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COMMONWEALTH of VIRGINIA

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December 2, 2008

Honorable Charles J. Colgan, Chairman
Senate Finance Committee
10th Floor General Assembly Building
Capitol Square
Richmond, VA 23219

Honorable Lacey E. Putney, Chairman
House Appropriations Committee
General Assembly Building, Room 947
Capitol Square
Richmond, VA 23219

Dear Chairman Colgan and Chairman Putney:

As requested in the 2002 Appropriations Act, it is my pleasure to submit to you this report on the Silvicultural Water Quality Program.

The report addresses some historical milestones of the program and our latest data on accomplishments.

Should you have questions or need additional information, please do not hesitate to contact me.

Sincerely,

Carl E. Garrison, III
State Forester

c: Honorable Robert S. Bloxom
Secretary of Agriculture and Forestry



Department of Forestry Implementation of the 1993 Silvicultural Water Quality Act for FY 2008 – December, 2008

Abstract: Since 1993 the efforts of the Department of Forestry and public / private organizations have trained approximately 6,202 loggers in Water Quality Techniques known as BMP's; inspected over 5,000 harvesting operations in FY 2008 and has utilized the Silvicultural Water Quality Act to protect water quality. In 2008, the Department has continued to streamline the enforcement process which has reduced the number of law enforcement actions. The Department has continued with it's pilot mediation program in an attempt to change the behavior of those operators who are repeat offenders under the law.

Background:

- The Department of Forestry (DOF) developed Best Management Practices (BMP's) in response to requirements of the Federal Clean Water Act in 1972. These were later revised in the late 1980's, again in 1997, and most recently in July, 2002.
- The timber harvest inspection program began in 1987 by DOF on all timber harvesting operations greater than 10 acres for BMP implementation and to educate operators on the uses of BMP's to protect water quality.
- A Water Quality Task Force was created in 1988 by the State Forester to monitor water quality progress and to provide program guidance on water issues relating to silvicultural activities. This activity continues through the State Forester's representation on the Sustainable Forestry Initiative State Implementation Committee.
- DOF hired two (2) forest engineers in 1992 to provide technical assistance to forest operators in BMP implementation and harvest planning.
- In 1992 the Water Quality Task Force recommended and supported the Virginia General Assembly to pass the Silvicultural Water Quality Act of 1993 (Article 12, §10.1-1181.1-7) which authorized the DOF to act to prevent pollution of state waters from silvicultural activities.
- In 1993, DOF began monitoring of BMP implementation and effectiveness under the direction of the forest hydrologist.
- The Forestry Community supported the Amendment of the Silvicultural Water Quality Act in 1998 to require notification of all timber harvesting operations. DOF implemented a 1-800-telephone number to facilitate notification.
- The Silvicultural Water Quality Act was again amended in 2002 to allow for the issuance of a civil penalty against the operator for failure to notify the Department of Forestry of a commercial timber harvesting operation. This change allowed the DOF to track history of notifications by individual operators. The DOF inspected 93% of the harvests through June 2008 where notification was received, within 15 days of notification, exceeding the agency standard of 85%.

Program Administration:

- In 1999 the State Forester formed a Water Resources Unit. In 2006, a further reorganization combined the functions of the Water Resources unit under the Forest Resource Management Division at the Central Office under the direct supervision of the Assistant Director for Water Quality.
- Unit consists of the Assistant Director for Water Quality, the Water Quality Program Supervisor and six (6) Environmental Compliance Engineers operating in each of the agencies three (3) administrative regions. These eight (8) positions are positions within the agency, which are dedicated full-time to the Water Resources Program. This has been enhanced with the addition of 8 Water Quality Specialists that have been added since December 2006.
- Focus of the Unit is to provide:
 1. Guidance to DOF employees in uniform enforcement of the Silvicultural Water Quality Act.
 2. Provide technical assistance to landowners and operators in implementation of various forest practices.
 3. Provide education on BMP's and water quality protection to forestry operators. This is done in conjunction with the Sustainable Forestry Initiative® (SFI) program. The logger education component of which is called the “Sustainable Harvesting and Resource Professional” or SHARP Logger Program.
- Education under SFI has allowed DOF to train 6,202 individual loggers and foresters on harvest planning and BMP's since 1996. *See figure 1.*

