

# Policy and Procedure 18-3

## Water Quality Law Enforcement

<b>Issued By:</b>	Robert W. Farrell, State Forester	DocuSigned by: <i>Robert W. Farrell</i>	10/15/2023
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<b>Codes/Mandates:</b>	Code of Virginia: <a href="#">§10.1-1181.2-H</a> ; <a href="#">§2.2-4000A</a> ; <a href="#">§2.2-4020</a> ; <a href="#">§2.2-4021</a> ; <a href="#">§10.1-1181.1 through §10.1-1181.7</a>		
<b>References:</b>	<a href="#">Virginia’s Forestry Best Management Practices for Water Quality Technical Guide</a> <a href="#">Virginia’s Forestry Best Management Practices for Water Quality Field Guide</a> IFRIS		
<b>Forms:</b>	IFRIS Harvest Inspection Report [ <a href="#">Form 18.2 Harvest Inspection</a> ] IFRIS Recommendation Incident Report [ <a href="#">Form 18.3 Water Quality Protection Recommendations</a> ] <a href="#">Form 18.4 Waiver of Right to a Formal Hearing</a> IFRIS Emergency Special Order Report [ <a href="#">Form 18.5 Water Quality Emergency Special Order</a> ] Letter [ <a href="#">Form 18.6 Notice of Informal Conference for Failure to Notify DOF of Commercial Timber Harvest</a> ] <a href="#">Form 18.7 Civil Penalty Assessment Matrix</a> IFRIS Special Order Notification Report IFRIS Notice of Informal Conference for Failure to Notify DOF of Commercial Timber Harvest  <i>Forms may be used when an immediate notice to hand to the operator on site is needed, as a worksheet to collect information for IFRIS, or as a backup if IFRIS is unavailable; all information must be entered into IFRIS.</i>		

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## PURPOSE

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To provide guidance and direction to ensure consistent and accurate enforcement of the Silvicultural Water Quality Law using the Administrative Process Act; fair and consistent enforcement of violations of harvest notification law; proper use and implementation of informal conferences and formal hearings; consistent and fair assessments of civil penalties, and complete, fair and thorough resolution of water quality problems resulting from timber harvesting.

## POLICY

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The Virginia Department of Forestry is committed to ensuring the protection of Virginia's water resources during harvest operations. The Silvicultural Water Quality Law violations will be handled through the Administrative Process Act. (Code of Virginia [§2.2-4000A](#); [§2.2-4020](#)).

## DEFINITIONS

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"**Agency**" and "**DOF**" means the Virginia Department of Forestry.

"**Commonwealth**" means the Commonwealth of Virginia.

"**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](#).

## PROCEDURES

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### Failure to Notify DOF of Commercial Timber Harvest

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#### Harvesting Operation Detected without Notification

In the event that a DOF field inspector comes across a timber harvesting operation that he/she did not previously know about, the following steps should be taken:

1. Monitor logging and or trucking activity from the public right-of-way to determine if the timber harvest operation has been ongoing for longer than three days.
  - Do not enter private property to inspect the operation without making a reasonable attempt to notify the landowner.
2. Contact the regional office or regional water quality engineer to see if they have any record of notification for the site (be sure notification was not received through the 1-800 number Answering Service or Website. Check the IFRIS system for the notification.
3. Take photos to show that timber-harvesting activity is occurring.
4. Make a reasonable attempt to notify the landowner of the intent to inspect the site as described in the harvest inspection procedures.
5. Return to the site and complete a Harvest Inspection [\[See DOF Policy and Procedure 18-2 Harvest Inspections\]](#).

6. Speak to the operator on the site to verify how long the operation has been ongoing.
7. The VDOF field inspector may issue a [Form 18.6 Notice of Violation for Failure to Notify VDOF of Commercial Timber Harvest](#) to the logger/operator on site or provide a verbal violation on site and then issue the Failure to Notify through IFRIS. If the Form 18.6 is not issued on site, be sure to include it with the IFRIS generated letter.
8. The DOF field inspector will advise the logger that they may request an Informal Conference to present their case if they wish to challenge the violation. The logger may request an Informal Conference by contacting the Regional Office phone number on the Form 18.6.
9. Send notification by email to the region water quality engineer, water quality program support technician, silvicultural water quality program manager, and region program support technician of the violation for Failure to Notify.
10. Enter harvest details in IFRIS.
11. Send written notification, IFRIS Notice of Violation for Failure to Notify DOF of Commercial Timber Harvest Report and [Form 18.6 Notice of Violation for Failure to Notify DOF of Commercial Timber Harvest](#), to the logger/operator via certified mail if unable to deliver in person.

## Civil Penalty Assessment

Civil penalties are assessed if the operator indeed failed to notify DOF of a commercial timber harvest.

### *Schedule of Penalties*

This Schedule of Penalties is to conform to the Silvicultural Water Quality Law guidelines as expressed in [§10.1-1181.2-H](#) regarding penalties for Failure to Notify of a Commercial Timber Harvesting Operation. The penalty will be assessed on the [Form 18.6 Notice of Violation for Failure to Notify DOF of Commercial Timber Harvest](#). The penalty will be based on the following criteria:

Offense	Amount of Fine
First Offense	\$250.00
Second Offense	\$500.00
Third Offense	\$1,000.00
Subsequent Offenses within a 24-month period	\$1,000.00

### *Payment of Penalties*

The operator may pay civil penalties with a check or money order payable to the "State Forester". Payment check or money order must be:

- ◆ Mailed to DOF Headquarters.
  - Virginia Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903
- ◆ Paid in person at a DOF Regional Office.

**A copy of the Form 18.6 will be submitted with payment.**

**Civil penalties are due within 30 days of the issue date of the [Form 18.6 Notice of Violation for Failure to Notify DOF of Commercial Timber Harvest](#).**

## Scheduling a Failure to Notify Informal Conference Upon Logger Request

If the logger wishes to challenge their violation, they may request an Informal Conference to present their case by contacting the DOF Regional Office phone number on the [Form 18.6 Notice of Violation for Failure to Notify DOF of Commercial Timber Harvest](#).

