GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2015 REGULAR SESSION

SENATE BILL NO. 92

TUESDAY, MARCH 3, 2015

The following bill was reported to the House from the Senate and ordered to be printed.

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

1 AN ACT relating to timber harvesting.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 149.330 is amended to read as follows:

4 As used in KRS 149.330 to 149.355, unless the context requires otherwise:

5 (1) "Best management practices" means effective, practical, economical, structural, or
6 nonstructural methods that prevent or reduce the movement of sediment, nutrients,
7 pesticides, and other pollutants from the land to surface or groundwater, or that
8 otherwise protect water quality from potential adverse effects of timber harvesting
9 operations as developed by the Division of Forestry and approved by the
10 Agriculture Water Quality Authority;

11 (2) "Cabinet" means the Energy and Environment Cabinet;

12 (3) "Director" means the director of the Division of Forestry;

13 (4) "Division" means the Division of Forestry;

14 (5) "Logger" means any person who conducts timber harvesting operations for
15 commercial purposes;

16 (6) "Operator" means any person who operates or exercises control over any timber
17 harvesting operations;

18 (7) "Person" means any ***natural person or any director, officer, or agent of***
19 ***a***[~~individual,~~] partnership, corporation, association, society, joint stock company,
20 firm, company, or business organization***. "Person" also means***[~~, and~~] any agency
21 or instrumentality of federal, state, or local government, including any publicly-
22 owned utility or any publicly-owned corporation of federal, state, or local
23 government;

24 (8) "Timber harvesting operations" means activities directly related to the cutting or
25 removal of trees from the forest as a raw material for commercial processes or
26 purposes, including timber preharvesting and postharvesting activities associated
27 with the implementation of appropriate best management practices. "Timber

1 harvesting operations" does not include:
2 (a) The cutting of firewood;
3 (b) The cutting of evergreens grown for and cut for the traditional Christmas
4 holiday season;
5 (c) The removal of trees incidental to clearing for coal mining or farm purposes or
6 incidental to ground-disturbing construction activities, including well sites,
7 and access roads and gathering lines for oil and natural gas operations;
8 (d) The cutting of trees for maintaining existing, or during construction of, rights-
9 of-way for public highways or public utilities, unless those trees are being sold
10 or provided as raw material for commercial wood product purposes; or
11 (e) The cutting of trees by an individual, nonindustrial landowner on his own
12 property, if the cutting is performed by the individual, nonindustrial
13 landowner; and
14 (9) "Water pollution" has the same meaning as in KRS 224.1-010.
15 ➔Section 2. KRS 149.344 is amended to read as follows:
16 (1) ~~[Two (2) years from July 15, 1998,]~~Any logger or operator engaged in the conduct
17 of any timber harvesting operations shall use appropriate best management
18 practices.
19 (2) No logger or operator shall conduct any timber harvesting operations in a manner
20 that is causing or will likely cause water pollution.
21 (3) If the cabinet determines that a logger or operator engaged in timber harvesting
22 operations has failed to use the appropriate best management practices or is causing
23 water pollution, the cabinet shall give the logger or operator a written warning of
24 the facts alleged to constitute the failure to use the best management practice or the
25 water pollution, and a reasonable period for abatement and compliance.
26 (4) If, after the time for abatement in the written warning, the cabinet determines that
27 the logger or operator has failed to implement the appropriate best management

1 practices or has failed to abate the water pollution, the logger or operator will be
2 provided an opportunity for an informal conference with the ***regional***~~[district]~~
3 forester. After the opportunity for an informal conference, if the cabinet determines
4 that the logger or operator has failed to implement the appropriate best management
5 practices or has failed to abate the water pollution, the cabinet shall issue a notice of
6 violation stating the best management practice that the logger or operator has failed
7 to implement or the facts alleged to constitute the water pollution, and order the
8 logger or operator to implement corrective measures within a specified period of
9 time.
10 (5) If, after the issuance of a notice of violation, the logger or operator fails to
11 implement the best management practice or corrective measures, the cabinet shall
12 issue a special order mandating the logger or operator to immediately implement the
13 best management practice or the corrective measures. The cabinet may also order
14 the logger or operator to cease all or a portion of the timber harvesting operation
15 constituting the violation, and if the cabinet does so, the logger or operator shall
16 cease all or a portion of the timber harvesting operation, until an inspection
17 determines that the violation has been abated. At the time the special order is
18 issued, the cabinet shall notify the logger or operator of the opportunity for an
19 administrative hearing under KRS 149.346(2), to be held within five (5) working
20 days of the receipt of a written request made by the logger or operator.
21 (6) If the cabinet finds that any logger or operator is conducting any timber harvesting
22 operations in violation of KRS 149.342(1) or in a manner that is causing or is likely
23 to cause water pollution that is presenting or will likely present an imminent and
24 substantial danger to the public health, safety, or welfare, or to the health of
25 animals, fish, or aquatic life, or to a public water supply, or to recreational,
26 commercial, agricultural, or industrial uses, the cabinet may issue an emergency
27 order directing the logger or operator to immediately cease the activity and

