Delaware Forest Service
2320 S. DuPont Hwy.
Dover, DE 19901

(302) 698-4547
(800) 282-8685 (In State)
(302) 697-6245 (Fax)

DELAWARE FOREST SERVICE

Departmental Use

Permit No. _____
Co/Yr/Mo/#

Tract Name: _____

DELAWARE'S FORESTRY PRACTICES EROSION AND SEDIMENT CONTROL (E&S) LAW AND SEED TREE LAW

NOTIFICATION FORM AND PERMIT

I. SITE INFORMATION

A. Operator or Contractor Name: _____

Address: _____

Contact Person: _____ Telephone No.: _____

B. Landowner Name *(as listed on title)*: _____

Address: _____

Contact Person: _____ Telephone No.: _____

C. Acres to be Harvested: _____ Total Acres of Woodland on Property: _____ County: _____

Location of Property *(including nearest road intersection)*: _____

D. Silvicultural Activity: *(Please check all that apply.)*

❑ Clearcut ❑ Selection Cut ❑ Thinning ❑ Other _____
(Chemical application, site prep, etc.)

E. Anticipated Start Date: *(Please call when the activity begins.)* _____

F. Harvested under a Management Plan? ❑ Yes ❑ No

G. Is the harvest area located in one of the Delmarva Fox Squirrel Zones? ❑ Yes ❑ No

II. BEST MANAGEMENT PRACTICES

It is critical that silvicultural operations are conducted in a way that will protect water quality and preserve site productivity. Best Management Practices (BMPs) are simple, common sense techniques to accomplish these goals. For a complete description of BMPs please refer to the Delaware BMP manual or BMP field manual. The following questions deal with water quality and BMPs.

A. Are there any water features in or bordering the harvest area? ❑ Yes *(if yes, please indicate type below)* ❑ No *(skip to D.)*

❑ Pond / Lake ❑ Stream ❑ Ditch ❑ Maintained Ditch ❑ Wetland

B. **Proposed Buffers**: All open water features except maintained ditches must have a minimum fifty-foot wide buffer (Streamside Management Zone). Buffers are not required on properties that are covered under the Seed Tree Law with slopes less than 5%. The operator and landowner should consider using a modified or reduced buffer on these properties.

Buffer Type: ❑ No Buffer ❑ No Cut Zone ❑ Leave at least 60 sq. ft. BA/acre

❑ Ditch Maintenance Road ❑ Proposed Buffer Width (at least 50'): _____

C. Will any stream crossing be necessary? ❑ Yes *(if yes, please check type below)* ❑ No

Type of Crossing: ❑ Bridge ❑ Culvert ❑ Bridge Mats ❑ Other *(specify)* _____

Check one: ❑ Temporary ❑ Permanent

D. Are truck haul roads necessary? ❑ Yes ❑ No Are primary skid trails necessary? ❑ Yes ❑ No

Check all practices that will be used on these roads or trails to reduce erosion and protect water quality:

❑ Wooden Mats ❑ Avoid Wet Soils ❑ Water Bars ❑ Wood Chips

❑ Use Tops in low areas ❑ Cross Road Drainage ❑ Water Turnouts ❑ Seeding

Remember to grade and close roads when finished, smooth out ruts over 12" deep, and properly store/dispose equipment fluids.

E. Other practices to be used: _____

III. SITE MAP

Please include a site map which shows the location of the property, water features, access, landings and the location of any buffers. Otherwise the E&S Permit cannot be approved.

IV. DELAWARE SEED TREE LAW

In the past, many forested areas were harvested without any plan for reforestation. This resulted in a loss of valuable species and greatly reduced the value of future harvests. The Delaware Seed Tree Law is intended to reverse this trend and preserve forest land values.

A. Is the harvest area equal to or greater than 10 acres? Yes ☐ No ☐

B. Does the harvest area contain 25% or more pine and/or yellow-poplar? Yes ☐ No ☐ Don't Know ☐

C. Will the land use of the property remain as forest? Yes ☐ No ☐ Portion ☐
If No, please indicate the intended future use of this property Agriculture ☐ Development ☐

Number of Acres to be Converted _____

If you answered Yes to all three of these questions, then the property qualifies for the Delaware Seed Tree Law. **Please indicate your proposed reforestation method below.** If you answered No to one or more of these questions, the Seed Tree Law does not apply; **However, to protect the future value of your property, you should contact a professional forester to discuss management and reforestation options.**

D. Proposed Reforestation Method: **Plant Nursery Grown Seedlings** ☐
Natural Reproduction (Two years to establish, then plant seedlings if stocking is insufficient) ☐
Seed Tree (Leave uncut for two years at least 6-8 evenly distributed trees per acre that are at least 14" D.B.H.) ☐

V. STATEMENTS AND SIGNATURES

A. Landowner Statements: By signing below, the landowner declares that he/she holds legal title over this property, intends to use BMPs to protect water quality, and will meet any applicable Seed Tree Law requirements by ensuring the property will be properly forested.