### ***Address for Informal Conference***

All conferences for Failure to Notify will be held at the Regional Office, unless a conference room is not available. If a conference room is not available, the water quality engineer will designate one alternate location for all Failure to Notify Informal Conferences. The location should remain the same from month to month.

### ***Conference Date***

Use the appropriate schedule based on your region and area. The schedule for Informal Conferences for Failure to Notify will be the following:

- ◆ Eastern south – Third Tuesday of each month
- ◆ Eastern north – Third Thursday of each month
- ◆ Central north – Second and fourth Tuesday of each month
- ◆ Central south – Second and fourth Thursday of each month
- ◆ Western north – Third Wednesday of each month
- ◆ Western south – Fourth Wednesday of each month

### ***Conference Time***

Conferences will be scheduled at 10:00 am. Each case will be heard one at a time beginning at 10:00 am.

### ***Silvicultural Water Quality Program Manager Notification***

The regional water quality engineer or specialist will notify the silvicultural water quality program support technician and silvicultural water quality program manager of a newly scheduled conference. When notifying the silvicultural water quality manager(s) of a newly scheduled conference the inspector must provide the following information so failure to notify violations can be properly tracked.

- ◆ Logger's Name
- ◆ County
- ◆ Failure to notify Case number and harvest number
- ◆ Date the Form 18.6 Failure to Notify was issued
- ◆ Date and time informal Conference is scheduled

The silvicultural water quality program support technician will arrange for a conference officer and notify the regional water quality engineer or specialist and area field inspector of the conference officer confirmation.

### ***Field Inspector Responsibilities***

The DOF field inspector will need to be present to testify:

- ◆ To the date and time of inspection and discovery of logging operation.
- ◆ That a logging operation is actually taking place on the site by the individual or company named.
- ◆ That the logging operation has been ongoing for longer than three (3) days.
- ◆ Photographic evidence that logging is occurring at the site.
- ◆ That no notification has occurred.
- ◆ The field inspector should confirm through the IFRIS system that proper notification has not been given by any means.
- ◆ The field inspector will check in IFRIS, or with Water Quality Staff, for any past Failure-to-Notify violations within a 24-month period by the operator for purposes of recommending the appropriate penalty to the informal conference officer.

### ***Conference Officer Responsibilities***

The Informal Conference officer will provide a Finding of Fact and Conclusion of Law for each conference. Headquarters Office silvicultural water quality program manager will provide a template for these conference findings.

## At the Informal Conference

The conference officer will provide a digital recorder and the DOF field employee initiating the case will provide one copy of the law enforcement case summary for each owner/operator in attendance and the conference officer at the Informal Conference.

The conference officer will ask all defendants present to waive their right to a Formal Hearing by signing a [Form 18.4 Waiver of Right to a Formal Hearing](#). If the owners/operators do not sign the waiver statement, DOF will cease the Informal Conference and go directly to a Formal Hearing.

1. The conference officer will ask DOF field inspector to state his/her case.
2. Following DOF testimony, all responsible parties present will give their testimony.
3. The conference officer will then determine if the logger did fail to notify DOF of a commercial timber harvest operation.

## Prepayment of Penalties for a Scheduled Informal Conference

If a logger requests an informal conference and then chooses to prepay the penalty prior to the Informal Conference, a check or money order made payable to the "State Forester" must be received a minimum of five (5) days prior to the scheduled Informal Conference to allow time to cancel the conference and notify all parties.

## Canceling an Informal Conference

If a logger has chosen to prepay the penalties prior to the scheduled Informal Conference that they requested, the field inspector will confirm that payment has been received; an indication of intent to prepay does not suffice.

If prepayment is confirmed, the field inspector will cancel the scheduled Informal Conference by notifying all parties by letter with follow-up telephone call.

If the primary inspector is unable to attend a requested and scheduled Informal Conference, it is the responsibility of the issuing field inspector to notify all water quality staff and contact all parties to reschedule or cancel the Informal Conference.

## Failure to Notify Records

If a logger does not request an Informal Conference or Formal Hearing and does not pre-pay the penalty, he is presumed guilty and the silvicultural water quality program manager will write a Final Order and the deputy state forester will sign the FTN Final Order. An entry in IFRIS for Conference "Affirmed – no conference held" will be entered.

All failure to notify activities will be entered into IFRIS.

NOTE: All inspections will be conducted within **20 calendar days** of anticipated start date received during notification.

## Law Enforcement Action (Protection Recommendations, Emergency Special Order and Special Order)

### Initial Law Enforcement Action – Protection Recommendations

Any Harvest Inspection Report that indicates water quality concerns will be referred to the regional water quality engineer or specialist to complete a site visit and develop a second Harvest Inspection Report in IFRIS.

If a water quality concern is confirmed,

- ◆ The regional water quality engineer or specialist will issue a Recommendation Incident Report with water quality protection recommendations, which gives the owner/operator notification and time to correct the concern.
- ◆ The regional water quality engineer or specialist will issue an Emergency Special Order Report if the water quality problem detected is severe and presenting an imminent and substantial danger to public health, safety or welfare; the health of animals, fish or aquatic life; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses.

### ***Reinspection Following a Recommendation Incident Report***

DOF will reinspect the site on the follow-up inspection date **ten (10) working days** from the date of issue as specified on the Recommendation Incident Report. The DOF inspector will check to see if the situation still remains.

- ◆ Record harvest inspection in the IFRIS system.

#### **Situation Corrected**

If corrective measures are complied with, note in the comments field on the Harvest Inspection Report for that day's site visit that concerns were addressed.

#### **Situation Still Exists**

If the DOF inspector determines that deficiencies still exist, the DOF inspector will document the situation with photos and determine whether to proceed with offering an Informal Conference or whether the situation has upgraded to an emergency situation requiring an Emergency Special Order.

- ◆ If the situation has upgraded to an emergency level, proceed to Emergency Special Order.
- ◆ If the situation has not upgraded to an emergency level, proceed with offering an Informal Conference and proceed to Informal Conference.
  - If an Informal Conference is not requested, proceed to Special Order.

