

PROPOSED FINAL DRAFT

Section 1. Definitions

1. “Advisory Board” means the newly-created, volunteer, BMP Advisory Board.”
2. “Best Management Practices” means effective, practical, economical, structural or nonstructural methods that prevent or reduce the movement of sediment, nutrients, pesticides, and other pollutants from the land to surface or groundwater, or that otherwise protect water quality from potential adverse effects of timber harvesting operations as developed by the Department of Natural Resources, Division of Forestry.
3. “Commission” means the Natural Resources Commission.
4. “Department” means the Department of Natural Resources
5. “Division” means the Division of Forestry.
6. “Forester” (as defined by statute)
7. “Licensed Timber Buyer” (as defined by statute).
8. “Logger” means any person who conducts timber harvesting operations for commercial purposes.
9. “Operator” means any person who operates or exercises control over any timber harvesting operation, or acts as a consultant for the property owner.
10. “Person” means any individual, partnership, corporation, association, society, joint stock company, firm, company, or business organization, and any agency or instrumentality of federal, state, or local government, including any publicly-owned utility or any publicly-owned corporation of federal, state, or local government.
11. “Timber Harvesting Operations” means activities directly related to the cutting or removal of trees from a forest as a raw material for commercial processes or purposes, including timber pre-harvesting and post-harvesting activities associated with the implementation of appropriate best management practices. This includes cutting on shares.
“Timber harvesting operations” does not include:
 - a. The cutting of timber for non-commercial use.
 - b. The cutting of evergreens grown and cut for the traditional Christmas holiday season.
 - c. The removal of trees incidental to clearing for coal mining or farm purposes or incidental to ground-disturbing construction activities, including well sites, and access roads and gathering lines for oil and natural gas operations.
 - d. The cutting of trees for maintaining existing, or during construction of, rights-of-way for public highways or public utilities, unless those trees are being sold or provided as raw material for commercial wood product purposes.

Section 2. Legislative Findings

The General Assembly finds, determines, and declares are follows:

1. Healthy, sustainable forests that are ecologically sound provide economic opportunities and benefit the overall quality of life for Indiana's citizens;
2. High quality forests provide clean air and water and biodiversity;
3. A diverse forest economy includes forest products industries, recreation, and tourism;
4. Timber harvesting operations must be conducted in an ecologically sound manner; and
5. Indiana must promote the stewardship of its public and private forest lands while recognizing the rights and responsibilities of private landowners;
6. Comprehensive continuous forest inventories are needed to provide information to make policy and industry investment decisions to meet present and future needs;
7. Increased awareness of the economic, social, and ecological importance of Indiana's forests is needed to educate the public and industry in order to make wise decisions for the future of the forest resource and recognize and respond to threats to the forest resource.
8. It is the purpose of this Act to provide private landowners and loggers with education, training, technical assistance, and incentives that encourage them to manage their properties and carry out timber harvesting operations that will assure sustainable forests in the state.
9. This Act shall be used to address forestry-related water quality issues.
10. Insofar as this act is a result of audit recommendations from a state-initiated forest certification program, the state will assume the responsibility of funding the program and collecting the related fees and penalties. It is understood that the state will seek to recoup the administrative cost of BMP compliance from landowners who sell timber.
11. This Act shall include a sunset provision (7-10 years).

Section 3. BMP Advisory Board

1. There is hereby established a voluntary Forestry Best Management Practices Board consisting of 13 members for the purposes of reviewing, updating and implementing Indiana's forestry best management practices guidelines for water quality management. The Board reports to the Division.
2. The initial appointments to the Advisory Board shall be made within one year of the effective date of this Act, and the appointments shall be for staggered terms to assure continuity. (add language that ISDA uses).
3. The members of the Advisory Board shall be appointed by the Governor and represent the following:
 - a. Two members who are woodland owners and who are actively engaged in woodland management;
 - b. Two members representing Indiana's logging industry;

- c. Two members representing Indiana's wood products industry;
 - d. Two members of the Indiana DNR Division of Forestry;
 - e. Two members representing Indiana's environmental organization community;
 - f. Two members who are non-government foresters in Indiana.
 - g. One member who represents forestry science and research.
5. Except for initial staggered appointments, Advisory Board membership shall be for a period of three years, and members may be appointed to no more than two full consecutive terms.
 6. The chair of this Advisory Board shall be chosen from the members.
 7. The Advisory Board shall review existing forestry best management practices within one year after establishment of the Board, and shall conduct periodic reviews for updating the best management practices guidelines no sooner than every five years thereafter.
 8. The Advisory Board shall oversee the implementation of best management practices training and enforcement.
 9. The Advisory Board shall meet at least once a year for the purpose of conducting its responsibilities.

Section 4. Training and Certification

1. After two years from the effective date of this Act, no operator shall conduct timber harvesting operations within the state unless there is on the site during the timber harvesting operations at least one individual who has completed the requirements of certification as listed in Section 5 of this Act.
2. The certification is required of loggers and anyone responsible for the marking, procurement, or harvesting of timber, and enforcement personnel.
3. After successful completion of the certification requirements, 18 hours every three years of approved continuing education shall be required.
4. The Advisory Board shall specify the education and training requirements for certification, as developed by the Division, the Indiana Forest Industries Council (IFIC), and Purdue University, and shall specify the requirements for continuing education, and may establish a fee for the training that bears a reasonable relationship to the cost of the training.
5. Loggers who have successfully completed the core training requirements of certification, as listed in Section 5 of this Act shall be considered in compliance of this section.
6. All qualified courses successfully completed prior to the enactment of this Act shall be counted toward certification, according to the database currently maintained by the Indiana Forest Industries Council. This includes courses taken outside of Indiana which have been deemed transferable by the Advisory Committee.
7. The Division and IFIC shall maintain a current list of all individuals who have successfully completed the certification requirements and required continuing education, and shall make the list available to the public. All certified individuals shall provide the Division with a published phone number.

