



# Selected Statutes and Regulations Impacting Silvicultural Operations in Kentucky

Jeffrey W. Stringer

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## Kentucky Revised Statutes and Administrative Regulations Involving Environmental and Boundary Issues Which May Impact Forest Owners and Silvicultural Operations

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The following is a summary of Kentucky Revised Statutes (KRSs) and the associated Kentucky Administrative Regulations (KARs) which have impacted or have direct implications for forest owners and silvicultural and timber harvesting operators. Note: This is not a complete list of all statutes and regulations which might pertain to forest operations. This summary was developed to facilitate awareness of some of the statutes and regulations which are most likely to impact forestry and related operations and is not meant to provide legal council or interpretation or to be a definitive explanation of the regulations and statutes. Those involved in forestry or related operations are encouraged to seek legal council if questions arise about the application of the statutes or regulations.

Only selected sections of the regulations and statutes have been provided. To help clarify the regulations or statutes annotations have been added as follows:

- ◆ All “**bold and/or underlined**” text represent statute or regulatory titles.
- ◆ All “...” (series of periods) represent missing sections of statutes and/or regulations.
- ◆ All “*bold and italicized*” text represent either silvicultural terms related to the statutes or regulations or definitions.

◆ Boxed text are common descriptions of the statute or regulation.

## **Drifts, Logs and Timber**

This statute commonly termed the "Timber Trespass Law" was enacted in 1994. It sets forth how awards will be issued in timber trespass cases. It is possible that this legislation may pertain to both forest owners and silvicultural and timber harvesting operators.

### **KRS - 364.130 Liability of person entering upon and cutting timber growing upon land of another - Measure of damages.**

(1)...any person who cuts or saws down...or causes to be cut or sawn down..timber growing upon the land of another..shall pay to the rightful owner of the timber three (3) times the stumpage value of the timber and... three (3) times the cost of any damages... UNLESS ...That prior to cutting:

- (2) (a) 1. A signed statement was obtained from the person whom the defendant believed to be the owner of all trees scheduled to be cut that:
- a. All of the trees to be cut were on his property and that none were on the property of another; and
  - b. He has given his permission, in writing, for the trees on his property to be cut; and
2. Either:
- a. A written agreement was made with owners of the land adjacent to the cut that the trees to be cut were not on their property; or
  - b. Owners of the land adjacent to the cut were notified in writing, delivered by certified mail, restricted delivery, and return receipt requested, of the pending cut and they raised no objection, the court may render a judgement for no more than the reasonable value of the timber, ..damages..and legal costs.

(2) (b) ...if no written objection was received from the persons notified within seven (7) days from the date of signed receipt of mail, it shall be presumed, for the purposes of setting penalties only, that the notified owner had no objection to the proposed cut.

### ***Recommendations which might help avoid non-compliance:***

- ◆ ***Both loggers and landowners know the boundaries and make sure they are clearly marked.***
  - ◆ ***Sell or buy timber with a signed contract.***
  - ◆ ***Contact adjacent landowners as in section 364.130 (2) 2. b. Both loggers and landowners can be held responsible for this.***
  - ◆ ***Both loggers and landowners should stipulate boundaries and boundary marking in timber sale contracts.***
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# Water Quality Regulations Division of Water

Kentucky's 401 Administrative Regulations relate to the maintenance of water quality in the Commonwealth and support Kentucky Revised Statute 224. A number of regulations set

## **AR - 401 KAR 5:031 Surface Water Standards**

### **Section 2. Minimum Criteria Applicable to all Surface Waters.**

(1) ...Surface Waters (*perennial, intermittent streams having well defined banks, lakes, ponds, marshes, wetlands and subterranean streams*) shall not be aesthetically or otherwise degraded by substances that:

- a) Settle to form objectionable deposits; *i.e. (sediment or mud)*
- b) Float as debris, scum, oil or other matter to form a nuisance; *i.e. (hydraulic fluids, tree tops)*
- c) Produce objectionable color, odor, taste, or turbidity; *i.e. (muddy water)*

### ***Recommendations which might help avoid non-compliance:***

- ◆ *Specify use of Kentucky's Silvicultural Best Management Practices, especially Streamside Management Zones and if applicable Sinkhole Practices, by timber harvesting operators.*
- ◆ *Avoid timber boundary access near surface waters.*
- ◆ *Get assistance from a professional forester to help determine sensitive areas and suggest locations for access, log deck, primary skid trail locations, and stream crossings.*

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## **AR - 401 KAR 5:031**

### **Section 4 (2). Cold Water Aquatic Habitat and, Section 7. Outstanding Resource Waters.**

These sections relate to the protection of several classifications of surface water such as those containing endangered or threatened species or designated as a **Kentucky Wild River** or Federal Wild and Scenic River or contained within a nature preserve or on the registry of natural areas. Water quality standards related to aquatic habitat have been set for these surface or subsurface waters and maintenance of these water quality standards is mandated.

### ***Recommendations which might help avoid non-compliance:***

- ◆ *Determine if these surface waters are in or near timber boundary and obtain a permit for harvesting directly adjacent to applicable water (call the Kentucky Division of Water to get a listing of these in your county 502-564-3410).*
- ◆ *Specify the use of Kentucky's Silvicultural Best Management Practices by timber harvesting operators, specifically BMP's for Coldwater Aquatic Habitats.*

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## Floodplain Regulations

## Division of Water

These regulations were developed to protect the safety and welfare of the public and prevent flood damage. In order to do this regulations were developed to make sure that streams and rivers stayed clear allowing water to efficiently move through them. A floodplain is an area adjacent to stream or river which may flood and these regulations stipulate that materials left on a floodplain or a stream or river bank won't interfere with water movement.

### AR - 401 KAR 4:060 Stream Construction Criteria

#### Section 4. Uses of Regulatory Floodway

- 1) No fill, deposit, obstruction, excavation, storage of materials, or structure, either alone or in combination with existing or future similar works, which may adversely affect the efficiency or the capacity of the regulatory floodway, existing streams (*intermittent (flows during winter) or perennial (flows all year long)*), or drainage facilities shall be placed in the regulatory floodway.

Related to timber harvesting this regulation primarily means that tree tops and logging slash cannot be left in streams or rivers and that tree tops and logging slash must be contained in the floodplain so that they will not move or obstruct the waterway.

#### *Recommendations which might help avoid non-compliance:*

- ◆ *Stipulate use of Best Management Practices - specifically the use of Streamside Management Zones around perennial streams.*
- ◆ *Stipulate that a buffer zone of trees be left along intermittent streams having a floodplain and/or institute full SMZ recommendations for intermittent streams.*

## Air Quality Regulations

## Division of Air Quality

While normally air quality problems are not associated with forestry operations in Kentucky, these regulations do stipulate that dust from dried mud on paved surfaces is a violation of air quality standards.

### AR - 401 KAR 63:010 Fugitive Emissions

Section 4 (4): ...no one shall allow earth...to be deposited onto a paved street or roadway.

#### *Recommendations which might help avoid non-compliance:*

- ◆ *Stipulate removal of mud from paved road (and/or) (Section 3 (f))*
- ◆ *Stipulate that crushed rock be used for 100 to 200 ft on access or haul roads directly prior to their junction with paved surface.*
- ◆ *Stipulate use of culverts on road shoulders were appropriate.*