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Regulating Silviculture Activities

The United States Environmental protection Agency (USEPA) is currently working towards regulating forest and silviculture stormwater runoff by requiring NPDES discharge permits for logging roads and other silviculture activities.

The Clean Water Act was implemented to protect the nation's waterways from pollution. The NPDES permitting program was promulgated under section 402 of the CWA to address point-source discharges. In 1976, EPA implemented the Silviculture Rule which exempted non-point source silviculture activities (except rock crushing, gravel washing, log sorting and log storage) from the NPDES permitting program. Under 40 C.F.R. § 122.27(b)(1) nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff are considered "non-point source" activities, which falls under state permitting authorities.

For the past 36-years, the USEPA has allowed foresters and timber land managers to utilize best management practices, under the Silviculture Rule, to minimize pollutants from entering nearby water bodies. At issue is a 2010 controversial ruling by the 9th Circuit Court of Appeals in San Francisco, stating that runoff collected and discharging through ditches and culverts into nearby waterways constitutes a point source and should be federally regulated.

The USEPA has sent a draft notice of intent to the White House Office of Management and Budget. The USEPA said it 'is considering flexible options including non-permitting options that recognize the vastness, diversity, and complexity of the nation's logging roads networks and existing effective federal, state, local, and tribal best management practice frameworks.'

Any rule the EPA develops regulating runoff from silviculture activities will go out for public comment.

Potential Impacted Parties – public and private forest landowners, operators, managers and associated production activities.

Additional references:

<http://www.naco.org/newsroom/countynews/Current%20Issue/5-7-2012/Pages/NoticeofIntentfiledtoregulaterunofffromloggingroads.aspx>

<http://www.jacobtcremer.com/2012/05/epa-moves-toward-regulation-of-forest.html>

http://evergreenmagazine.com/web/Judicial_Regulation_and_Killing_Jobs_The_Ninth_Circuit_s_Forest_Roads_Decision_Waving_Goodbye_to_Science_Based_BMPs_and_More_Than_35_Years_of_Regulatory_Precedent.html

<http://nafoalliance.org/statement-silviculture-in-the-clean-water-act/>