8. IFIC shall coordinate all training classes and instructors, in cooperation with Purdue University and the Division.
9. The Division shall issue cards to all persons completing certification, which shall constitute proof of certification. The card shall include an identification number for each individual, and is renewed every three years.
10. The certification is valid for as long as continuing education requirements, as approved under Section 5 of this Act, are met.
11. The core training can be funded by grants from the Division, by fees charged to those being trained, or by grants from industry and organizations.

Section 5. Curriculum

1. Two years after the effective date of this Act, any logger or anyone responsible for the marking and procurement, or harvesting of timber shall have completed the required BMP training course and the cutting and skidding courses as approved by the Advisory Board and offered by IFIC and the Division.
2. In addition to the BMP training, all loggers and foresters shall complete approved courses in cutting, skidding, first aid and safety as established by the Advisory Board.
3. The Advisory Board shall create and maintain a list of all accepted approved continuing education courses, and shall communicate that list to all affected persons.

Section 6. Compliance and Enforcement

1. Loggers and operators shall implement BMP's.
2. Operators shall be required to notify the Division of a timber harvest operation at the time of close-out via the use of a BMP monitoring checklist form in accordance with Advisory Board requirements. It is a violation of this act not to file the close-out check-off form.
3. Inspections of logging sites will be conducted by the Division, and are instigated by random selection, or as the result of a complaint received by the Division. Once notified, the landowner may opt out of the random inspection.
4. If the Division determines that a logger or operator engaged in timber harvesting operations has failed to use the appropriate best management practices, the Department shall give the logger or operator a written warning of the facts alleged to constitute the failure to use the best management practice, and a reasonable period for abatement and compliance.
5. A person who engages in a Timber Harvesting Operation without the required certification is in violation of this Act, and commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction for an offense under this section.
6. The Division may revoke, suspend, or refuse to issue a certification to any person who has:
 - a. been convicted of a felony;
 - b. violated any provision of this Act;

Revocation or suspension of a certification shall be determined by the Division after an administrative hearing as provide in Section 7 of this Act.

7. If, after the time for abatement in the written warning, the Commission determines that the logger or operator has failed to implement the appropriate best management practices, the logger or operator will be provided an opportunity for an informal conference with the Division. After the opportunity for an informal conference, if the Division determines that the logger or operator has failed to implement the appropriate best management practices, the Division shall issue a notice of violation stating the best management practice that the logger or operator has failed to implement and order the logger or operator to implement corrective measures within 30 days, weather permitting.
8. If, after the issuance or a notice of violation, the logger or operator fails to implement the best management practice or corrective measures, the Division shall order the logger or operator to cease all or a portion of the timber harvesting operation constituting the violation, until an inspection determines that the violation has been abated. At the time the special order is issued, the Division shall notify the logger or operator of the opportunity for an administrative hearing before the Division, to be held within 5 days of the receipt of a written request made by the logger or operator.
9. 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 Division.
10. If the Division determines that the logger or operator engaged in timber harvesting operations in violation of this Act, or in a manner that is causing water pollution that is presenting an imminent 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 Division may issue an emergency order to immediately cease the activity and implement corrective measures.
11. If the logger or operator fails or refuses to cease activity or comply with and implement the best management practices or corrective measures, the logger or operator shall be deemed a bad actor by the Commission and shall be subject to civil penalties under Section 7.3 of this Act, after an opportunity for a hearing under Section 7.2 of this Act.

Section 7. Bad Actors

1. If the Division has evidence that a violation of under Section 6 of this Act has occurred, or has deemed a logger or operator a bad actor under Section 6, subsection 10, the Division shall serve written notice of the determination and the provision alleged to have been violated, and the Division shall require the person complained against to answer the charges at an administrative hearing of the Commission to be held not less than 21 days after the date of the notice, unless the person complained against waives the 21-day period.
2. Any person who considers himself aggrieved by any determination of the Division under this Act, may file a petition alleging the determination is contrary

to law or fact, and is injurious to him, citing the grounds and reasons therefore, and demanding an administrative hearing. Unless the Commission considers the petition frivolous, it shall schedule an administrative hearing before the Commission not less than 90 days after the date of the notice, unless the person complained against waives the 90 day period. The right to demand a hearing under this subsection shall be limited to a period of 30 days after the petitioner has had actual notice of the determination complained of. The Commission shall be represented at the hearing by the Commission's attorney. All hearings of this Commission shall be conducted in accordance with state law.

3. Any operator or logger who is deemed by the Division to be a bad actor under Section 6 of this Act may, after an opportunity for an administrative hearing, be assessed a civil penalty not to exceed one thousand (\$2,500) for each violation. In determining the amount of the penalty, consideration shall be given to the operator's or logger's history of noncompliance; the seriousness of the violation and any damage caused, including any irreparable harm to the environment or hazard to public health or safety or the health and safety of animals, fish or aquatic life; the degree of fault and whether the conduct was intentional or negligent; and the demonstrated good faith in remedying the pollution. The penalties shall be recoverable in an action brought in the name of the State of Indiana. All sums recovered shall be deposited in a Forest Stewardship Incentives Fund, established by the Division. The circuit court in the county in which the violation occurred shall have concurrent jurisdiction and venue of all civil and injunctive actions instituted by the Commission for the enforcement of the provisions of this Act.