

Rob Farrell

State Forester

COMMONWEALTH of VIRGINIA

**Department of Forestry**

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Informal Conference Determination

LANDOWNER: **\*\*Landowner Name\*\***

TIMBER OWNER: **\*\*Timber Owner Name\*\***

LOGGER: **\*\*Operator Name\*\***

REFERENCE: Silvicultural Water Quality Law Enforcement

 Harvest ID No.: \*\*Harvest ID Number\*\*

 Case No.: \*\*Case Number\*\*

 Tract No.: \*\*Tract Number\*\*

An Informal Conference was held on \*\*Date\*\* at the \*\*Location\*\* in \*\*City\*\*, Virginia. The Conference was attended by \*\*Name, Company/Agency; Name, Company/Agency\*\*. Notified but not in attendance: \*\*Name, Company/Agency; Name, Company/Agency\*\*. \*\*Name\*\*, \*\*Company\*\*, signed a waiver of his right to a Formal Hearing. \*\*Name\*\*, \*\*Company/Agency\*\*, served as the Informal Conference Officer.

The purpose of the Informal Conference was to determine if \*\*Name\*\*, \*\*Company\*\*, were conducting a silvicultural activity in a manner which is causing or is likely to cause pollution. (Note: For an ESO, the purpose is to affirm, amend, modify or cancel the ESO. For “failure to notify” cases, the purpose is “to determine if the Logger notified the Department of Forestry of commercial harvesting of timber on the\*\*Tract Name\*\*tract in\*\*County\*\*,Virginia.”).

## FINDINGS OF FACT

1. \*\*Name\*\*, \*\*Company\*\* is the owner of certain land and timber situated in \*\*County\*\* County, near \*\*Location\*\*, Virginia.
2. \*\*Name\*\* is the owner of \*\*Company\*\*.
3. \*\*Operator Name\*\*, \*\*Company\*\*, is also conducting certain logging operations on the above-mentioned property.
4. On \*\*Date\*\*, \*\*Name of DOF Employee\*\* inspected the tract and found that the silvicultural activity was causing pollution in the creek.
5. On \*\*Date\*\*, both \*\*Owner and Operator Name\*\* were issued Water Quality Protection Recommendations (ESO) for recommended corrective measures to protect waters of the Commonwealth (sediment pollution of the waters of the Commonwealth for an ESO. This notice was hand delivered or sent by regular mail (certified mail for an ESO) to current owners and operators.
6. On \*\*Date\*\*, an inspection of the tract was completed by \*\*Name of DOF Employee\*\* to determine if measures recommended in the Water Quality Protection Recommendations had been completed by the follow-up inspection date of \*\*Date\*\*. Measures were recommended for skid trails, stream crossings and mulching of bare mineral soil.
7. On \*\*Date\*\*, \*\*Name of DOF Employee\*\* sent a letter (Page 18 of Exhibit 1) notifying \*\*Owner and Operator Name\*\* that the Virginia Department of Forestry did not believe the situation observed on \*\*Date\*\* had been satisfied. An Informal Conference was scheduled. This letter was sent to all parties by Certificate of Mailing (Page 20 of Exhibit 1).
8. On \*\*Date\*\*, a letter was sent to \*\*Owner and Operator Name\*\* notifying them that an Informal Conference had been scheduled for \*\*Date\*\* at \*\*Time\*\* in \*\*Location\*\* in \*\*City\*\*, Virginia.
9. \*\*Name of DOF Employee\*\*, Virginia Department of Forestry, stated that the Department of Forestry was notified of the silvicultural activity as required by law.
10. \*\*Name of DOF Employee\*\* presented a bound binder showing the chronology of events and pictures of the conditions that existed on \*\*Date\*\*. This binder was entered as Exhibit 1.
11. \*\*Name of DOF Employee\*\* testified that Skid Trail #1 (see Page 4 of Exhibit 1) was not properly drained. See Photo Number 1A and 1B on P1 of Exhibit 1. \*\*Name of DOF Employee\*\* also testified that Skid Trail #2 (see Page 4 of Exhibit 1) was located on the top of a dam and properly spaced, constructed and filtered drainage structures were not installed as recommended and that excessive sedimentation is entering the stream channel.
12. \*\*Name of DOF Employee\*\* testified that the stream crossing located on Skid Trail #1 was filled with logging slash and soil (see Photos IIA and IIB on Page P2 of Exhibit 1).
13. \*\*Name of DOF Employee\*\* testified that sedimentation was coming from bare soil and that mulching of bare mineral soil is required to top of slope above stream crossing and to all other bare soil areas within 50 feet of streams and channels.
14. \*\*Name of DOF Employee\*\* testified that mulch has not been applied as required (see Photos IIIA and IIIB on Page P3 of Exhibit 1.).
15. \*\*Owner and Operator Name\*\* testified that on \*\*Date\*\*, the recommended seeding and mulching was completed.
16. \*\*Owner and Operator Name\*\* testified that he inspected the tract on \*\*Date\*\*, and walked all waterways on the tract. \*\*Owner and Operator Name\*\* entered photographs to show the condition of the tract during the inspection on \*\*Date\*\*.
17. \*\*Owner and Operator Name\*\* entered Exhibit O/O #1 and O/O #2 showing the mulching of the crossing on the Skid Trail #2. Some mulch was visible in the photos and some new germination of vegetation was visible.
18. \*\*Owner and Operator Name\*\* showed photos labeled O/O #3, 9, 10, 11, 12, 13 and 14 showing the condition of the stream crossing, skid trails, diversion structures and mulch. \*\*Owner and Operator Name\*\* stated that the diversion structures were installed and were working.
19. \*\*Name of DOF Employee\*\* entered Exhibits #3 and #7 showing the condition of the log deck, skid trails and stream crossing on the morning of \*\*Date\*\*.