1 implement corrective measures within a reasonable time, and the logger or operator
2 shall immediately cease the activity and implement corrective measures. At the time
3 the order is issued, the cabinet shall also notify the logger or operator of the
4 opportunity for an administrative hearing under KRS 149.346(2) to be held within
5 five (5) working days of the receipt of a written request. The commencement of
6 proceedings by the cabinet under subsection (3), (4), (5), or (10) of this section shall
7 not preclude the cabinet from issuing an emergency order under this subsection.
8 (7) Notification under this section shall be by certified mail, return receipt requested,
9 sent to the last known address of the logger or operator, or by hand delivery by the
10 cabinet.
11 (8) If the logger or operator fails or refuses to cease activity or comply with and
12 implement the best management practices or corrective measures in a special order
13 issued under subsection (5) of this section or fails to cease activity and implement
14 corrective measures in an emergency order under subsection (6) of this section,
15 unless extended by the cabinet, the logger or operator shall be deemed a bad actor
16 and shall be subject to civil penalties under KRS 149.348 after an opportunity for a
17 hearing under KRS 149.346. The cabinet shall have the authority to remove or
18 terminate bad actor designations from loggers or operators that demonstrate
19 adherence to implementing best management practices, have paid all fines and
20 penalties imposed by the cabinet, and have completed corrective action on sites with
21 violations.
22 (9) The cabinet may promulgate administrative regulations to establish rules and
23 procedures to remove or terminate the bad actor designation from a logger or
24 operator that was previously designated a bad actor under subsection (8) of this
25 section.
26 (10) If the cabinet determines that a logger or operator engaged in timber harvesting
27 operations has failed to use the appropriate best management practices in violation

1 of this section, and the logger or operator has been issued two (2) or more bad actor
2 designations under KRS 149.346, the cabinet shall immediately issue a warning
3 and, if the violations are not corrected after a period defined by the warning but no
4 longer than one (1) week, shall issue an order directing the logger or operator to
5 immediately cease the activity and implement corrective measures within a
6 reasonable time, and the logger or operator shall immediately cease the activity and
7 implement corrective measures. At the time the order is issued, the cabinet shall
8 also notify the logger or operator of the opportunity for an administrative hearing
9 under KRS 149.346(2) to be held within five (5) working days of the receipt of a
10 written request.

11 ***(11) (a) Any logger or operator who has been designated a bad actor under***
12 ***subsection (8) of this section shall provide prior notice to the appropriate***
13 ***regional office or offices of the division before engaging in any timber***
14 ***harvesting operation regulated by the cabinet until he or she has paid all***
15 ***civil penalties and performed all of the site remediation required by the***
16 ***cabinet.***

17 ***(b) The cabinet shall promulgate administrative regulations in accordance with***
18 ***KRS Chapter 13A to set forth the form and manner of the notification***
19 ***required by this subsection. The notification requirements of this subsection***
20 ***shall take effect on the effective date of the administrative regulations***
21 ***required by this paragraph.***

22 ***(12) Beginning on January 1, 2016, if the cabinet finds that any logger or operator***
23 ***has three (3) or more bad actor designations under subsection (8) of this section,***
24 ***the cabinet shall issue an emergency order directing the logger or operator to***
25 ***immediately cease all timber harvesting operations in the Commonwealth. Upon***
26 ***receiving the emergency order, the logger or operator shall cease all timber***
27 ***harvesting operations in the Commonwealth until he or she has performed all of***

