

SENATE BILL 2850
By Cohen

AN ACT to amend Tennessee Code Annotated, Title 11, Chapter 4 and Title 69, Chapter 3, relative to forestry activities under the "Water Quality Control Act of 1977".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 69-3-120, is amended by deleting subsection (g) and by substituting instead the following:

(g) Nothing whatsoever in this part shall be so construed as applying to any agricultural activity or the activities necessary to conduct and operations thereof or to any lands devoted to the production of any agricultural products, unless there is a point source discharge from a discernible, confined, and discrete water conveyance.

SECTION 2. The general assembly hereby finds that some activities associated with the harvesting of timber result in the exposure of soil and that, if uncontrolled, such exposed soil can erode, resulting in gullyng, soil slippage and sediment deposition in streams. Such practices, if unchecked and unmonitored, endanger state water quality. It is the policy of this state to ensure that the people of Tennessee have a right to unpolluted waters and that the government of the state has an obligation to take prudent steps to secure, protect and preserve

this right. The general assembly further recognizes that there are cases where improper silvicultural activities may result in pollution of the waters of the state.

SECTION 3. As used in Sections 2 through 7 of this act:

(1) "Operator" means any person who conducts or exercises control over any silvicultural activities;

(2) "Operation" means a discrete land area for which silvicultural activities are planned or conducted;

(3) "Owner" means any person who owns or leases land or timber rights or who contracts with an operator to conduct silvicultural activities on his property;

(4) "Silvicultural activities" means those forest management activities associated with the harvesting of timber including, but not limited to, the construction of roads, trails and landings, deforestation and logging and the preparation of the property for reforestation;

(5) "Best Management Practices" means those land and water resource conservation measures that prevent, limit or eliminate water pollution, which for forest resource management purposes, are defined in rules promulgated in accordance with Tennessee Code Annotated, Section 11-4-301(d)(18); and

(6) "Masterlogger" means a logger who has attended and received certified findings of completion of the masterlogger training program.

SECTION 4. An owner or operator conducting a logging operation on fifty (50) acres or more of forest land shall file a written intent-to-cut document with the department of agriculture. The purpose of this requirement is to aid in identification and monitoring of loggers in Tennessee. The document shall specify:

(1) The amount or acreage of the proposed cut;

(2) The county of the proposed cut and approximate location of the site or sites;

(3) The name of the owner and operator;

- (4) The proposed method of timbering; and
- (5) Whether there will be a certified masterlogger on site.

This document shall be available for public inspection.

After the cut has been completed, the owner or operator shall file a final report confirming the total acreage cut, county, location, and the date of completion. This document shall also be available for public inspection.

SECTION 5.

(a) Any person who engages in a logging operation in any area in excess of fifty (50) acres, including, but not limited to, clear-cutting as that term is commonly understood in the logging industry, who is a non-resident of the state of Tennessee, shall submit to the department a bond in form acceptable to the department to insure the performance of the duties of such person to clean up any pollution caused by such logging operation, and for the protection of the public health, welfare, and the environment of the state. Logging operations may not begin until the bond has been approved by the department. The bond shall be in the amount of two hundred dollars (\$200) per acre for each acre in which any logging operation may occur, with a minimum bond of ten thousand dollars (\$10,000) and a maximum bond of seventy-five thousand dollars (\$75,000). For purposes of this subdivision, "non-resident" means having a principal residence or principal place of business outside of the state of Tennessee. A separate bond shall be posted for each logging operation in an area in excess of 50 acres.

(b) The commissioner may petition the chancery court of a county in which all or any portion of the logging operation occurs for forfeiture of the bond if the department determines that:

- (1) The continuation of the logging operation represents a threat to the health of the public or is causing or will cause pollution;

(2) All reasonable and practical efforts under the circumstances have been made to obtain corrective actions from persons responsible for the logging operation; and

(3) It does not appear that corrective actions can or will be taken within an appropriate time or it appears that the logging operation has been abandoned.

The proceeds of such forfeiture shall be paid into the court and, pursuant to the order of the court, used in combination with any remedy provided by law or equity which will correct or mitigate the pollution. If the court finds that a logging operation has been abandoned or otherwise terminated, the court may enter such orders regarding the continuance of the logging operation as it deems necessary to protect the public. Except as provided in this subsection, nothing whatsoever in this part shall be construed as applying to any agricultural or forestry activity or the activities necessary to the conduct and operations thereof or to any lands devoted to the production of any agricultural or forestry products, unless there is a point source discharge from a discernible, confined, and discrete water conveyance.

SECTION 6. If the department of environment and conservation determines that an owner or operator has conducted or is conducting, or has allowed or is allowing, the conduct of any silvicultural activity in a manner which has caused pollution to waters of the state, the department shall notify both the owner and operator of the pollution and specify corrective measures needed to mitigate the damage done and prevent future pollution. Failure of the department to notify the owner or operator of such corrective measures shall not impair the department's authority to issue a cease and desist order as described in the following section.

SECTION 7. If the department of environment and conservation determines that an owner or operator has conducted or is conducting, or has allowed or is allowing, the conduct of any silvicultural activity in a manner which is causing pollution to waters of the state it shall have the authority to issue a cease and desist order. Such order shall require the owner or operator

to cease immediately all or part of the silvicultural activities on the site and implement corrective measures within a stated period of time.

SECTION 8. This act shall take effect upon becoming a law the public welfare requiring it.