### ***Emergency Special Order***

The Emergency Special Order Report states a specified period of time for implementation of corrective measures. Any deadlines given to owners/operators must be met to ensure the integrity of the law process. An Emergency Special Order shuts down the operation until emergency situation is corrected.

- ◆ Emergency Special Order – An Informal Conference to affirm, amend, modify or cancel the Emergency Special Order is offered.

### ***Repeat Law Enforcement Action on the Same Site***

When there is a repeat law enforcement action on the same site, the water quality specialist or engineer will issue a Recommendation Incident Report to the owners/operators identifying the problem. This will be an automatic Informal Conference. The Informal Conference will be scheduled on the Recommendation Incident Report.

### ***Reinspection Following Emergency Special Order Report***

DOF will reinspect the site within **three (3) working days** of the compliance date specified on the Emergency Special Order Report.

- ◆ Record harvest inspection in IFRIS.

#### **Compliance**

If corrective measures are complied with, the regional water quality engineer or specialist will notify the responsible parties in writing that they have satisfied the deadline in the Emergency Special Order Report.

#### **Non-Compliance**

If deficiencies still exist, prepare a Law Enforcement Case Summary that contains, at a minimum, the following information:

- ◆ All previously completed Harvest Inspection Reports documenting deficiencies with regard to corrective action listed on the Emergency Special Order Report.
- ◆ Copy of the Emergency Special Order Report, complete with map.
- ◆ Documentation of the site conditions with still photos or video with time/date function.
- ◆ Proof of mailing verifications and/or certified mail receipts of Emergency Special Order Report.

- ◆ A chronological listing of events to date.

The regional water quality engineer or specialist will notify the owners/operators of the failure to obey the Emergency Special Order and schedule a Formal Hearing.

## Special Order

### *When to Issue a Special Order*

When a water quality concern is not addressed, a Special Order will be issued as a result of an Informal Conference or failure of the owner/operator to request an Informal Conference.

### *Contents of a Special Order*

The Special Order must state a specified period of time for implementation of corrective measures. Any deadlines given to owners/operators must be met to ensure the integrity of the law process.

### *Reinspection Following Special Order Report*

DOF will reinspect the site within **three (3) working days** of the compliance date specified on the Special Order Report.

- ◆ Document the following:
  - Itemized description of the corrective measures specified by the Special Order that have been satisfactorily implemented at the site, and descriptions of deficiencies in the completion of the corrective measures.
  - If the owners/operators have failed to satisfactorily implement the corrective measures specified in the Special Order, document the conditions with photos on the date of the site inspection.
- ◆ Record harvest inspection in IFRIS.

## Compliance

If corrective measures are complied with, the regional water quality engineer or specialist will notify the responsible parties in writing that they have satisfied the deadline in the Special Order Report.

## Non-Compliance

If corrective measures are not complied with, the regional water quality staff will notify the owners/operators of the failure to obey the Special Order and schedule a Formal Hearing.

Note: All entities involved with the Silvicultural Water Quality Law are always entitled to a Formal Hearing under [§2.2-4020](#) and [§2.2-4021](#) unless they waive their right to a Formal Hearing ([Form 18.4 Waiver of Right to a Formal Hearing](#)).

## Notification of Jurisdiction

DOF will keep any other local, state and/or federal agency that may also have jurisdiction informed of enforcement activity on areas where they have jurisdiction.

When an Emergency Special Order Report is completed, it is necessary to notify any other local, state and/or federal agency that may also have jurisdiction. The following are the local, state and federal Agencies who have jurisdiction for their particular natural resource area:

- ◆ **Wetland Disturbance** – U.S. Army Corps of Engineers
- ◆ **Violation of the Chesapeake Bay Preservation Act** – Virginia Department of Environmental Quality Bay Act Staff
- ◆ **Adding rock to stream bottom for Stream Crossing Installation or stream crossing permit requirement for areas over five (5) square miles in watershed size** – Virginia Marine Resources Commission or Virginia Department of Game and Inland Fisheries
- ◆ **Violation of the Agricultural Stewardship Act** – Virginia Department of Agriculture and Consumer Services

The BMP Technical Guide has a listing of pertinent addresses and phone numbers to assist field staff in contacting other federal and state agencies.

## Informal Conference

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### Guidelines

Informal Conferences are used as a mechanism to enforce the Silvicultural Water Quality Law. When a water quality concern is not addressed, Informal Conferences are used when the right to a Formal Hearing has been waived ([Form 18.4 Waiver of Right to a Formal Hearing](#)).

### Scheduling an Informal Conference

When regional water quality engineer or specialist learns that a water quality concern has not been addressed, water quality engineer or specialist will send a letter offering an Informal Conference (IFRIS Announcement of Informal Conference) to all owners and operators.

- ◆ **Recommendation Incident Report** [[Form 18.3 Water Quality Protection Recommendations](#)] – an Informal Conference must be requested within ten (10) working days.
  - The regional water quality engineer or specialist will send a letter by regular mail or hand deliver to all owners/operators, including operator, landowner, timber buyer and consultant, offering them the opportunity to request an Informal Conference.
- ◆ **Emergency Special Order Report** [[Form 18.5 Water Quality Emergency Special Order](#)] – an Informal Conference is offered and must be formally requested within three (3) working days.
  - The Informal Conference is held to affirm, modify, amend or cancel an Emergency Special Order.
  - The time frame for scheduling an Informal Conference for an Emergency Special Order is two (2) to four (4) working days, and the Informal Conference will be held within four (4) to seven (7) days. It is imperative that the conference be scheduled in a timely manner due to the emergency nature of these problems. Notification will be given in person or by overnight mail to all owners/operators.

Regional water quality engineer or specialist will contact the Headquarters silviculture water quality program support technician to arrange for a conference officer.

### At the Informal Conference

The conference officer will provide a digital recorder and the DOF field employee initiating the case will provide one copy of the law enforcement case summary for each owner/operator in attendance at the Informal Conference as well as a copy for the conference officer.