"I am/we are the owner(s) of the woodlot described above. Under the provisions of Title 3, Chapter 10, Subchapter V of the Delaware Code, I/we hereby state that I/we will reforest the woodlot as required. According to the provisions of Title 3, Chapter 10, Subchapter VI of the Delaware Code, I/we agree to protect the water and land from erosion and sedimentation which may result from the silvicultural activities proposed through the use of Forestry Best Management Practices as outlined in Delaware's Forestry Best Management Practices Manual and as approved by the Delaware Forest Service."

Signed: _____ Date: _____
(Landowner)

B. Operator Statements: By signing below, the operator declares to use BMPs and work with the Delaware Forest Service to protect water quality from erosion and sedimentation.

"According to the provisions of Title 3, Chapter 10, Subchapter VI of the Delaware Code, I agree to protect the water and land from erosion and sedimentation which may result from the silvicultural activities proposed through the use of Forestry Best Management Practices as outlined in Delaware's Forestry Best Management Practices Manual and as approved by the Delaware Forest Service."

Operator agrees to contact the Delaware Forest Service when harvest is complete.

Signed: _____ Date: _____
(Operator/Contractor)

Please remember to include a site map with this permit

For Delaware Forest Service Use Only

Date Received: _____ **Date Processed:** _____
E&S Law Compliance: **Approved** ☐ **Approved with Modifications** ☐ **Denied** ☐
Seed Tree Law: **Applies** ☐ **Does not apply** ☐ **Acres** _____
Watershed: _____ **Tax Parcel ID:** _____
Approved by: _____ **Field Forester:** _____

DEPARTMENT OF AGRICULTURE
Statutory Authority: 3 Delaware Code
Section 1101 (3 Del.C. § 1011)

Forest Service Regulations

1.0 AUTHORITY

These regulations are promulgated under the authority of Section 1011 of Title 3 of the Delaware Code.

2.0 PURPOSE

The purpose of these amendments to the Forest Service's Erosion and Sedimentation Control regulations is to streamline the process for responding to potential or existing water quality problems and to establish an enforcement scheme for dealing with operators who do not file the proper permits prior to commencing a timber harvest. These rules and regulations apply to silvicultural operations, as defined, being conducted on private, state, and federal lands within the State of Delaware, unless otherwise stated in the regulations.

The intent of these rules and regulations is to ensure that silvicultural activities do not cause erosion and sedimentation to Delaware's waters. The Delaware Forest Service has determined that timber harvests and shearing & piling are the two silvicultural activities that pose the greatest potential for producing erosion and sedimentation. Therefore a notification system is required for these two activities. Other silvicultural activities, such as but not limited to, root raking, chemical application, installation and maintenance of firebreaks, do not require prior notification but operators are to follow best management practices (BMPs) as outlined in Delaware's Forestry BMP Manual (DE Dept. of Ag. Document #65-01-04/95/09/01)

3.0 DEFINITIONS:

3.1 **Acceptable sediment control and stormwater management techniques** are equivalent/synonymous to/with both erosion and sediment control measures and forestry Best Management Practices (BMP).

3.2 **Business days** are defined as any day Monday through Friday.

3.3 **Buyer** is defined as "any individual or firm that regularly purchases standing trees for harvest by himself or herself or a subcontractor."

3.4 **Department** is the Delaware Department of Agriculture.

3.5 **DFS** is the Delaware Forest Service

3.6 **DNREC** is the Delaware Department of Natural Resources and Environmental Control.

3.7 **Forest management activities** are herein defined as practices, techniques or activities which are designed for purpose of conserving, protecting and enhancing the land as forest land over the long-term. Forest management includes but is not limited to perpetuation of tree species; improvement of trees' and forest growth, health and vigor; protection from fire, and insects and diseases.

3.8 **Forester** is defined as a Forester, Senior Forester, Regional Forester, Assistant Forestry Administrator, or Forestry Administrator currently employed by the Delaware Forest Service.

