



NAUFRP

National Association of University Forest Resources Programs

Creating Knowledge—Developing Leaders

October 27, 2011

Administrator Lisa Jackson
Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington DC 20460

Dear Administrator Jackson:

The U.S. Court of Appeals for the Ninth Circuit issued a final ruling in May declaring that forest roads are "point sources" that require a discharge permit under the Clean Water Act (CWA). This decision reversed the District Court's ruling upholding the Environmental Protection Agency's 35-year-old regulation of forestry and forest roads as nonpoint sources under the CWA. The state of Oregon and other defendants in the case are now appealing the 9th Circuit decision to the Supreme Court.

As administrators and faculty in forestry schools and colleges, we have devoted our careers to educating forestry professionals to develop and implement environmentally and economically sound forest management. American private forests help clean our air, provide open space, wildlife habitat, recreational opportunities and act to improve our drinking water as natural filtering systems. They also support hundreds of thousands of jobs and tens of billions of dollars for our economy. Forestry professionals, working with your agency, have brought this balance through decades of effort to craft forest management regimes that are carefully tailored to the variety of environmental conditions across the United States.

For 35-years, EPA has recognized the effectiveness of this approach and delegated to states the management of forestry operations as nonpoint sources under the CWA. States have developed Best Management Practices (BMPs) for forestry operations that have proven effective in protecting and improving water quality. Unfortunately, the Ninth Circuit decision mandates permit requirements that should be left to the discretion of the EPA and states; a decision if sustained many believe will be a serious disincentive for private landowners to continue to manage their lands as forests.

We have attached a summary of citations on this issue from various sources.

- (1) All evidence indicates that treating forest roads as point sources of pollution will in fact mean a significant increase in regulatory costs of managing forests for both production and conservation purposes;
- (2) Best Management Practices and/or state laws have effectively dealt with this issue and in Florida we know that there is over 95% compliance with Florida's forestry BMPs and that they are effective in protecting water quality (see http://www.fl-dof.com/forest_management/hydrology_index.html); and
- (3) This is why after 35 years, forestry contributes to impairment in just 0.5% of the nation's stream miles.

The Ninth Circuit decision is an unfortunate example of a Federal court undermining scientifically sound resource management and introducing potential gridlock at a time when we need more flexibility to improve both the environment and our economy. Sound resource management is best achieved by developing stability, consensus, and collaboration - not management by lawsuit. We urge you to support appeals to the U.S. Supreme Court and to take actions to maintain the use of BMPs to regulate forestry activities, including roads, under the Clean Water Act.

Sincerely,

Tim White, Director, School of Forest Resources and Conservation, University of Florida
Peg Gale, Dean, School of Forest Resources and Environmental Science,

Michigan Tech University

George Hopper, Dean, College of Forest Resources, Mississippi State University

Robert Swihart, Head, Department of Forestry and Natural Resources, Purdue University

Keith Belli, Head, Department of Forestry, Wildlife and Fisheries, University of Tennessee

Terrell T. "Red" Baker, Chair, Department of Forestry, University of Kentucky

Mike Clutter, Dean, Warnell School of Forestry and Natural Resources, University of Georgia

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Citations Relative to Forestry School Deans' Letter to Administrator Jackson

Water quality is most effectively managed through best management practices tailored to local conditions by the states

- EPA spoke clearly and reasonably in 1976 when it declared that silviculture activities are nonpoint sources, with the exception of four specific point source activities. (40 C.F.R. 122.27)
- EPA recognized that, “numerous forest practices acts, State environmental programs, and local ordinances are excellent sources of effective regulation and... such State and local expertise is the critical factor in the development of the areawide plans for water pollution... [I] incorporating BMPs should effectively prevent and abate water pollution from silvicultural activities.” (emphasis added) 41 Fed. Reg. 24709, 24710 (June 18, 1976).
- Studies demonstrate that BMPs currently in use significantly reduce environmental impacts and effectively protect water quality[1].
- As an example, since 1997, ongoing monitoring in the southern states shows continuous improvement in use and effectiveness of BMPs in that region.
- EPA lists forestry as contributing to impairment in only .5% of total river and stream miles in the U.S.[2]

Forestry is most effectively regulated as a nonpoint source

- Shortly after passage of the CWA, the EPA concluded forestry activities are nonpoint sources most effectively managed through best management practices (BMPs) established by the states rather than through federal permits[3].
- EPA was right. After 35 years, forestry contributes to impairment in just .5% of the nation's river and stream miles[4].

BMPs are effective at protecting water quality

- BMPs are drafted with EPA funding, guidance, and approval. They address such things as harvesting, planting, and roads.

[1] Ice, G.G. 2004. *History of innovative Best Management Practice development and its role in addressing water quality limited waterbodies*. *Journal of Environmental Engineering* 130(6):684-689.

[2] U.S. EPA. *National Water Quality Inventory Report to Congress*. Available at <http://water.epa.gov/lawsregs/guidance/cwa/305b/index.cfm>.

[3] 41 Fed. Reg. 24709, 24710 (June 18, 1976).

[4] U.S. EPA. *National Water Quality Inventory Report to Congress*. Available at <http://water.epa.gov/lawsregs/guidance/cwa/305b/index.cfm>.

[5] Schilling, Dr. Erik. *Compendium of Forestry Best Management Practices for Controlling Nonpoint Source Pollution in North America*. Technical Bulletin Number 966. National Council for Air and Stream Improvement. September 2009.

[6] Southern Group of State Foresters. *Silviculture Best Management Practices Implementation Monitoring*. 2008.

- Ongoing studies show that BMPs are a widely used highly effective means of protecting water quality[5]. For example, since 1997, ongoing monitoring in the southern states shows continuous improvement in use and effectiveness of BMPs in that region[6].

Private forests support jobs, open space, clean air and water, and other benefits

- Private U.S. forests support 2.5 million U.S. jobs and \$87 billion in paychecks.
- 10 million private forest owners manage 427 million acres – 57% of the forested land in the U.S.

EPA and Litigation

- EPA vigorously defended its nonpoint source definition in its amicus brief on the appeal to the Ninth Circuit. In this brief, EPA also explained that it excluded forestry activities from the 1990 definition of “industrial activity” under the Phase I program, meaning that if the court found forest roads to be point sources, they would not be subject to mandatory NPDES permits. The Ninth Circuit ignored this explanation. *NEDC v. Brown*

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