The conference officer will ask all defendants present to waive their right to a Formal Hearing by signing a [Form 18.4 Waiver of Right to a Formal Hearing](#). If the owners/operators do not sign the waiver statement, DOF will cease the Informal Conference and go directly to a Formal Hearing.

1. The conference officer will ask DOF field staff to state his/her case.
2. Following DOF testimony, all responsible parties present will give their testimony.
3. The conference officer will then determine if pollution has occurred and whether the Emergency Special Order has been issued correctly.

### Conference Determination

- ◆ The conference officer has 30 days, as stated by the Code, in which to determine the outcome of the Informal Conference.
- ◆ The Headquarters water quality staff will provide the owners/operators with a copy of the Findings of Fact and Conclusion of Law within 30 days of the conclusion of the Informal Conference.
- ◆ If the conference officer rules in favor of DOF,

- **Recommendation Incident Report** [[Form 18.3 Water Quality Protection Recommendations](#)] – Regional water quality engineer or specialist will develop a Special Order for compliance under the Silvicultural Water Quality Law in the case where pollution or the likelihood for pollution to occur has been proven.
- **Emergency Special Order Report** [[Form 18.5 Water Quality Emergency Special Order](#)] – Regional water quality engineer or specialist will affirm, modify, amend or cancel the Emergency Special Order.
- ◆ If the conference officer rules in favor of the owner/operator, the case will be closed.

## Post-Conference

The water quality engineer or specialist will develop the Special Order. The format used is dependent on the severity and complexity of the water quality problem(s) and what step(s) are necessary to correct the problems. Be specific on the corrective action required, date for completion and provide a map for owners/operators to ensure their understanding of what work needs to be accomplished and where the work is necessary at the site. If requested, provide two on-site visits at an agreed-upon time. Place language in the Special Order to require notification of DOF when the work is completed.

- ◆ If requested, one on-site visit may be made to provide technical assistance.
- ◆ All other site visits will be to check for compliance with the Special Order and not for technical assistance.
- ◆ If the owner/operator requests a check for compliance prior to the deadline on the Special Order, the DOF inspector will honor that request for one occurrence.
  - If compliance is found under these circumstances, the DOF inspector may complete final inspection while on site.
  - If problems still exist, the DOF inspector will return for inspection on or after the compliance deadline on the Special Order.
- ◆ When compliance or non-compliance with a Special Order is determined, follow appropriate action.

## Canceling an Informal Conference

- ◆ When an Informal Conference is scheduled as a result of a Recommendation Incident Report, the owner/operator will be permitted one additional inspection if requested. The additional inspection must be scheduled before five (5) days prior to the scheduled Informal Conference to allow time for the inspection to occur and notification to be made to all parties.
- ◆ If the restoration work is completed satisfactorily, the scheduled Informal Conference will be cancelled by notifying all parties by letter with follow-up telephone call (if possible).
- ◆ If the primary inspector is unable to attend a scheduled informal conference, it is the responsibility of the issuing inspector to notify all water quality staff and contact all parties to reschedule or cancel the Informal Conference or arrange for a substitute DOF water quality staff person who is familiar with the case and the site to stand in at the conference.

## Records

- ◆ All Informal Conference activities will be entered into IFRIS.
- ◆ All DOF staff involved in an Informal Conference will record their time in Cardinal.

## Formal Hearing

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### Guidelines

- ◆ The owner/operator may request a Formal Hearing under [§2.2-4020](#) and [§2.2-4021](#) of the Code of Virginia.
- ◆ Non-compliance with a Special Order or Emergency Special Order will automatically require a Formal Hearing.

### Regional Responsibilities

The regional water quality staff will take the following actions regarding Formal Hearings:

- ◆ Schedule a formal hearing regarding the possible violation of the order.
- ◆ Notify the silvicultural water quality program manager that a Formal Hearing has been requested in writing. Failure to comply with a Special Order or Emergency Special Order requires that a Formal Hearing be scheduled. The silvicultural water quality program manager will arrange for a formal hearing officer to be assigned to the case.
- ◆ Regional water quality engineer or specialist will notify all parties by proof-of-mailing and Certified Mail/Return Receipt Requested of the date, time and place of the Formal Hearing.
- ◆ Obtain a suitable site for the Formal Hearing once the hearing officer has selected an approximate date for the hearing.
- ◆ Provide adequate recording equipment for recording of the hearing.

## Documentation

- ◆ A copy of the Special Order or Emergency Special Order.
- ◆ A copy of the IFRIS Special Order or Emergency Special Order report indicating the conditions at the site that both meet and do not meet the requirements of the Special Order or Emergency Special Order.
- ◆ Regional water quality personnel will provide a copy of the Case Record to the silvicultural water quality program manager.
- ◆ Ensure that regional water quality personnel have adequate documentation and are prepared to demonstrate clearly how the owner/operator failed to obey the Special Order or Emergency Special Order.
- ◆ Information considering the seriousness of the violation, owner/operator history of non-compliance, owner/operator negligence and owner/operator demonstration of good faith.

## Headquarters Office Responsibilities

The Headquarters Office water quality staff will assume administrative responsibility over a water quality law enforcement case under two circumstances:

- ◆ A request by the owner/operator or DOF for a Formal Hearing, or
- ◆ Following a Formal Hearing, the writing of a Final Order from the state forester.

## *Silvicultural Water Quality Program Manager*

- ◆ Silvicultural water quality program manager will determine if a Formal Hearing is warranted.
- ◆ Upon receipt of a request in writing for a Formal Hearing from the owner/operator, the silvicultural water quality program manager will contact the Virginia Supreme Court and request a hearing officer be appointed to this case.
- ◆ All relevant information on this case will be forwarded to the Attorney General's Office for consideration as evidence, if needed.
- ◆ If the Formal Hearing is held to determine compliance with the Special Order or Emergency Special Order, and DOF prevails, the silvicultural water quality program manager will write the Final Order to include the cost of the hearing officer.
- ◆ Review the documentation for completeness and distribute as appropriate.

## Formal Hearing Officer

The formal hearing officer is responsible for determining if the requirements of the law have been met and determining compliance with the Special Order or Emergency Special Order.