3.9 **Intermittent Stream with a well-defined channel** is a defined as a water body which is naturally occurring, and maintains a seasonal flow of water under typical climatic conditions.

3.10 **Normal rainfall** is an inch of liquid precipitation in a 24 hour period.

3.11 **Open water body** is a bay, lake, or pond where water is present throughout the year. This does not include man-made water channels such as ditches.

3.12 **Operator** is defined as "any person that operates or exercises control over any silvicultural activity."

3.13 **Perennial stream** is defined as a water body with a well-defined channel which maintains a continuous flow of water throughout the year under typical climatic conditions. This does not include man-made water channels such as ditches.

3.14 **Permittee** is defined as "any individual or firm that has a Delaware Erosion and Sediment Law Notification Form and Permit that has been approved by the DFS."

3.15 **Pollution** is defined as the "alteration of the physical, chemical or biological properties of any waters of the State resulting from sediment deposition that will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare or the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future source as a public water supply; or unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses."

3.16 **Secretary** is the Delaware Secretary of Agriculture

3.17 **Shearing and Piling** is defined as preparing a site for reforestation by using a crawler tractor with a shear blade, commonly known as a "K-G blade" to cut off at ground level any trees or shrubs that remain after a timber harvest. This brush and debris is then piled in rows by a crawler tractor with a root raking blade. The spacing between the rows of debris is determined on site, and tree seedlings are planted between the rows.

3.18 **Silvicultural activity** is defined as "any forest management activity, including but not limited to harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation."

4.0 RULES AND REGULATIONS INTENT AND GOALS

The intent of the Rules and Regulations is to establish a system of notification and referral that quickly and easily provides the Forestry Administrator with the information needed to administer Delaware's Forestry Practices E&S Law without causing undue hardship on operators and landowners. The goals of these Rules and Regulations are:

4.1 to protect the waters of the State from erosion and sedimentation resulting from silvicultural activities; and

4.2 to provide the Forestry Administrator the authority to:

4.2.1 track the use and effectiveness of Forestry BMPs,

4.2.2 develop close working relationships with forest operators and landowners through site visits,

4.2.3 permit the Delaware Forest Service to rapidly address inquiries from citizens, agencies, and other organizations concerning ongoing silvicultural operations, and

4.2.4 document the positive benefits of properly managed forests.

5.0 REGULATORY PROCEDURES

5.1 Operators and buyers will provide written notification to Delaware Forest Service (DFS) at least five (5) business days prior to the initiation of covered silvicultural operations greater than or equal to 43,560 square feet of area (1 acre).

5.2 Operators and buyers will notify the Department by completing and signing Delaware's Forestry Practices Erosion and Sediment Law Notification Form and Permit, as provided by the Delaware Forest Service (DFS). No covered silvicultural activity will start prior to the date that an Erosion & Sediment Control Permit is approved.

5.3 This notification form will include, but is not limited to:

5.3.1 the forest land acreage and type of covered silvicultural activity planned,

5.3.2 statement that land will remain under forest management,

5.3.4 signed statements stating the operators' intent to use forestry BMPs to prevent pollution,

5.3.5 specific Forestry BMPs to be used on the site,

5.3.6 maps of the site, including location of any water bodies, streams, ponds, Streamside Management Zones, roads, stream crossings, landings, and other pertinent site specific information as appropriate, and

5.3.7 estimated start and completion dates

5.3.8 county tax parcel identification number

5.3.9 If the property is covered by the Delaware Seed Tree Law and, if so, how the owner intends to reforest the property.

5.4 Notification forms will be sent to the local Delaware Forest Service office for the county in which the activity is to occur. Technical assistance, forms, topographic maps, and other assistance are available at these offices as well.

5.4.1 Kent County:
Forestry Administrator
Delaware Department of Agriculture Forest Service
2320 South Dupont Highway
Dover, DE 19901
(302) 698-4500 In-state 1-800-282-8685
FAX (302) 697-6245

Kent County Forester
Taber State Forest
1953 Burrsville Road
Harrington, DE 19952
(302) 349-0938
FAX (302) 349-0937

5.4.2 Sussex County:
Southern Regional Forester
Redden State Forest
18074 Redden Forest Drive
Georgetown, DE 19947
(302) 856-2893
FAX (302) 856-5039

5.4.3 New Castle County:
Northern Regional Forester
Blackbird State Forest
502 Blackbird Forest Road
Smyrna, DE 19977
(302) 653-6505
FAX (302) 653-2869

5.5 The Delaware Forest Service will approve, approve with modifications, or deny all applications within five (5) working days of their receipt. In cases where denial of the application is issued, the Delaware Forest Service will provide technical assistance to the landowner, buyer and/or operator to develop modification(s) necessary to bring the application into compliance.