1 ***the site remediation required by the cabinet and has either paid all civil penalties***
2 ***or remains up-to-date on a payment plan for civil penalties with the cabinet. At***
3 ***the time the order is issued, the cabinet shall also notify the logger or operator of***
4 ***the opportunity for an administrative hearing under subsection (2) of Section 3 of***
5 ***this Act to be held within five (5) working days of the receipt of a written request.***
6 ***The commencement of proceedings by the cabinet under subsection (3), (4), (5),***
7 ***or (10) of this section shall not preclude the cabinet from issuing an emergency***
8 ***order under this subsection. A logger or operator who otherwise complies with***
9 ***the requirements of this subsection shall not be required to remove any of his or***
10 ***her bad actor designations as a condition of being allowed to restart timber***
11 ***harvesting operations in the Commonwealth.***
12 ***(13) All bad actor designations issued under subsection (8) of this section, including***
13 ***those issued prior to the effective date of this Act, shall be included in***
14 ***determining the applicability of this section to any logger or operator.***
15 ➔Section 3. KRS 149.346 is amended to read as follows:
16 (1) If the cabinet has evidence that a violation of KRS 149.342(1) ***or subsection (11) of***
17 ***Section 2 of this Act*** has occurred, or has deemed a logger or operator to be a bad
18 actor under KRS 149.344(8), the cabinet shall serve written notice of the
19 determination and the provision alleged to have been violated, and the cabinet shall
20 require the person complained against to answer the charges at an administrative
21 hearing to be held not less than twenty-one (21) days after the date of the notice,
22 unless the person complained against waives the twenty-one (21) day period.
23 (2) Any person not previously heard who considers himself aggrieved by any
24 determination of the cabinet under KRS 149.330 to 149.355 may file a petition
25 alleging that the determination is contrary to law or fact and is injurious to him,
26 citing the grounds and reasons therefor, and demanding an administrative hearing.
27 Unless the cabinet considers the petition frivolous, it shall schedule an

1 administrative hearing before the cabinet not less than ninety (90) days after the date
2 of the notice, unless the person complained against waives the ninety (90) day
3 period, except that hearings requested under KRS 149.344(5) and (6) shall be held
4 within five (5) working days of receipt of a petition. The right to demand a hearing
5 under this subsection shall be limited to a period of thirty (30) days after the
6 petitioner has had actual notice of the determination complained of, or could have
7 had notice. The cabinet shall be represented at the administrative hearing by the
8 Office of ***General Counsel***[~~Legal Services~~].
9 (3) All hearings under KRS 149.330 to 149.355 shall be conducted under KRS 224.10-
10 440. Appeals may be taken from all final orders under KRS 224.10-470.
11 ➔Section 4. KRS 149.348 is amended to read as follows:
12 ***(1)*** Any operator or logger who is deemed by the ***cabinet***[~~division~~] to be a bad actor
13 under KRS 149.344(8) or who violates KRS 149.342(1) ***or subsection (11) of***
14 ***Section 2 of this Act,*** may, after an opportunity for an administrative hearing, be
15 assessed a civil penalty not to exceed one thousand dollars ($1,000) for each
16 violation. In determining the amount of the penalty, consideration shall be given to
17 the operator's or logger's history of noncompliance; the seriousness of the violation
18 and any damage caused, including any irreparable harm to the environment or
19 hazard to public health or safety or the health and safety of animals, fish, or aquatic
20 life; the degree of fault and whether the conduct was intentional or negligent; and
21 the demonstrated good faith in remedying the pollution. The penalties shall be
22 recoverable in an action brought in the name of the Commonwealth of Kentucky by
23 the cabinet's Office of ***General Counsel***[~~Legal Services~~]. All sums recovered shall
24 be deposited in the Forest Stewardship Incentives Fund. The Circuit Court in the
25 county in which the violation occurred shall have concurrent jurisdiction and venue
26 of all civil and injunctive actions instituted by the cabinet for the enforcement of the
27 provisions of KRS 149.330 to 149.355 or the orders and administrative regulations

1 promulgated by the cabinet.

2 *(2) Notwithstanding KRS Chapters 271B to 275 or any other provision of law to the*
3 *contrary, any director, officer, or agent of an operator or logger doing business*
4 *as a partnership, corporation, association, society, joint stock company, firm,*
5 *company, or business organization shall be personally liable, jointly and*
6 *severally, for the civil penalties incurred by the operator or logger under this*
7 *section.*

President of Senate

Speaker-House of Representatives

Attest: Chief Clerk of Senate

Approved Governor

Date 3/20/15