(Optional: After all parties entered all evidence and described the conditions on the trail, I asked all parties involved to meet and to see if they could agree on what remained to be completed on the tract. At this point, a recess was called. After approximately 30 minutes, I returned and reconvened the conference. At that time, \*\*Name of DOF Employee\*\* and \*\*Owner and Operator Name\*\* stated that they had reached an agreement on what needed to be completed on the tract.)

There being no further evidence or testimony to be presented, I, **\*\*Conference Officer Name\*\***, Conference Officer, ended the Informal Conference.

## CONCLUSION OF LAW

1. Code of Virginia §10.1-1181.2 - From the testimony and evidence submitted, I find that the owners and operators have made an effort after the follow-up inspection date of the Recommendations Form to implement recommended corrective action; however, satisfactory implementation of recommended corrective measures has not been accomplished. I also find that \*\*Owner\*\* purchased the land after the sale of all timber and is hereby released from any obligation regarding this situation and any further action based on past harvesting activities as it pertains to the Silvicultural Water Quality Law.
2. The Code of Virginia §10.1-1181.2(B) allows the State Forester to issue Special Orders to any owner or operator who has conducted or is allowing the conduct of any silvicultural activity in a manner which is causing or is likely to cause pollution and to implement specific corrective measures within a stated period of time.
3. As a result of the evidence presented, I find that the owner and operator are conducting a silvicultural activity in a manner which is causing or is likely to cause pollution *(for ESO, I affirm that the ESO was issued appropriately and for due cause and affirm the ESO)*.

Therefore, I direct the Virginia Department of Forestry to issue a Special Order to \*\*Owner and Operator Name\*\*. The Special Order will contain all elements as agreed to by all parties present at the Informal Conference.

For “failure to notify” conferences: In review of the Findings of Fact, I find that the testimony given by the Virginia Department of Forestry indicates that harvesting activity was occurring on the tract in question as early as \*\*Date\*\*; and that a harvesting operation was occurring on said tract, and there was no notification of the operation by \*\*Date\*\* to the Department of Forestry per Code of Virginia §10.1-1181.2(H).

A Department of Forestry inspection on \*\*Date\*\* revealed that the harvesting operation was on going with no notification given by that date. Therefore, I find that the Operator was not in compliance with the logging notification portion of the Virginia Silvicultural Water Quality Law.

(If more than one offense: In review of the Department of Forestry Water Quality Record for Failure to Notify, I find that \*\*Name\*\*, Logger, was issued a Failure to Notify on \*\*Date\*\* and was heard at Informal Conference on \*\*Date\*\* and assessed a civil penalty of \*\*Amount\*\* for failing to notify the Department of Forestry per Code of Virginia §10.1-1181.2(H).)

The Code of Virginia §10.1-1181.2(H) allows the State Forester to assess a civil penalty of $250 for the initial violation and not more than $1,000 for any subsequent violation within a 24-month period by the operator.

Therefore, I recommend that a Final Order be written by the Deputy State Forester to \*\*Name\*\*, Logger, of \*\*City\*\*, Virginia, requiring payment of the offense amount of \*\*Amount\*\* made payable to the State Forester.

1. As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Bettina K. Ring, State Forester. In the event that the decision is served on you by mail, three (3) days are added to that period.

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| \*\*Conference Officer Name\*\* |  |  |  | \*\*Date\*\* |
| Informal Conference Officer |  | Signature |  | Date |