5.6 The operator on the site is responsible for following BMPs as indicated on the Erosion and Sediment Law Notification Form and Permit until a forester has made a final inspection of the site and issued a final inspection report on form BMP-02.

5.7 A copy of the approved Erosion and Sediment Law Notification Form and Permit shall be kept on the site at all times during the harvest operation, and shown on demand to any forester or DNREC Environmental Protection Officer.

5.8 The permittee/operator shall provide the DFS with the following notifications of intent:

5.8.1 starting a permitted harvest operation — not less than two (2) days prior to desired start date.

5.8.2 completion of the harvest operation — not less than one (1) day prior to completion.

5.8.3 returning to a site if the operator has vacated the site for weather-related or similar reasons — not less than one (1) day prior to return.

5.9 Special Consideration - Streamside Management Zones:

5.9.1 All open water bodies, perennial streams, intermittent streams with a well-defined channel, and streams that have been hydrologically modified by dredging or straightening, and have no established maintenance right-of-way, **shall** have a Streamside Management Zone (SMZ), unless the property or a portion of the property is covered by an approved Delaware Seed Tree Law application (Title 3, Chapter 10, Subchapter V) and is located on slopes of less than three (3) percent.

5.9.2 A Streamside Management Zone shall not be required on any water bodies not specified in Section 5.9.1 as long as Best Management Practices are followed to prevent the movement of sediment and debris into the ditch. The alteration of any berm or bank, structure, or control inlet culvert in or adjacent to tax ditches, as defined by Delaware Code Title 7, Chapter 41, is prohibited unless written approval from both the appropriate tax ditch managers and the Department of Natural Resources and Environmental Control (DNREC), Division of Soil and Water Conservation, Drainage Section is obtained. The use of a tax ditch right-of-way, as defined by Delaware Code Title 7, Chapter 41, as a skid trail is prohibited.

5.9.3 The minimum width for an SMZ is 50 feet, measured in lineal feet perpendicular from the edge (top of the bank or channel) on either side of a qualifying water body as defined in 5.9.1. Listed below are the minimum SMZ widths based on slope. Slope shall be defined as average slope of 100 contiguous feet measured on a horizontal plane perpendicular to the water body. All slope measurements shall begin at the crest of the water body, thus measurements adjacent to channelized streams will begin at top of the channel. SMZ width is measured in linear feet perpendicular from the perimeter of the water body. For tidal waters, the high water line should be used as the perimeter. The SMZ must be plainly designated with surveyors ribbon or durable paint ***before*** submitting the permit application.

Minimum Streamside Management Zone Width

	Percent Slope		
	0-10%	**11-20%**	**21-45%**
Horizontal distance	**50 feet**	**75 feet**	**100 feet**

5.9.4 Within a Streamside Management Zone, at least sixty (60) square feet of basal area per acre of trees well distributed throughout the area shall be retained, or at least sixty (60) percent of the overstory. These trees should be equally divided among diameter classes. The landowner may desire to leave up to eighty (80) percent of the crown cover to provide shading for streams.

5.9.5 Felling trees across a perennial or intermittent stream, or hydrologically modified channel, and dragging any part of the tree over or through the stream channel is not permitted. Any occurrence shall result in the operator making immediate repairs to the waterway bank. All trees will be felled away from the SMZ to avoid depositing logging debris in the SMZ.

5.9.6 The remainder of the specifications for Streamside Management Zones is found in **Delaware's Forestry Best Management Practices Manual, September 1995, Document Control No. 65-01-04/95/09/01. Copies of this manual and current topographic maps are available at all Delaware Forest Service offices.**

5.10 Special Consideration - Multiple Silvicultural Practices:

5.10.1 If more than one silvicultural activity is covered by an approved Forestry Practices E&S permit, the landowner will notify the local Delaware Forest Service office at least five (5) working days prior to the initiation of the subsequent operation. For example, if an E& S permit is approved for the harvesting operation and shearing and piling, the local DFS office must be notified five (5) days before starting the shearing and piling operation.

5.11 Special Consideration - Adverse Weather Conditions:

5.11.1 The notification form, which becomes the E&S permit once approved, requires projected start and completion dates. Should environmental conditions create circumstances which either delay or accelerate the projected start or completion of operations, the operator or landowner will verbally notify the local DDAFS office. One example of such a circumstance is excessive rain causing saturated soils during forest harvest operations; as a result to comply with BMPs, operations are terminated with plans to resume the operations in the drier summer months.

