

Since 1976, forest roads have been regulated as nonpoint sources of pollution under the federal Clean Water Act.

The U.S. Court of Appeals for the Ninth Circuit recently overturned 35 years of precedent by ruling that forest roads and associated stormwater ditches are point sources subject to National Pollution Discharge Elimination System (NPDES) permits, the same kind of permits required for factories, landfills, industrial parking lots and other confined sources of water pollution. The defendants in that suit are seeking review by the Supreme Court. The Court takes only a few cases each year.

This issue could be resolved by Congress making it clear that forest roads are to be regulated by EPA as nonpoint sources of pollution.

NPDES permit requirements would significantly impede the ability of the Forest Service and the Bureau of Land Management to manage federal forests, sell timber, repair roads and restore forests to reduce the risk of wildfires. Wildfires on unhealthy federal forests also damage adjacent private timberlands.

The Forest Service has approximately 378,000 miles of roads under its jurisdiction covering 193 million acres. In documents filed with the Court, the agency estimates that if it must obtain permits on a road-by-road-basis, it would have to obtain over 400,000 permits, a process it estimates could take more than 10 years. Even if the Forest Service can obtain programmatic permits by state, it estimates it would still take several years to obtain the necessary programmatic permits.

Federal forest roads used for timber hauling are subject to repair and maintenance requirements under timber sale contracts. This work is paid for by the timber sales that utilize the roads. Requiring expensive and time consuming permits that would be subject to citizen challenge would result in less, not more, road reconstruction and maintenance work. In the end, this would increase the amount of sediment coming from forest roads while reducing the number of jobs in our forests and mills.

Delaying public timber sales for several years through a costly NPDES permit process will threaten the already tenuous operations of sawmills and of road and stewardship contractors that provide scarce jobs to support the struggling economies of rural communities. In order for the installed milling capacity and the skilled woods workers who support it to survive to better times, it is vital that the timber supply from public lands not be further curtailed by an NPDES permit process. If this infrastructure is lost due to lack of available timber supply, it is unlikely that the investment will ever again be made in this industry and the loss of jobs will become permanent, rather than temporary or cyclical.

Environmental organizations are already filing notices of intent to sue under the Clean Water Act and protesting federal forest management activities based on the supposed need for NPDES permits. This activity will undoubtedly escalate, adding another cause of gridlock preventing forest management on federal lands.

The cost of unnecessary permits would also make U.S. mills less profitable at a time of severe economic hardship and intense international competition. This could displace U.S. manufacturing with manufacturing in more polluting countries jeopardizing both the environment and U.S. jobs.

The Silvicultural Regulatory Consistency Act would amend the Clean Water Act to exempt forest management activities from NPDES permit requirements. EPA would still regulate forest roads as nonpoint sources of pollution.

Policy recommendation:

AFRC supports the passage of the Silvicultural Regulatory Consistency Act ([S 1369](#) / [HR 2541](#)).

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The American Forest Resource Association www.amforest.org (AFRC), headquartered in Portland, Oregon, represents over 50 forest products businesses and forest landowners throughout the West. Its mission is to create a favorable operating environment for the forest products industry, ensure a reliable timber supply from public and private lands, and promote sustainable management of forests by improving federal laws, regulations, policies and decisions that determine or influence the management of all lands. For information, contact Tom Partin 503 222 9505 tpartin@amforest.org