

Forestry Regulations

Forestry operations must comply with state and federal regulations that are designed to protect soil productivity, water quality, and marine life as well as wildlife. Loggers and landowners alike should be aware of these requirements prior to conducting a harvest or forest management activity.

The North Carolina Forest Service maintains a ranger in each county who is charged with promoting sound forestry practices through outreach with landowners, foresters and professional loggers. The North Carolina Forest Service actively monitors logging jobs throughout the year, typically visiting over 3,000 logging jobs annually. The Forest Service sites compliance and non-compliance with forestry regulations, working to ensure that our professional logging workforce and landowners are following these guidelines.

Compliance with the Forest Practice Guidelines is consistently over 92% on an annual basis.

BEST MANAGEMENT PRACTICES: Best Management Practices (BMPs) were developed under the original Clean Water Act when states were called on to improve methods for reducing pollution. Today, BMPs are activities that promote forest health, productivity and minimize adverse environmental impacts during the activity.

Participation in state and federal cost-share programs in North Carolina requires compliance with state BMPs for forestry. Some general BMPs that should be included in any forest management plan or timber harvest operation are:

- **Proper construction of all logging roads to minimize erosion and channelized flow of water during a heavy rain.** This includes the use of broad-based dips, water bars and culverts. Restricting use of heavy equipment during very wet conditions to protect soil structure and quality. Minimizing soil disturbance on steep slopes to prevent accelerated erosion. Prompt reforestation of harvested sites and rehabilitation of logging trails, roads and loading decks.
- **Identification and maintenance of streamside management zones (SMZs) or buffers** along perennial and intermittent streams and water bodies. Selective harvesting is allowed in these areas, but care must be taken to minimize soil disturbance and bank erosion.
- **Keeping logging debris out of flowing streams and water bodies.** Loggers are encouraged to minimize stream crossings in their pre-harvest plan. When a stream must be crossed, the crossing should be at a right angle and constructed to prevent accelerated erosion.

The North Carolina SFI State Implementation Committee maintains a toll free number (1-877-271-6531) to report forestry activities that do not comply with the SFI standard. The program's monitor will investigate all complaints. The overall purpose of the Inconsistent Practices Process is to investigate, resolve and record practices reported to be inconsistent with the SFI Standard.

NORTH CAROLINA SEDIMENTATION POLLUTION CONTROL ACT – FOREST PRACTICES GUIDELINES TO PROTECT WATER

QUALITY: Legislative action in 1989 regulated land-disturbing forestry activities under the Sedimentation Pollution Control Act (SPCA). Regulations adopted to address these activities are found in 15A NCAC 1J .0201-.0209. These specific requirements are called the Forest Practice Guidelines to Protect Water Quality. The SPCA requires forestry activities to either comply with the Forest Practice Guidelines or obtain an approved sedimentation control plan from the state.

Below are the specific performance standards. These are performance oriented rather than prescriptive. The state Best Management Practices Manual identifies specific practices that may be used to comply with these standards. However, the manual itself is not a rule, and the specific practices are not mandatory.

.0201 STREAMSIDE MANAGEMENT ZONE A streamside management zone (SMZ) shall be established and maintained along the margins of intermittent and perennial streams and perennial water bodies. The SMZ shall be of sufficient width to confine within the SMZ visible sediment resulting from accelerated erosion. Ground cover, or other means, within the SMZ shall be sufficient to restrain accelerated erosion. Access roads and skid trails, except as provided in >0203 of this subchapter, logging decks and mill sites shall be placed outside of SMZs. When barriers such as property lines or limiting land features prohibit the location of any of these outside of SMZs, they can be located within the SMZ. When located within the SMZs, they shall have effective erosion control and sediment control structures on measures installed to restrain accelerated erosion and prevent visible sediment from entering intermittent or perennial water bodies.

.0202 PROHIBITION OF DEBRIS ENTERING STREAMS AND WATERBODIES Stream obstruction and the impediment of stream flow an/or degradation of water quality shall be prevented by keeping debris from construction, harvesting, mill sites residue and site preparation out of intermittent and perennial streams an perennial water bodies.

.0203 ACCESS ROAD AND SKID TRIAL STREAM CROSSINGS Stream crossings shall be avoided when possible. Access roads and skid trails which must cross intermittent or perennial streams or perennial water bodies shall be constructed so as to minimize the amount of sediment that enters the streams because of the construction. These crossings shall be installed so that: 1. stream flow will not be obstructed or impeded; 2. no stream channel or perennial water body shall be used as an access road or skid trail; 3. crossings are provided with effective structures or ground cover to protect the banks and channel from accelerated erosion; 4. they shall have sufficient water control devices to collect and divert surface flow from the access road or skid trail into undisturbed areas or other control structures to restrain accelerated erosion and prevent visible sediment from entering intermittent and perennial streams; and ground cover, or other means, sufficient to prevent visible sediment from entering intermittent and perennial streams and perennial water bodies shall be provided within 10 working days on initial disturbance and will be maintained until the site is permanently stabilized.