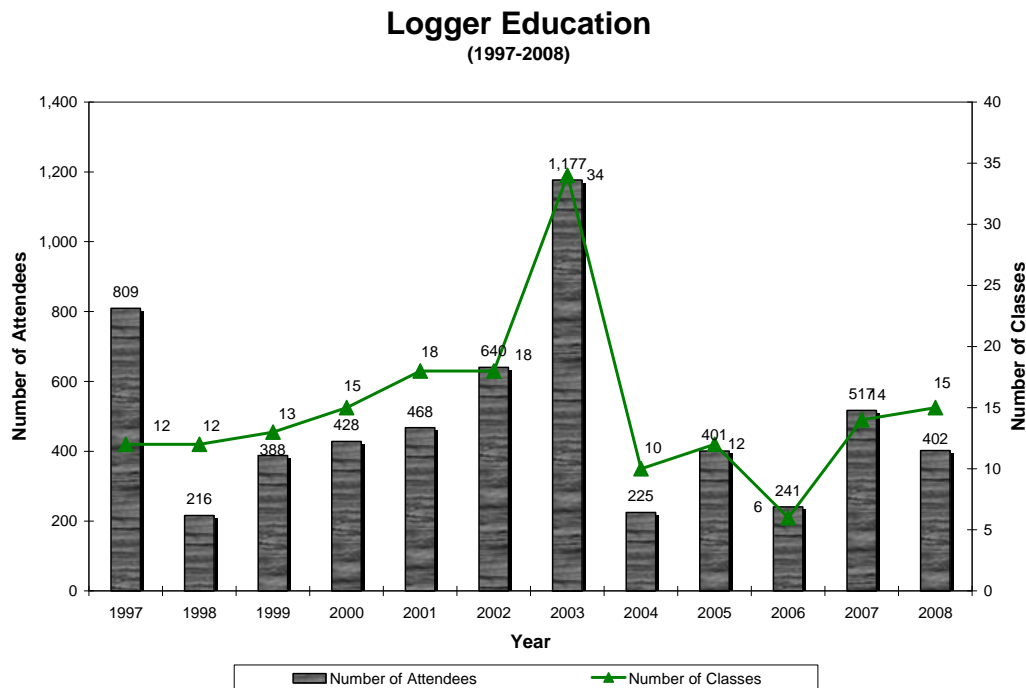


Figure 1: Water Resources Unit Logger Training Sessions – 1997 to Present

- Field personnel within each of the six (6) administrative regions accomplish harvest Inspections. Figure 2 shows the number of harvesting inspections by the Department of Forestry annually through FY 2008.

- The purpose of these inspections is to make recommendations on the implementation of Best Management Practices and for enforcement of the Silvicultural Water Quality Act.

Timber Harvests in Virginia (1996-2008)

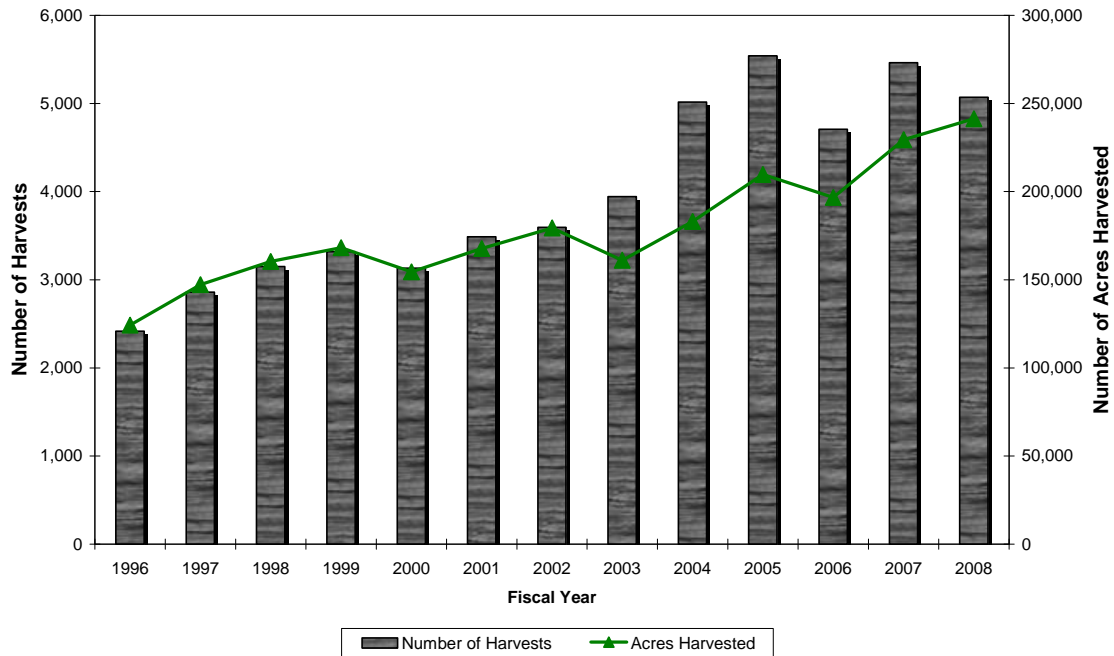


Figure 2 – Number of Harvesting Operations Inspected by DOF by Year

Compliance Actions:

In 1999, a record keeping and tracking mechanism was created by the Water Resources Unit to be able to better follow the progress of individual cases and persistent violators of the law. Figure 3 shows the number of Compliance Actions for each year since the Act was passed.