- ◆ The formal hearing officer will provide the owner/operator with a copy of the *Findings of Fact and Conclusion of Law* within 30 days of the conclusion of the Formal Hearing. The formal hearing officer is responsible for completing this document.

## Post Hearing

Following review of the *Findings of Fact and Conclusion of Law* from the formal hearing officer:

- ◆ If the owner/operator prevails, the case is closed.
- ◆ If DOF prevails, a Final Order will be issued.

## Records

- ◆ Headquarters Office water quality staff will maintain a case record for all civil penalty assessment cases.
- ◆ Regional water quality staff will record the results of the Formal Hearing in IFRIS and the silvicultural water quality program support technician will enter the information on the penalty assessment spreadsheet maintained at Headquarters.

## Final Order

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### Preparation

If DOF prevails at the Formal Hearing to determine if the conditions of the Special Order or Emergency Special Order have been met, a Final Order will be written following review of the Findings of Fact and Conclusion of Law from the formal hearing officer. The silvicultural water quality program manager writes this Final Order, which will contain:

- ◆ All relevant case history.
- ◆ The Findings of Fact and Conclusion of Law from the formal hearing officer.
- ◆ The civil penalty with the dollar amount penalty listed.
- ◆ Service charges from the formal hearing officer.
- ◆ Any other supporting documentation necessary to ensure that the Final Order is clear and follows the *Code of Virginia*.

**The state forester will sign the Final Order if penalties are \$3,000 or more. The deputy state forester will sign the Final Order if penalties are less than \$3,000.**

### Distribution

- ◆ Signed originals of the Final Order will be sent by Certified Mail/Return Receipt Requested to all owners/operators and their counsel.
- ◆ A copy will be retained in Headquarters Office.

### Collection

- ◆ Thirty (30) days will be allowed for payment of civil penalties or civil charges.
- ◆ After 30 days, the Final Order will be recorded in the owner's/operator's county of residence as a judgment in the Circuit Court Clerk's Office by the silvicultural water quality program manager.
- ◆ Cases assessed a civil penalty in the amount of \$3,000 or more will be forwarded to the Attorney General's Office for collection.
- ◆ Cases assessed a civil penalty in amounts less than \$3,000 will be submitted to the Finance Office for collection.

## Failure to Implement

If corrective measures are not fully implemented, the silvicultural water quality program manager will work through the Attorney General's Office to seek an injunction against owner/operator for completion of this work.

## Civil Penalty Assessment

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### Overview

Civil penalties to be assessed will be calculated using the Civil Penalty Assessment Matrix by the regional water quality engineer or specialist prior to the Formal Hearing to determine whether the Special Order (SO) or Emergency Special Order (ESO) has been violated. In determination of the amount of civil penalties or charges to assess, the following criteria are to be considered:

- ◆ The seriousness of the violation.
- ◆ Owner/operator's degree of negligence exhibited.
- ◆ Owner/operator's previous history of violation.
- ◆ Owner/operator's good faith in correcting the violation expeditiously.

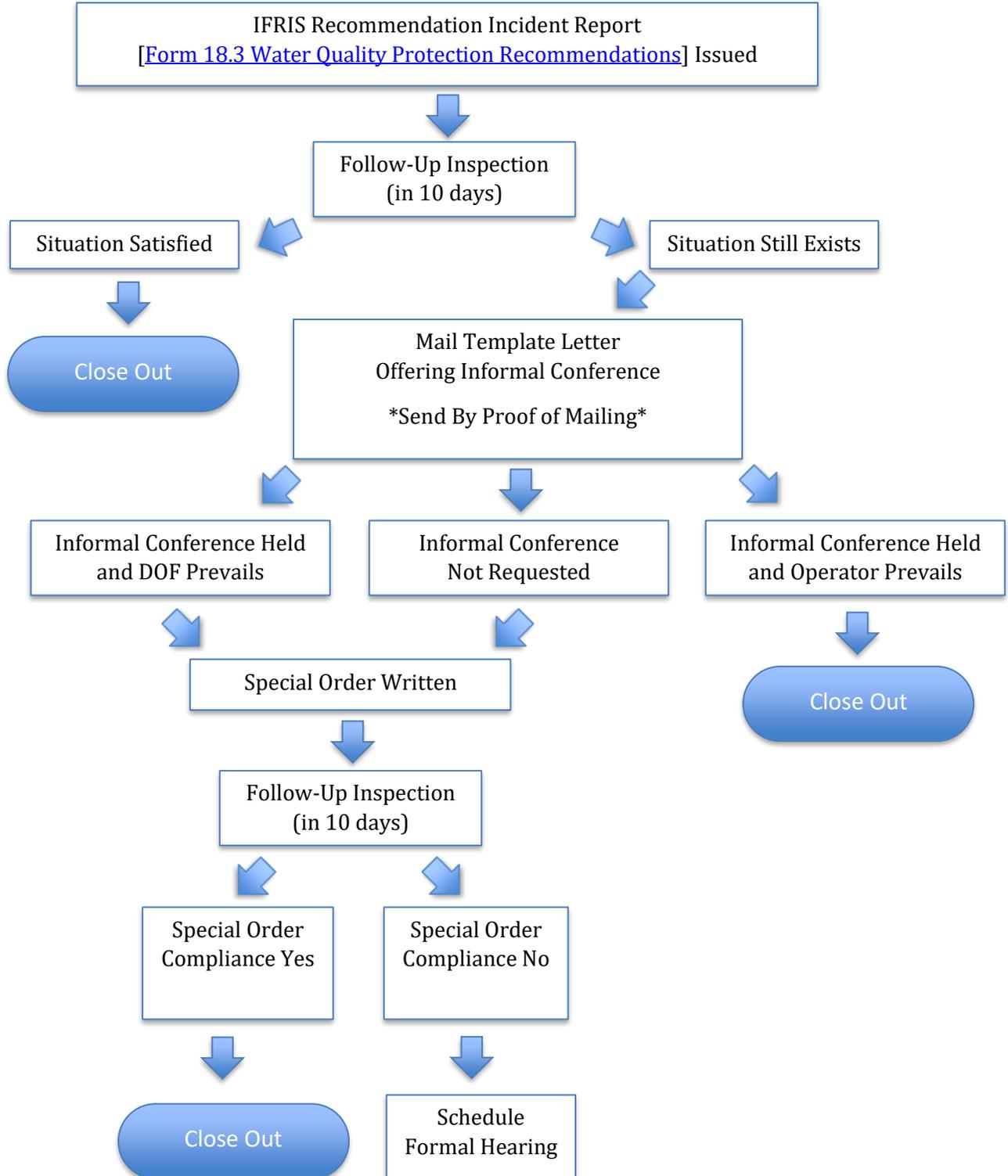
### Civil Penalty Assessment Matrix

The [Form 18.7 Civil Penalty Assessment Matrix](#) is provided to ensure consistent and fair determination of civil penalties.

