

149.344 Use of appropriate best management practices -- Violation -- Noncompliance -- Administrative regulations governing bad actor designation -- Procedure after multiple violations -- Opportunity for administrative hearing.

- (1) Any logger or operator engaged in the conduct of any timber harvesting operations shall use appropriate best management practices.
- (2) No logger or operator shall conduct any timber harvesting operations in a manner that is causing or will likely cause water pollution.
- (3) If the cabinet determines that a logger or operator engaged in timber harvesting operations has failed to use the appropriate best management practices or is causing water pollution, the cabinet shall give the logger or operator a written warning of the facts alleged to constitute the failure to use the best management practice or the water pollution, and a reasonable period for abatement and compliance.
- (4) If, after the time for abatement in the written warning, the cabinet determines that the logger or operator has failed to implement the appropriate best management practices or has failed to abate the water pollution, the logger or operator will be provided an opportunity for an informal conference with the regional forester. After the opportunity for an informal conference, if the cabinet determines that the logger or operator has failed to implement the appropriate best management practices or has failed to abate the water pollution, the cabinet shall issue a notice of violation stating the best management practice that the logger or operator has failed to implement or the facts alleged to constitute the water pollution, and order the logger or operator to implement corrective measures within a specified period of time.
- (5) If, after the issuance of a notice of violation, the logger or operator fails to implement the best management practice or corrective measures, the cabinet shall issue a special order mandating the logger or operator to immediately implement the best management practice or the corrective measures. The cabinet may also order the logger or operator to cease all or a portion of the timber harvesting operation constituting the violation, and if the cabinet does so, the logger or operator shall cease all or a portion of the timber harvesting operation, until an inspection determines that the violation has been abated. At the time the special order is issued, the cabinet shall notify the logger or operator of the opportunity for an administrative hearing under KRS 149.346(2), to be held within five (5) working days of the receipt of a written request made by the logger or operator.
- (6) If the cabinet finds that any logger or operator is conducting any timber harvesting operations in violation of KRS 149.342(1) or in a manner that is causing or is likely to cause water pollution that is presenting or will likely present an imminent and substantial danger to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life, or to a public water supply, or to recreational, commercial, agricultural, or industrial uses, the cabinet may issue an emergency order directing the logger or operator to immediately cease the activity and implement corrective measures within a reasonable time, and the logger or operator shall immediately cease the activity and implement corrective measures. At the time the order is issued, the cabinet shall also notify the logger or operator of the

opportunity for an administrative hearing under KRS 149.346(2) to be held within five (5) working days of the receipt of a written request. The commencement of proceedings by the cabinet under subsection (3), (4), (5), or (10) of this section shall not preclude the cabinet from issuing an emergency order under this subsection.

- (7) Notification under this section shall be by certified mail, return receipt requested, sent to the last known address of the logger or operator, or by hand delivery by the cabinet.
- (8) If the logger or operator fails or refuses to cease activity or comply with and implement the best management practices or corrective measures in a special order issued under subsection (5) of this section or fails to cease activity and implement corrective measures in an emergency order under subsection (6) of this section, unless extended by the cabinet, the logger or operator shall be deemed a bad actor and shall be subject to civil penalties under KRS 149.348 after an opportunity for a hearing under KRS 149.346. The cabinet shall have the authority to remove or terminate bad actor designations from loggers or operators that demonstrate adherence to implementing best management practices, have paid all fines and penalties imposed by the cabinet, and have completed corrective action on sites with violations.
- (9) The cabinet may promulgate administrative regulations to establish rules and procedures to remove or terminate the bad actor designation from a logger or operator that was previously designated a bad actor under subsection (8) of this section.
- (10) If the cabinet determines that a logger or operator engaged in timber harvesting operations has failed to use the appropriate best management practices in violation of this section, and the logger or operator has been issued two (2) or more bad actor designations under KRS 149.346, the cabinet shall immediately issue a warning and, if the violations are not corrected after a period defined by the warning but no longer than one (1) week, shall issue an order directing the logger or operator to immediately cease the activity and implement corrective measures within a reasonable time, and the logger or operator shall immediately cease the activity and implement corrective measures. At the time the order is issued, the cabinet shall also notify the logger or operator of the opportunity for an administrative hearing under KRS 149.346(2) to be held within five (5) working days of the receipt of a written request.
- (11)
 - (a) Any logger or operator who has been designated a bad actor under subsection (8) of this section shall provide prior notice to the appropriate regional office or offices of the division before engaging in any timber harvesting operation regulated by the cabinet until he or she has paid all civil penalties and performed all of the site remediation required by the cabinet.
 - (b) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to set forth the form and manner of the notification required by this subsection. The notification requirements of this subsection shall take effect on the effective date of the administrative regulations required by this paragraph.

- (12) Beginning on January 1, 2016, if the cabinet finds that any logger or operator has three (3) or more bad actor designations under subsection (8) of this section, the cabinet shall issue an emergency order directing the logger or operator to immediately cease all timber harvesting operations in the Commonwealth. Upon receiving the emergency order, the logger or operator shall cease all timber harvesting operations in the Commonwealth until he or she has performed all of the site remediation required by the cabinet and has either paid all civil penalties or remains up to date on a payment plan for civil penalties with the cabinet. At the time the order is issued, the cabinet shall also notify the logger or operator of the opportunity for an administrative hearing under KRS 149.346(2) to be held within five (5) working days of the receipt of a written request. The commencement of proceedings by the cabinet under subsection (3), (4), (5), or (10) of this section shall not preclude the cabinet from issuing an emergency order under this subsection. A logger or operator who otherwise complies with the requirements of this subsection shall not be required to remove any of his or her bad actor designations as a condition of being allowed to restart timber harvesting operations in the Commonwealth.
- (13) All bad actor designations issued under subsection (8) of this section, including those issued prior to June 24, 2015, shall be included in determining the applicability of this section to any logger or operator.

Effective: June 24, 2015

History: Amended 2015 Ky. Acts ch. 41, sec. 2, effective June 24, 2015. -- Amended 2006 Ky. Acts ch. 43, sec. 1, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 39, sec. 2, effective June 20, 2005. -- Created 1998 Ky. Acts ch. 555, sec. 8, effective July 15, 1998.