6.0 LAND USE

6.1 Timber harvesting is the primary silvicultural activity which enables landowners to initiate change in the land use from forest land to another land use, such as agricultural cropland, residential development, and industrial or commercial development. Delaware's Forestry Practices E&S rules and regulations are designed for silvicultural activities where the land is to remain under forested land use.

6.2 However, should the landowner choose to change the land use, the new land treatment activity would no longer fall within the jurisdiction of the Delaware Forest Service. Land clearing activities are regulated under the Department of Natural Resources and Environmental Contol's (DNREC) Sediment and Stormwater Management law. For conversion to agricultural cropland use, the designated agencies are the local Conservation Districts in each county. For conversion to other non-forest uses, the DNREC Division of Soil and Water Conservation, Sediment and Stormwater Section has regulatory authority. Thus, the owner or operator will be required to receive approval from the appropriate agency prior to initiating any activity on the site.

6.3 Therefore, as enumerated above, a land use intent declaration is required to receive approval under this law. However, in cases where the land use is to change, the Delaware Forest Service, in accordance with a Memorandum of Understanding with DNREC Division of Soil and Water Conservation, will notify in writing the appropriate agency(ies) of the landowner's intention and provide a copy of this correspondence to the landowner.

6.4 These rules and regulations as well as those of the Stormwater and Sediment law relate to erosion and sedimentation control. Any local, county, state, or federal laws which regulate land use changes, such as wetlands conversion, should be investigated thoroughly prior to initiating conversion of forest land to other uses.

7.0 PROCEDURES AND PENALTIES

7.1 To establish an inspection procedure which reinforces and compliments the regulatory authorities contained within Subchapter VI, the Delaware Forest Service has established the following framework.

7.1.1 Informal field visits

7.1.2 Formal hearing

7.1.3 Superior Court.

7.2 If at any time during the enforcement process any water quality problem is corrected, all proceedings will be terminated, and a letter will be provided to the landowner and operator reflecting compliance with the law.

7.3 Informal Field Visits

7.3.1 The Forester will visit a tract, perform a BMP inspection, and complete a BMP inspection form, a copy of which will be provided to the operator and landowner. During the course of this inspection, the field person will determine the status of the effectiveness of BMPs in protecting water quality and record this determination on the inspection form.

7.3.2 If, during a routine inspection of a harvest operation, it is discovered that the operator on the site does not have an approved harvest permit for the operation, the Forester will, at his or her discretion, issue a verbal or written warning to the operator. The Forester will immediately assist the operator in completing a permit form to bring the operation into compliance with the E & S rules and regulations. If failure to have an approved permit is a second offense, the Forester can, at his or her discretion, halt all harvesting operations until a permit has been completed and approved. If more than two offenses of this nature within a 12 month period, are on record for the operator/buyer, a fine, not to exceed $2,000.00 may be levied as specified in Title 3, Chapter 10, Subchapter VI, Paragraph 1077.

7.3.3 On the BMP inspection form, three categories of water quality classifications will be used: 1) *no Water Quality (WQ) problem*; 2) *potential WQ problem;* and 3) *severe WQ problem.* A potential WQ problem is defined as a typical problem that would cause excessive sedimentation and erosion during a normal rainfall. Examples may include undersized culverts and improper log road or deck stabilization on highly erodible soils. A severe WQ problem is defined as any silvicultural activity which is causing sediment deposition or will immediately create serious sediment deposition in a rainfall event.

7.3.4 If no WQ problem exists, the landowner and operator are notified on site, if possible, and in writing within five (5) business days following the inspection.

7.3.5 If a potential WQ problem exists on an initial field visit, the Forester will note the problem on the BMP inspection form, including written directions to alleviate the potential problem, to the operator and landowner, and a time limitation of up to five (5) business days to correct the problem. The Forester will notify his/her immediate supervisor of the existence of a potential WQ problem. When the time limitation specified in the recommendation for a potential WQ problem has elapsed, the Forester will return for a second visit. If the problem persists with no extenuating circumstances such as bad weather, all operations will be halted until specified corrective actions have been made to the satisfaction of the Forester.

7.3.6 If a severe WQ problem exists, such as skidding logs across a stream or ditch with no bridge, the Forester will cause all operations to cease immediately, issue a written warning containing instructions how to immediately correct the problem.