## Law Enforcement Process Flow Charts

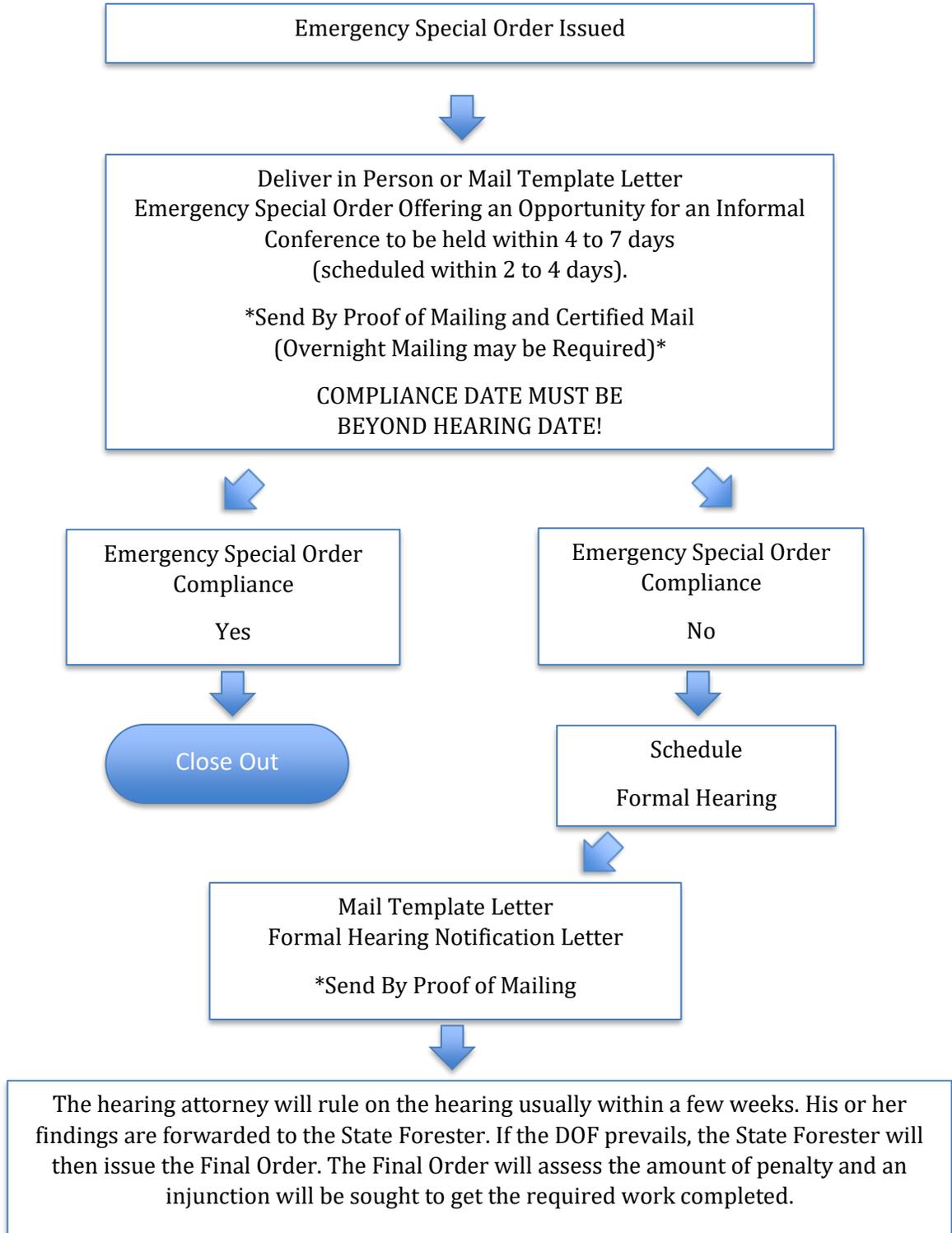
### Flow Chart for Water Quality Protection Recommendations

An IFRIS Recommendation Incident Report ([Form 18.3 Water Quality Protection Recommendations](#)) is written when there are water quality problems that need to be addressed. However, they are not emergency in nature. Examples would be failure to remove a temporary undersized culvert and stabilize the stream crossing or failure to stabilize a stream crossing or skid trail in the SMZ where the likelihood exists for sediment to enter the stream.



