



Maintaining the Forestry Exemption Under the Sedimentation Pollution Control Act

The North Carolina Sedimentation Pollution Control Act was passed in 1973. Its purpose is to prevent sediment from reaching streams by requiring the installation and maintenance of adequate sediment control measures during site-disturbing activities. The initial law provided a blanket exemption for agriculture and forestry.

In 1974, a Forest Practices Act study committee concluded that forestry was not a major contributor of sediment and recommended that voluntary Best Management Practices (BMPs) be developed and used during forestry activities. These BMPs are summarized in the publication **Forest Practices Guidelines Related to Water Quality**. The guidelines were followed voluntarily by the forest industry and forest landowners until the end of 1989.

The 1989 North Carolina legislature amended the Sedimentation Pollution Control Act. The amendment maintains the forestry exemption but only on the condition that site-disturbing forestry activities be conducted in accordance with Forest Practices Guidelines (15 NCAC 11.0101 - .0209). These guidelines have been developed by a team of forestry and sedimentation experts, reviewed at public hearings, and approved by the Secretary of Environment, Health, and Natural Resources. The amendment became effective January 1, 1990.

Forest Practices Guidelines

According to the **Forest Practices Guidelines**, nine performance standards must be met to maintain the forestry exemption. Of the nine standards, six are existing laws that have been incorporated into the guidelines. The standards are set forth in the following sections, with notation of the six existing laws.

.0201 Streamside Management Zone.

- (a) A streamside management zone (SMZ) shall be established and maintained along the margins of intermittent and perennial streams and perennial waterbodies. The SMZ shall be of sufficient width to confine within the SMZ visible sediment resulting from accelerated erosion.
- (b) Ground cover, or other means, within the SMZ shall be sufficient to restrain accelerated erosion.
- (c) 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 SMZs. When located within the SMZs, they shall have effective erosion control and sediment control structures or measures installed to restrain accelerated erosion and prevent visible sediment from entering intermittent or perennial streams or

perennial waterbodies.

.0202 Prohibition of Debris Entering Streams and Waterbodies.

Stream obstruction and the impediment of stream flow or degradation of water quality shall be prevented by keeping debris from construction, harvesting, mill site residue, and site preparation out of intermittent and perennial streams and perennial waterbodies.

[Note: This law has existed since 1975.]

.0203 Access Road and Skid Trail Stream Crossings.

Stream crossings shall be avoided when possible. Access roads and skid trails that must cross intermittent or perennial streams or perennial waterbodies shall be constructed so as to minimize the amount of sediment that enters the streams from the construction. These crossings shall be installed so that:

1. stream flow will not be obstructed or impeded;
2. no stream channel or perennial waterbody 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;
5. ground cover, or other means, sufficient to prevent visible sediment from entering intermittent and perennial streams and perennial waterbodies shall be provided within 10 working days of the 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.

[Note: This law has existed since 1978.]

.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 so as not to contravene water quality standards as adopted by the Environmental Management Commission in Sections 15 NCAC 2B

.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).

[Note: This law has existed since 1976.]

.0206 Pesticide Application.

Application of pesticides shall be limited to those labeled for that intended use and shall be used in accordance with labeling and rules adopted by the North Carolina Pesticide Board as set forth in 2 NCAC 9L

.1005-Restricted Areas-and applied in a manner to prevent adverse impacts on water quality.

[Note: This law has existed since 1976.]

.0207 Fertilizer Application.

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

[Note: This law has existed since 1976.]

.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.

[Note: This law has existed since 1976.]

.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 perennial waterbody, 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 waterbodies until the site is permanently stabilized.

Forestry Best Management Practices Manual

The **Forest Practices Guidelines** do not give specific recommendations for compliance. Rather, compliance is performance oriented. For example, streamside management zone width, road location, stream crossing location and methods, and site rehabilitation methods are not spelled out in the guidelines. The forester, landowner, logger, and contractor can prevent sedimentation in many different ways.

The **Forestry BMP Manual** helps individuals comply with the **Forest Practices Guidelines**. BMPs minimize erosion and prevent sedimentation. They must be adequate and effective to guarantee that a landowner maintains the forestry exemption under the SPCA.

Copies of the **Forestry BMP Manual** are available from the North Carolina Division of Forest Resources or your county Cooperative Extension Service Center.

Monitoring Compliance

The North Carolina Division of Forest Resources (NCFS) monitors for compliance. If a potential violation is discovered or reported, the following actions are taken:

1. NCFS conducts an on-site visit and prepares a written report. If adequate BMPs are in place, no further action is taken. In the event of noncompliance, the responsible parties are required to implement recommended BMPs to bring the site into compliance.
2. A reasonable amount of time (determined by NCFS) is given to take corrective action. If the responsible parties bring the site into compliance within that time, no further action is taken.

3. If corrective actions are not taken, the violation is referred to the appropriate regulatory and enforcement agency. At this point, the forestry exemption from the Sedimentation Pollution Control Act is lost.

Enforcement and Regulation

The Division of Land Resources (DLR) within the North Carolina Department of Environment, Health, and Natural Resources enforces the Sedimentation Pollution Control Act. Once the DLR receives written notice of the violation, the following steps are taken:

1. The site-disturbing activity may be stopped at the discretion of the DLR and a \$1,000 fine levied because an erosion and sedimentation plan has not been developed.
2. The DLR requires that a sedimentation plan be submitted and approved within 30 working days.
3. A reasonable amount of time (determined by the DLR) is given to implement approved sedimentation control practices. Usually, the required practices are more expensive than those suggested in the **Forestry BMP Manual**.
4. Fines of up to \$500 for each violation and each succeeding day of noncompliance may be levied if the party is not in compliance at the end of the time period.
5. The site is monitored until the site-disturbing activity is completed, and the site is satisfactorily restored.

Liability

Landowners, timber buyers, loggers, contractors, and others with financial or economic interests can be liable. Liable parties will be held jointly and separately responsible for compliance, penalties, and site rehabilitation in the event of a violation.

Summary

Professional forestry assistance in planning timber harvests, site preparation, and other site-disturbing forestry activities is even more important now than in the past. Landowners should include provisions in invitations to bid and in timber sale contracts that require the buyer to conduct the timber harvest in compliance with this amendment to the Sedimentation Pollution Control Act. The same applies to contractual agreements with site-preparation or timber-management contractors.

For more information, contact the local North Carolina Division of Forest Resources or your county Cooperative Extension Service Center.

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