Compliance Actions and Violations (1993-2008)

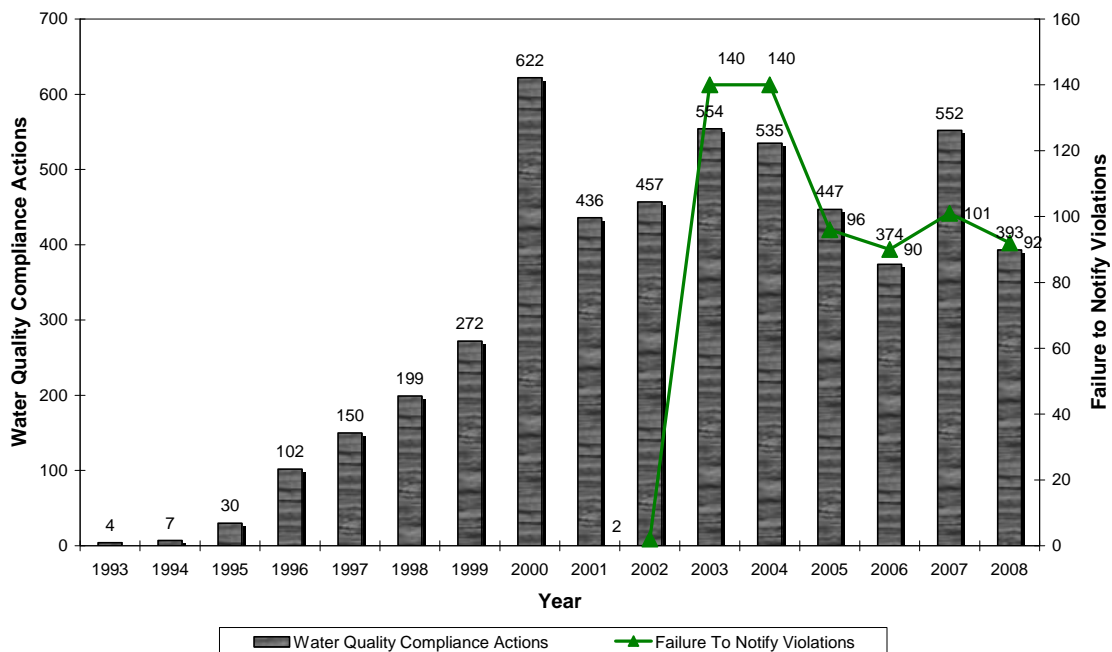


Figure 3: Compliance Actions by Year

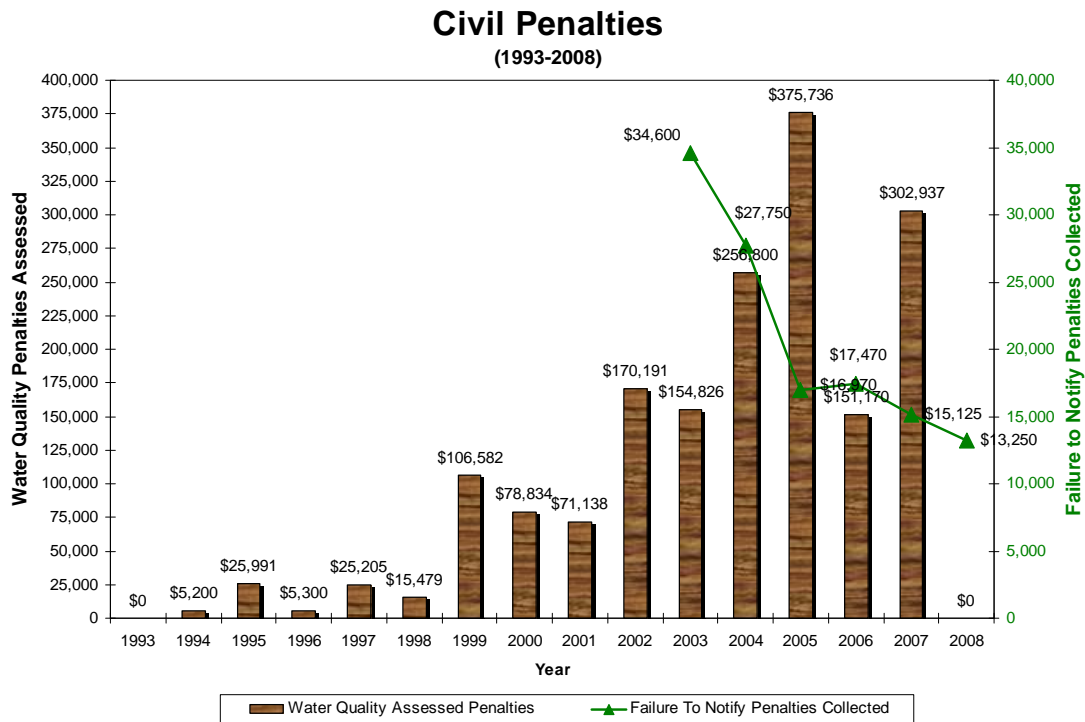


Figure 4: Civil Penalties by Year

These actions have resulted in the assessment of \$170,191.00 in civil penalties in 2002, \$154,826.00 in civil penalties in 2003, \$256,800.36 in 2004, \$375,736.00 in 2005, \$151,170.00 in 2006, \$302,936.56 in 2007, and no penalties assessed for water quality violations in 2008 (See Figure 4). Civil Penalties of \$34,600.00 have been collected for Failure to Notify violations in 142 cases in 2003, \$27,750.00 have been collected on 120 cases in 2004, \$16,970.00 have been collected on 75 cases in 2005, \$17,470.00 have been collected on 61 cases in 2006, \$15,125.00 have been collected on 58 cases in 2007, and \$13,250.00 have been collected on 92 cases in 2008 under §10.1-1181.2(H) of the Code of Virginia. Penalties collected are placed in the Water Quality Penalty Fund. Penalties that have not been paid have judgments recorded against the responsible parties. By law, penalties collected are to be used for education, demonstration of water quality protection techniques and research.

Audits:

- A new statewide audit system was initiated in 2008 to track trends in BMP implementation and effectiveness.
- This is the first Audit cycle to meet the protocol developed by the Southern Group of State Foresters as the standard auditing methodology, this process was approved by that group in early 2008.
- Results of the audits show that an effort to install BMPs on timber harvesting operations is occurring on 100% of the sites and that there is no evidence of active sedimentation on 98.8% of the sites audited.
- New regional reviews were implemented in 2000 to randomly select tracts in each region to provide a quality control methodology for consistency in compliance actions and training of DOF personnel.

Program Accomplishments:

- Completion of the Fourth Edition of *Virginia's Forestry Best Management Practices for Water Quality* and the associated Field Guide in 2002.
- Changes to Department of Forestry procedures involving enforcement of the Silvicultural Water Quality Law to eliminate the Notice of Required Action and implement a mechanism for making recommendations prior to a Special Order being issued.