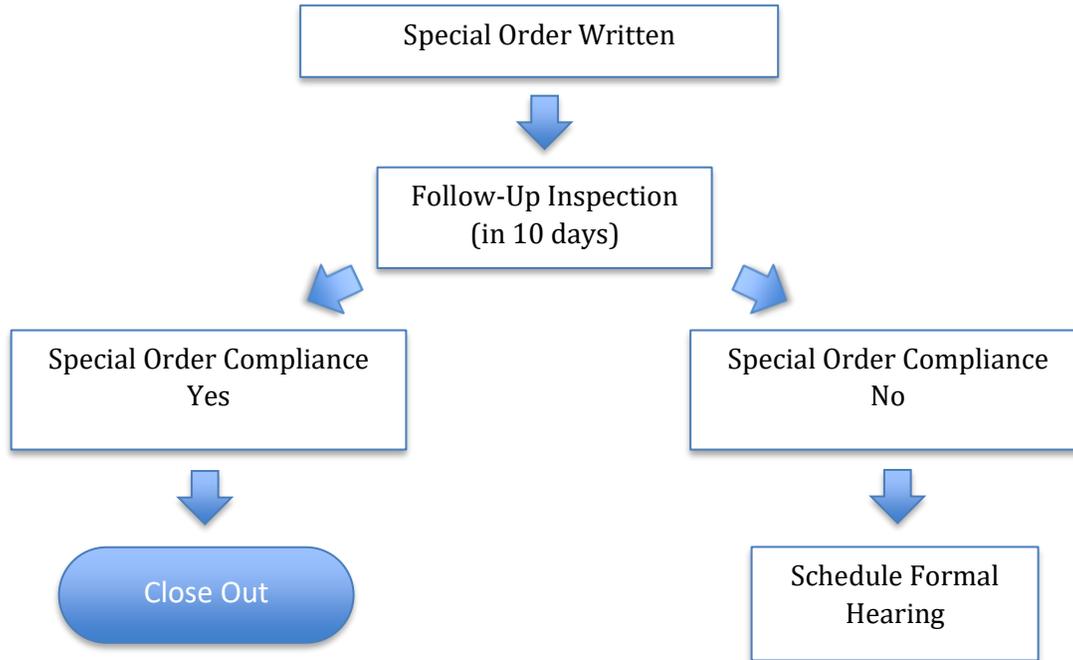
## Flow Chart for Water Quality Emergency Special Order (ESO)

An IFRIS Emergency Special Order Report ([Form 18.5 Water Quality Emergency Special Order](#)) is written when there is an imminent danger and substantial likelihood that pollution from sediment is entering State waters. Examples would be skidding through a stream or using an improper ford on a haul road. Usually, an ESO is written on active logging jobs. A "rule of thumb" is that the problem is emergency in nature.



## Flow Chart for a Water Quality Special Order (SO)

An IFRIS Recommendation Incident Report ([Form 18.3 Water Quality Recommendations](#)) is written when there are water quality problems that need to be addressed. However, they are not emergency in nature. Examples would be failure to remove a temporary undersized culvert and stabilize the stream crossing or failure to stabilize a stream crossing or skid trail in the SMZ where the likelihood exists for sediment to enter the stream. When water quality concerns are not addressed, an Informal Conference is offered. If an Informal Conference is not requested or an Informal Conference is held and DOF prevails, a Special Order is written.



## Law Enforcement Templates

### Templates

- ◆ [Base Letter](#) (Letter)

A base letterhead template for any additional correspondence necessary.

- ◆ [Harvest Inspection](#) (Cover Letter)

When an IFRIS Harvest Inspection Report [[Form 18.2 Harvest Inspection](#)] is issued, the area field inspector will send this letter to notify the owner/operator.

### Case Summary Table of Contents Templates

- ◆ [Law Enforcement Case Summary Table of Contents](#)

To provide a Table of Contents for the Law Enforcement Case Summary to assist in the preparation of these legal documents and ensure complete documentation.

- ◆ [Failure to Notify Case Summary Table of Contents](#)

To provide a Table of Contents for the Failure to Notify Case Summary to assist in the preparation of these legal documents and ensure complete documentation.

### Emergency Special Order Templates

- ◆ [Emergency Special Order Notification](#) (Letter)

When an Emergency Special Order ([Form 18.5 Water Quality Emergency Special Order](#)) is issued as a stop work order, the regional water quality engineer or specialist will send this letter to all responsible parties to offer the opportunity for an Informal Conference or Formal Hearing.

## Protection Recommendations Templates

- ◆ [Water Quality Protection Recommendations](#) (Cover Letter)

When water quality protection recommendations are issued, the regional water quality engineer or specialist will send this letter with an IFRIS Recommendation Incident Report [[Form 18.3 Water Quality Protection Recommendations](#)].

- ◆ [Water Quality Protection Recommendations Completed](#) (Letter)

When an owner/operator has satisfied the water quality concerns addressed by an IFRIS Recommendation Incident Report [[Form 18.3 Water Quality Protection Recommendations](#)], the water quality engineer or specialist will send this letter.

## Informal Conference Templates

- ◆ [Request for Informal Conference to Determine if Silvicultural Activity is Causing or is Likely to Cause Pollution](#) – Offer Informal Conference or Formal Hearing (Letter)

When an IFRIS Recommendation Incident Report [[Form 18.3 Water Quality Protection Recommendations](#)] is issued and corrective measures are not taken, the regional water quality engineer or specialist will send this letter to offer the opportunity for an Informal Conference or Formal Hearing.

- ◆ [Informal Conference Notification to Determine if Silvicultural Activity is Causing or is Likely to Cause Pollution](#) (Letter)

When an IFRIS Recommendation Incident Report [[Form 18.3 Water Quality Protection Recommendations](#)] is issued and the situation is not adequately addressed, the regional water quality engineer or specialist will send this letter to schedule an Informal Conference to determine if silvicultural activity is causing or is likely to cause pollution.

- ◆ [Informal Conference Notification to Determine if Silvicultural Activity is Causing or is Likely to Cause Pollution Additional Concerns](#) – Repeat Offenses (Letter)

The regional water quality engineer or specialist sends this letter to notify the owner/operators of an Informal Conference time, date and location for repeat offenses on the same tract.

- ◆ [Notice of Informal Conference for Failure to Notify DOF of Commercial Timber Harvest](#) (Letter)

When an IFRIS Notice of Informal Conference for Failure to Notify DOF of Commercial Timber Harvest Letter [[Form 18.6 Notice of Informal Conference for Failure to Notify DOF of Commercial Timber Harvest](#)] is issued, the regional water quality engineer or specialist will send this letter to schedule an Informal Conference to determine if the tract of cutover timberland is in compliance with the Silvicultural Water Quality Law in regards to Notification of the Commercial Harvesting of Timber.

- ◆ [Informal Conference Findings of Fact and Conclusion of Law](#) (Cover Letter)

After editing the Informal Conference Determination submitted by the informal conference officer, the water quality program support technician will send this cover letter with the Informal Conference Determination Findings of Fact and Conclusion of Law to all responsible parties. (Note: Use this format for “Failure to Notify” Informal Conferences also.)