.0204 ACCESS ROAD ENTRANCES Access road entrances intersecting public highways shall be constructed and maintained with measures, devices or techniques effective to prevent

excessive soil and other debris from being carried to and deposited on the highway to the extent that sedimentation problems will result.

.0205 PROHIBITION OF WASTE ENTERING STREAMS, WATERBODIES AND GROUNDWATER Measures shall be taken to prevent equipment servicing waste, petroleum, fertilizers or other chemical waste from entering streams, perennial waterbodies, and groundwater which result in a violation of an adopted water quality standard of the Environmental Management Commission in Sections 15 NCAC 2L .0200 – Classifications and Water Quality Standards Applicable to Surface Waters of North Carolina, and 15 NCAC 2L .0200 – Classifications and Water Quality Standards (related to groundwater).

.0206 PESTICIDE APPLICATION Application of pesticides shall be limited to those labeled for that intended use, shall be used in accordance with labeling and rules adopted by the N.C. Pesticide Board as set forth in 2 NCAC 9L .1005, Restricted Areas, and applied in a manner to prevent adverse impacts on water quality.

.0207 FERTILIZER APPLICATION When used, fertilizers shall be applied in a manner to prevent adverse impacts on water quality.

.0208 STREAM TEMPERATURE Adequate shade within SMZs associated with natural perennial streams shall be retained to protect those streams from adverse temperature fluctuations which result in a violation of an adopted water quality standard of the Environmental Management Commission as contained in rule 15 NCAC 2B .0211 – Fresh Surface Water Classifications and Standards

.0209 REHABILITATION OF PROJECT SITE Areas on the project site that have the potential for accelerated erosion, resulting in concentrated flow directly entering an intermittent or perennial stream or other water body, shall be provided with ground cover or other means of adequate sedimentation control within 30 working days after ceasing any phase of an operation or beginning a period of inactivity. Treatment and maintenance of those areas shall be sufficient to restrain accelerated erosion and prevent visible sediment from entering intermittent and perennial streams and perennial water bodies until the site is permanently stabilized.

PRESCRIBED BURNING: In 1999, legislation provides limited liability protection to landowners in the use of prescribed fire. The regulations may be found in General Statute 113-60.40-43. The law declares that the use of prescribed fire not a public nuisance and provides limited liability protection for smoke damage to a forest landowner. To obtain this liability protection, the landowner must use a “certified burner” (someone who has been through the prescribed fire training program offered by the NC Division of Forest Resources) and must have a burning plan prepared by the certified burner. The landowner, or contract burner, must also obtain a burning permit from the North Carolina Forest Service. The law also allows landowners to burn up to 50 acres of their own property, without a certified burner, provided that it is done under a burning plan prepared by a certified burner.

ENDANGERED SPECIES: The presence of a federally-listed threatened or endangered species on the property will have a direct impact on how the property is managed. Landowners and ProLoggers must understand the basic requirements of the Endangered Species Act.

Section 7 governs federal agency conduct. It prohibits federal agencies from engaging in or authorizing any action likely to jeopardize the continued existence of a listed species. As in Section 9, this includes destruction or adverse modification of designated habitat. “Agency action” includes timber sales, issuance of permits and funding grants. It may also include approval of federal cost-share funds for forest management/reforestation on private lands. Key points to know include

- The animal currently having the most impact on forestry in North Carolina is the red-cockaded woodpecker, which generally inhabits older pine stands that are in a park-like condition.
- Landowners are responsible for not “taking” an endangered species. They are not responsible for recovery of the species, i.e. managing for or providing new habitat. Section 9 of the ESA applies only to animal species. It does not apply to listed plant species on private lands.
- There may be some programs or agreements available to private landowners, such as the “Safe Harbor” program, that offer some incentives and protections to landowners for providing habitat.

LIMITS ON LOCAL GOVERNMENT REGULATION OF FORESTRY: In 2005, legislation was passed (Senate bill 681) that limits the ability of local governments to regulate forestry activities.

The law prohibits counties and cities from regulating forestry activities provided that (1) land is enrolled under use-value tax program; or (2) activities are done under a forest management plan. For counties, this management plan does not have to be prepared or approved by a registered forester, although it is advisable to have this done. For cities, the plan must be prepared or approved by a registered forester.

The law does allow local governments to regulate development activities and does not alter municipal zoning authority. The law also grandfathers in existing ordinances adopted with authority from General Assembly (all existing ordinances except one for Chapel Hill exempt forestry). The law also allows local governments to respond to state or federal mandates, i.e. if state or federal laws or regulations specifically direct local governments to adopt an ordinance that would regulate forestry, this law allows that to happen. There is also a recapture provision in the law that would allow local governments to delay or deny site plans or building permits for a maximum of five years if a area otherwise exempted from regulation moves to development.