7.3.7 In the event that an operator vacates a harvest site and WQ problems have not been corrected or resolved, the following actions may be taken at the discretion of the Forestry Administrator. 1) No further E & S permits will be issued for that permittee (operator), nor may that operator legally operate under any existing DFS E & S permits, until all corrections have been made to the satisfaction of the DFS. 2) A fine, not to exceed $2,000.00 may be levied as specified in Title 3, Chapter 10, Subchapter VI, Paragraph 1077.

7.4 Formal Hearing

7.4.1 If the parties cannot agree to corrective actions as determined by DFS, a formal hearing will be convened and conducted in accordance with Title 29 Chapter 101 of the Delaware Code, the Administrative Procedures Act (APA). All silvicultural operations on the site will cease until the results of the hearing are known.

7.4.2 Twenty (20) days prior to the hearing, formal notice will be given to the parties and such notice will contain the following information:

7.4.2.1 A description of the subject matter of the proceedings;

7.4.2.2 Notice of the opportunity to proceed with informal fact-finding procedures (a second informal conference) and of the date by which this election must be made;

7.4.2.3 The date, time, and place the formal hearing will be held if informal fact-finding is not elected;

7.4.2.4 Citation to the law or regulation giving the DFS the authority to act;

7.4.2.5 Notice to parties of their right to present evidence, to be represented by counsel, and to appear personally or by other representative, and

7.4.2.6 Notice to the parties of the agency's obligation to reach its decision based upon the evidence received.

7.4.3 The hearing may be conducted by the Secretary of Agriculture or his or her designee.

7.4.4 Any party may request a pre-hearing conference, to discuss, among other things, issues in dispute, documents to be relied upon, witnesses to be called, and any procedural matters.

7.4.5 The proceedings shall be recorded to ensure accuracy. A recorded transcript will be taken by a court stenographer upon request and this procedure will be paid for by the requesting party. All testimony shall be taken under oath as administered by the hearing officer. The names and addresses of all interested parties present shall be noted on the official record of the hearing.

7.4.6 Any party may present any competent evidence in its behalf and request subpoenas for testimony or production of documents and other tangible evidence. Non-parties shall not present evidence.

7.4.7 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by a reasonably prudent person in the conduct of his or her affairs shall be admitted. Objections to the admission or the exclusion of evidence shall be brief and shall state the ground for objection. Evidence which is plainly irrelevant, immaterial, insubstantial, cumulative, or unduly repetitive may be excluded.

7.4.8 The parties may be represented by counsel. The hearing shall open with a brief statement from each party of what such party intends to establish at the hearing.

7.4.9 Following opening statements, each party shall have an opportunity to produce evidence in support of such party's position. The owner/operator shall produce evidence first followed by DFS. After initial testimony and cross-examination by the parties, any witness may be examined by the hearing officer. Following the presentation of the main case, the owner/operator shall have an opportunity to produce rebuttal evidence, subject to cross-examination. Following the presentation of the rebuttal evidence, DFS shall have an opportunity to present surrebuttal evidence, subject to cross-examination.

7.4.10 If no procedure is specifically prescribed by these Rules, the hearing officer may proceed in a manner not inconsistent with these Rules.

7.4.11 At the conclusion of the hearing, the Secretary of Agriculture or designee may issue a **Special Order** within twenty (20) days from the date of the hearing. The Special Order shall describe evidence on which the Order was based. Upon issuance of a Special Order, the landowner and operator will implement specified corrective measures within a specified period of time.

7.5 Penalties

7.5.1 Any owner or operator who violates, fails, or refuses to obey any Special Order may be assessed a civil penalty by the Forestry Administrator. Such penalty shall not be less than $200 or more than $2,000 for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of assessing penalties.

7.6 Superior Court

7.6.1 If the Special Order has not been complied with, the Forestry Administrator may file a complaint in the Superior Court which has jurisdiction over all offenses under this statute. However, within three (3) working days of the inspection and prior to the filing of a complaint with the Superior Court, the Forestry Administrator may, at his or her discretion, agree to engage in an informal conference process with the landowner and operator to discuss and resolve violations of the Special Order.

7.6.2 Any person who intentionally, knowingly, and after written notice to comply violates or refuses to comply with any notice issued by the DFS shall be fined not less than $500 or more than $10,000 for each offense. Such penalty may only be assessed after owner or operator has had the opportunity for a hearing as specified herein. Each day the violation continues shall constitute a separate offense.