- ◆ [Informal Conference Determination](#) (Findings of Fact and Conclusion of Law)

When an Informal Conference is held to determine if pollution is occurring or is likely to occur or for Emergency Special Order affirmation, the determination will be documented using this following format. (Note: Use this format for “Failure to Notify” Informal Conferences also.)

## Formal Hearing Templates

- ◆ [Formal Hearing Request for Services](#) – To Schedule a Formal Hearing Officer (Letter to Attorney assigned by the Supreme Court)  
The silvicultural water quality program manager will send this letter with the Agreement on behalf of the state forester to the attorney who agrees to conduct a Formal Hearing.
- ◆ [Formal Hearing Services Agreement](#) – To Conduct a Formal Hearing  
The silvicultural water quality program manager will send this agreement on behalf of the state forester with cover letter to the attorney who agrees to conduct a Formal Hearing.
- ◆ [Formal Hearing Notification for Special Order Non-Compliance](#) (Letter)  
The regional water quality engineer or specialist will send this letter to notify the owner/operator of a Formal Hearing to determine whether a Special Order was violated.

## Special Order Templates

- ◆ [Special Order Notification](#) (Cover Letter)  
When a Special Order is issued after the owner/operator fails to request an Informal Conference or a Formal Hearing, the regional water quality engineer or specialist will send this letter to accompany the Special Order.
- ◆ [Special Order – Silvicultural Activities](#)  
When a Special Order is issued as the result of an Informal Conference, the regional water quality engineer or specialist will send the Special Order to the owner/operator.
- ◆ [Special Order Compliance](#) – All (Letter)  
When an owner/operator has complied with all parts of a Special Order, the regional water quality engineer or specialist will send this letter to completely close out the Special Order.
- ◆ [Special Order Partial Compliance](#) (Structural Closeout) – Deadline Completion (Letter)  
When an owner/operator has complied with a structural component of a Special Order, the regional water quality engineer or specialist will send this letter to notify that a deadline has been completed for part of the Special Order.

## Final Order Templates

- ◆ [Final Order Resulting from Formal Hearing](#) (Cover Letter)  
If owner/operator fails to comply with a Special Order, the silvicultural water quality program manager will issue a Final Order to assess a civil penalty after a Formal Hearing is held.
  - Civil penalties in amounts less than \$3,000 will be issued by the deputy state forester; \$3,000 or more will be issued by the state forester.
  - Original signed letter will be submitted to all responsible parties, finance and file, accompanied by original signed Final Order.)
- ◆ [Final Order of Civil Penalty](#) – Failure to Comply with a Special Order or Emergency Special Order  
If owner/operator violates a Special Order or Emergency Special Order, the silvicultural water quality program manager will issue a Final Order on behalf of the state forester or deputy state forester to assess a Civil Penalty after a Formal Hearing or Informal Conference is held and a Final Order is recommended.
  - Civil penalties in amounts less than \$3,000 will be issued by the deputy state forester; \$3,000 or more will be issued by the state forester.
  - Submitted to all responsible parties, finance and file, accompanied by original signed Final Order Resulting from Formal Hearing cover letter.
- ◆ [Final Order for Failure to Notify Resulting from Informal Conference](#) (Cover Letter)

If owner/operator receives a "Failure to Notify" penalty, the silvicultural water quality program manager will issue a Final Order on behalf of the deputy state forester to assess a Civil Penalty after an Informal Conference is held. (Note: An original signed letter will be submitted to all responsible parties, Finance and file, accompanied by the original signed Final Order.)

◆ [Final Order for Failure to Notify](#) – Penalty for Failure to Notify

If logger receives a Failure to Notify penalty, the silvicultural water quality program manager will issue a Final Order on behalf of the deputy state forester to assess a civil penalty after an Informal Conference is held and a Final Order is recommended. (Note: An original signed letter will be submitted to all responsible parties, Finance and file, accompanied by an original signed Final Order.)

## Judgment Filed Templates

◆ [Final Order of Civil Penalty](#) – File Judgment in Circuit Court for Unpaid Civil Penalty (Letter)

The silvicultural water quality program manager will send this letter on behalf of the state forester to the Clerk of Circuit Court in the landowner/timber owner/logger/operator's county of residence and the City of Richmond, Virginia, if civil penalty has not been paid and no appeal has been filed in time allowed after they receive the Final Order. This judgment must be filed in all counties of residence if the responsible parties reside in different counties.

◆ [Affidavit of Authenticity of Final Order of the State Forester of Virginia](#) – To Accompany Judgment Filed in Circuit Court for Unpaid Civil Penalty (Form)

The silvicultural water quality program manager will complete this affidavit, which will accompany the letter to the Clerk of Circuit Court to file a judgment if Civil Penalty has not been paid and no appeal has been filed in the time allowed after they receive the Final Order.

◆ [Notification of Judgment Filed](#) – Notification to Responsible Parties That a judgment has been filed (Letter)

The silvicultural water quality program manager will send this letter to notify the owner/operator that a judgment has been filed in Circuit Court for the amount of their civil penalty.

◆ [Request for Collections](#) – To the Office of the Attorney General for Collection of Unpaid Civil Penalty (Memorandum)

The silvicultural water quality program manager will send this memorandum to the claims specialist in the Office of the Attorney General to request collection of a civil penalty after a judgment has been filed in Circuit Court if the civil penalty is \$3,000 or more.

## AUTHORITY

This policy and procedure is issued by the Virginia state forester.

## INTERPRETATION

The silvicultural water quality program manager and deputy state forester are responsible for the interpretation of this policy and procedure.

## APPROVAL

I certify that this policy and procedure is approved and ready for publication.

Rodney Newlin

Silvicultural Water Quality Program Manager Name (Print)

DocuSigned by:

*Rodney Newlin*

10/6/2023

Silvicultural Water Quality Program Manager Signature

Ed Zimmer

Deputy State Forester Name (Print)

DocuSigned by:

*Ed Zimmer*

10/10/2023

Deputy State Forester Signature