PUBLIC NUISANCE: Local governments are limited in what activities may be declared a public nuisance. Article 57, Chapter 106-700 deals with the nuisance liability of agriculture, also called North Carolina’s Right to Farm law. This legislation limits the ability of local governments to regulate farming activities via public nuisance laws. In 1992, an amendment was passed that added forestry to this provision. This protection from public nuisance now includes

activities involved in the growing, managing and harvesting of trees. However, the legislation did specifically exclude “sawmill operations.”

TIMBER THEFT: The following is the law parameters for timber theft, which includes damages for unlawful cutting, removal or burning of timber; misrepresentation of property lines.

- Any person, firm or corporation not being the bona fide owner thereof or agent of the owner who shall without the consent and permission of the bona fide owner enter upon the land of another and injure, cut or remove any valuable wood, timber, shrub or tree therefrom, shall be liable to the owner of said land for double the value of such wood, timber, shrubs or trees so injured, cut or removed.
- If any person, firm or corporation shall willfully and intentionally set on fire, or cause to be set on fire, in any manner whatever, any valuable wood, timber or trees on the lands of another, such person, firm or corporation shall be liable to the owner of said lands for double the value of such wood, timber or trees damaged or destroyed thereby.
- Any person, firm or corporation cutting timber under contract and incurring damages as provided in subsection (a) of this section as a result of a misrepresentation of property lines by the party letting the contract shall be entitled to reimbursement from the party letting the contract for damages incurred. (1945, c. 837; 1955, c. 594; 1971, c. 119; 1977, c. 859.)

WATER QUALITY: Forestry operations in North Carolina must comply with the forest practice guidelines for water quality under the state Sedimentation Pollution Control Act. The guidelines are designed to prevent sediment and chemicals from entering streams or other water bodies during a forestry operation. Compliance with these provisions is considered necessary to meet federal nonpoint source pollution requirements under the Coastal Zone Management Act and the Clean Water Act. The North Carolina Division of Forest Resources is charged with technical oversight and implementation.

One of these requirements is that a vegetated streamside management zone (buffers) be maintained on perennial and intermittent streams and water bodies. The buffer must be of sufficient width to confine visible sediment from accelerated erosion. Note: The rule does not require that standing timber be left in the buffer. It only requires a vegetated buffer. There are numerous riparian buffer rules that are specific to various rivers and lakes across North Carolina. [Click here to see these individual regulations.](#)

WETLANDS: Federal Regulations Federal regulations define wetlands as “..areas inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are considered waters of the U.S. and are subject to federal regulations under the Clean Water Act. Ongoing forestry operations are exempt from obtaining a 404 dredge and fill permit provided that certain requirements are met. To maintain this permitting exemption, the forestry operation (1) must be established and ongoing; (2) must not change or convert the wetland to an upland; (3) must not change the use of the wetland where the reach and flow of waters are impaired. Change in use is generally defined as changing forest land to agriculture, or forest land

to development or similar changes. Conversion to upland is also a change in use. Specific regulatory requirements and interpretations are constantly evolving. Landowners should understand current requirements prior to implementing forestry operations on lands that are or may be considered wetlands. Landowners do not need to notify state or federal agencies in order to take advantage of this permitting exemption. However, landowners should consult a professional forester to avoid possible violations.

STATE WETLANDS: In 2000, the North Carolina Environmental Management Commission adopted a rule (15A NCAC 2B .0230) that incorporated the federal wetland provisions for forestry and agriculture into state rule. This provides the mechanism for forestry and agricultural operations to comply with the state wetland standards found in (15A NCAC 2B .0231). In the addition to the federal requirements, the state rule requires that spoil from any ditch construction be deposited within 20 feet of the ditch. Further, the state rule gives authority to the Director of the Division of Water Quality, in consultation with the Corps of Engineers and/or EPA, to determine if an activity falls within or is in compliance with the permitting exemption. If a landowner's forestry operation is challenged by EPA, the Corps of Engineers or the N.C. Division of Water Quality on the basis of wetland regulations, please contact the NCFCA immediately.

PESTICIDE APPLICATION: In 2000, the N.C. Pesticide Board adopted an enforcement policy to clarify label language concerning the application of pesticides used in forestry in wetlands. This policy states: "No pesticide can be applied to surface water unless it has an aquatic label. An exception exists if ephemeral water is present with little likelihood of the water moving offsite. Ephemeral water is surface water (i) that temporarily accumulates in shallow depressions during and following rain events, (ii) that is less than one foot deep, and (iii) that has been present less than 30 consecutive days at the time of application. This exception is does not apply if the product label has an aquatic organism toxicity statement." Rule for Isolated Wetlands In July of 2001, the Environmental Management Commission developed a rule regarding isolated wetlands in the state.

ZONING: North Carolina General Statutes 153A-340 grants zoning authority to counties. Section (B)(2) limits this authority with respect to "bona fide farm purposes." In 2006, legislation was passed that defined "bona fide farm purposes" as defined in the Agricultural Development Act which specifically include the production of trees and timber. This clarified that counties may not zone forestry operations.