- Created and implemented procedures for the assessment of civil penalties for failure to notify of a forest harvesting operation as required due to a changes to the Silvicultural Water Quality Law enacted by the 2002 session of the Virginia General Assembly.
- Conducted 24 Logger Training Sessions in 2002 to educate forest operators to the changes that have occurred in the new BMP Manual and changes to the Silvicultural Water Quality Law.
- Completion of sixteen (16) demonstration areas across Virginia to be utilized for Forestry Water Quality Education, several of which incorporate the use of GeoWeb® material as a stream crossing structure that is new to forestry applications.
- Develop and man two (2) exhibits at the East Coast Sawmill and Logging Equipment Exposition in Richmond, Virginia dealing with Water Quality Education on Forestry Operations that reached an estimated 15,000 forestry professionals in a two-day period. This occurs in alternate years and occurred in May, 2008.
- Performing studies on the use of PAM-12 Soil Amendment which is designed to reduce soil erosion from site disturbance.
- Instituted a Pilot Project in 2005 which utilizes Mediation as a tool in dispute resolution involving enforcement actions under the Silvicultural Water Quality Law, to date, have utilized mediation to resolve six (6) Silvicultural Water Quality violations, this pilot project remains in place currently
- In 2006, participated on a U. S. Forest Service Team of Program Reviewers looking at the Water Quality Program in North Carolina, and again in 2007 for the State of Kentucky
- In 2006, continue to streamline Silvicultural Water Quality Law enforcement procedures which resulted in less agency time involved in enforcement of this law.
- Initiated the “BMP Logger Cost Share Program” utilizing a grant from the Commonwealth’s Water Quality Improvement Act which is providing 50% cost share to forest operators to implement Forestry BMPs on sites on which they are operating. Through November 2007, 96 projects have been approved for a total cost of implementation of \$570,000 by the forest operators for the protection of the Commonwealth’s water resources.