quality through the judicious use of Best Management Practices.

LOGGER CERTIFICATION

The second main provision of the law provides for the certification of loggers. The fee for certification is also \$50 annually. The requirements for certification are the satisfactory completion of courses in tree felling safety and personal safety equipment, first aid, and Best Management Practices.

After July 1, 1993, each logging crew is required to be supervised by a certified logger, who must be on the job each day but does not have to be continuously present. The certification can be renewed for two successive years, but certified loggers must attend an update training course, approved by the Director of the Division of Forestry, before being recertified for the third year.

NOTIFICATION AND JOB POSTING

A third provision requires logging operators to submit a notification form to the Division of Forestry within three days of starting a new harvesting operation. Along with notification, the operator is required to post the logging job with a sign indicating the company name and license number. The posted sign must be plainly visible on a log landing of an active operation.

ENFORCEMENT

The law also specifies several ways in which licenses can be suspended and/or revoked. These provisions have been amplified by the writing of regulations by the Division of Forestry and approved by the Legislative Rule-Making Review Committee.

The law, and accompanying regulations, empowers the Division of Forestry to issue compliance orders to correct problems and, when necessary, to suspend a logging operation until specified corrections are made to bring the operation into compliance with the law. The operation may be immediately suspended when human life is endangered, uncorrectable damage to the environment is imminent, an operator is not licensed, uncorrectable water pollution may result, or a certified logger is not supervising the operation. Licenses may be suspended if the person is found in violation twice in any two-year period, and they may be revoked if found guilty for a third time in any two-year period.

If a logging operator feels that the Division of Forestry has acted improperly, an appeal of the Division of Forestry's ruling may be filed with an informal conference panel composed of three persons. Establishment of these informal conference panels is provided by the legislation.

The Director of the Division of Forestry also may seek civil penalties for violations of the law in the Circuit Court of the county in which the violation occurred, in an amount not to exceed \$2,500 for the first offense and \$5,000 for any subsequent offense. However, the inspector generally will give the logging operator a specified number of days to correct the situation.

All penalties collected are deposited in a Timbering Operations and Enforcement Fund for use in administering the law.

The law also provides that all state agencies will cooperate with the Director in administering the law, and that the Director will cooperate with all other state agencies in the enforcement of their responsibilities and duties.

The law provides exceptions for utilities and right-of-way clearing, ground disturbing construction, Christmas tree severing, companies regulated by the Federal Energy Regulatory Commission, and people harvesting timber and other wood products on their own property for their own use. An application can be submitted for a waiver from licensing and certification for occasionally severing or removing standing trees for sale, either from the harvester's property or from the property of another, provided the aggregate gross income realized from all sales of the forest products within any calendar year does not exceed \$15,528. However, a notification form still must be submitted to the Division of Forestry.

It should be noted that landowners have a responsibility to prevent sedimentation of the state's streams. Under Chapter 22 of the Code of West Virginia and enforced by the Office of Water Resources of the West Virginia Division of Environmental Protection, landowners can be held legally responsible for allowing or contributing to stream sedimentation or even stream turbidity due to logging.