

402 KAR 3:040. Removal of bad actor designation.

RELATES TO: KRS 149.330, 149.344, 149.346, 149.348

STATUTORY AUTHORITY: KRS 149.334(5), 149.344(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.344(9) authorizes the cabinet to promulgate administrative regulations to establish rules and procedures to remove the bad actor designation from a logger or operator that was previously designated a bad actor under KRS 149.344(8). This administrative regulation establishes the requirements for removal of a bad actor designation.

Section 1. Request and Agreement. (1) A logger or operator designated as a bad actor under KRS 149.344(8), who has complied with the terms of the secretary's orders or agreed orders, has completed corrective actions on all sites with violations, and has paid all monetary penalties imposed by the cabinet or the court, may request to have his bad actor designations removed.

(2) The bad actor shall submit to the Division of Forestry a written request to have each bad actor designation removed.

(3) The bad actor shall enter into a written agreement with the division in which he shall:

(a) Affirm that he meets the requirements of subsection (1) of this section;

(b) Agree to a two (2) year period of review, during which time he shall give prior notice to the appropriate regional office or offices of the division of all timber harvesting operations on which he is the primary contractor or master logger in charge of operation, and agree that the division shall track and inspect the timber harvesting operations as it deems necessary;

(c) Agree that the written agreement and the two (2) year period of review shall be terminated if, during the review period, he is issued a notice of violation as the primary contractor, or is actively involved as a subcontractor or master logger on the site of a timber harvesting operation that receives a notice of violation; and

(d) Affirm that he understands that the designation shall be removed if the division determines that he meets the requirements of Section 3(1) of this administrative regulation regarding his compliance with orders, corrective actions on all sites with violations, payment of monetary penalties, prior notification of timber harvesting operations, and demonstration of adherence to implementing best management practices during the review period.

Section 2. Review Period. (1) The division shall notify the bad actor in writing of the beginning date and anticipated ending date of the two (2) year period of review.

(2) The division shall conduct a two (2) year period of review during which the division:

(a) Shall track all timber harvesting jobs in which the bad actor is engaged that are applicable to the review process; and

(b) May inspect all the commercial timber harvesting operations that the bad actor conducts.

(3) During the two (2) year period of review, the bad actor shall provide prior notice to the appropriate regional office or offices of the division of all timber harvesting operations on which he is the primary contractor or master logger in charge.

(a) Notification shall be made by letter, facsimile, email, telephone conversation, or in person, to the appropriate regional office. A message left on an answering machine or voice mail service shall not constitute valid notification.

(b) In the notification the bad actor shall identify the anticipated dates of harvest and the location of the timber harvesting site in sufficient detail to enable the division to locate the site in the field. The location shall be identified in at least one of the following ways:

1. Provide the name of the landowner, the county, and the latitude and longitude of the site to the nearest one-tenth (1/10) of a minute or the UTM (Universal Transverse Mercator) coordinates to the nearest 100 meters;

2. Provide the name of the landowner, the county, and a USGS (United States Geological Survey) 7.5 minute topographic quadrangle map or reproduction thereof, marked to show the name of the quadrangle map, the map scale, the north arrow, and the exact location of the site; or 3. Provide the name of the landowner, the county, the nearest named community and the approximate distance and direction from the community to the site, the name and number of the nearest highway or street, and a description of how to reach the site from the nearest road intersection or other appropriate landmark.

(4) During the two (2) year period of review, if the bad actor is issued a Notice of Violation or is actively involved with any site that is issued a Notice of Violation, or fails to give prior notice of the location of his logging operation in accordance with subsection (3) of this section, the written agreement and review process shall be terminated and the bad actor designation shall be retained.

Section 3. Removal of Designation. (1) At the end of the two (2) year period of review, the division shall remove the bad actor designation if it determines that the bad actor:

(a) Has provided prior notification of all timber harvesting operations in accordance with Section 2(3) of this administrative regulation;

(b) Has demonstrated adherence to implementing best management practices on timber harvesting operations conducted during the two (2) year period of review; and

(c) Is in compliance with the requirements established in Section 1(1) of this administrative regulation.

(2) If the bad actor designation is removed pursuant to subsection (1) of this section, the division shall:

(a) Notify the logger or operator in writing that the designation has been removed; and

(b) Make information available to the public which shows that the designation has been removed.

Section 4. Designation Not Removed. (1) If the written agreement and review period are terminated pursuant to Section 2(4) of this administrative regulation or if the review period is completed but the division is unable to remove the designation pursuant to Section 3(1) of this administrative regulation, the division shall notify the bad actor in writing and shall inform the bad actor that he may begin the review process again in accordance with Section 1(1) of this administrative regulation.

(2) If a bad actor is unsuccessful in having the designation removed in three (3) consecutive review periods, the designation shall become permanent.

Section 5. Removal of Second Designation. (1) If a bad actor successfully completes the review process and the bad actor designation is removed, and based upon subsequent timber harvesting operations the operator then is designated a bad actor for a second time, he may seek to have the second designation removed in accordance with Section 1(1) of this administrative regulation.

(2) If the bad actor is unsuccessful in having the second designation removed in two (2) consecutive review periods, the designation shall become permanent.

Section 6. Third Designation. If a logger or operator is designated a bad actor for a third time, the designation shall become permanent. (32 Ky.R. 1349; 1889; eff. 5-5-2006; TAm eff. 5-12-2015; Crt eff. 7-3-2018.)