

Chapter 2

Water Quality Regulations Effecting Forestry

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The information and recommendations contained in this chapter are not formal regulatory guidance from any federal or state regulatory agency and do not constitute a legal document.

Helpful Hints:

Representatives of service agencies often can offer technical assistance and recommendations, but may not have authority to make final determinations. That authority is held by the regulatory agency that oversees a specific rule.

NOTE: Regulations concerning activities in forested wetlands are explained in Chapter 6 and are not described here.

Part 1 -- Introduction

Several different types of federal, state, and local government regulatory programs for the protection of soil and water resources affect forest management in North Carolina. This chapter includes discussions about laws, rules, regulations, and guidance documents as well as direct quotes:

- All direct quotes from laws, regulations or guidance documents are cited according to the method described in *How To Use This Manual*.
- Guidance from regulatory agencies provides additional information on specific regulations and how to implement them. Such guidance should be followed unless a regulatory agency representative provides an exemption from that guidance.

Technical Assistance

An important purpose of this chapter is to offer background information and recommendations to assist you in meeting the requirements of federal and state regulatory programs that can effect forestry operations.

Regulatory agencies that are most frequently involved with forestry:

- N.C. Division of Energy, Mineral and Land Resources
- N.C. Division of Water Resources
- U.S. Army Corps of Engineers
- U.S. Environmental Protection Agency

Service agencies that are often involved with forestry:

- N.C. Forest Service
- USDA-Natural Resources Conservation Service
- N.C. Soil & Water Conservation Districts
- N.C. Cooperative Extension Service

Steps for Knowing the Rules

1. Read the recommendations in this manual. They are written to help you implement effective systems of BMPs and understand the regulations.
2. Discuss applicability of the BMPs for your site-specific situation, as needed, with the appropriate service agency and/or regulatory agency.
3. Check the literature and Web resources for the most recent versions or interpretations of regulations and regulatory guidance.

The rest of this chapter briefly highlights regulations that most frequently come into question on forestry operations in North Carolina. Supporting citations of these regulations are in Appendix 1.

Part 2 -- Nonpoint Source Management Programs

Watch Out!

All North Carolina surface water classifications and water quality standards apply to forestry operations - - Not just the FPG's!

State programs to control nonpoint source pollution are required by the Clean Water Act of 1987 section 319 Nonpoint Source (NPS) Management Program.

The NPS pollution program in North Carolina includes three main elements:

- 1 - Surface Water Classifications (*see sidebar and following section*)
- 2 - Surface Water Quality Standards (*see section on next page*)
- 3 - Regulations: Various rules have been and may be further instituted in an effort to manage NPS pollution so that the water quality standards are met, which maintains the use classification of a targeted waterbody. Specific NPS rules that apply to forestry in North Carolina are explained in Parts 3 and 4 of this chapter.

Surface Water Classifications

These classifications are designations that define the best uses to be protected within those waters. You may hear these called 'use classifications.'

Helpful Hints:

Any tributary that is not specifically listed in a stream classification list is classified the same as the stream to which it discharges.

Effect on Forestry: Streams, waterbodies and wetlands in North Carolina are classified in one of the designations shown in Table 2-1. All land use practices, including forestry, are held to the water quality standards for each classification developed in the NPS pollution program.

Table 2-1: Summary of N.C. Surface Water Use Classifications

Helpful Hints:

Special care should be taken in implementing BMPs in the watersheds of streams with classifications that are most sensitive to sediment inputs.

*These include:
HQW, ORW, PNA,
SA, Tr, and
WS-I through WS-V*

B	Primary recreation including swimming on frequent or organized basis
C	Secondary recreation, fishing, aquatic life, and wildlife
FWS	Future Water Supply
HQW	High Quality Waters
NSW	Nutrient Sensitive Waters
ORW	Outstanding Resource Waters
PNA	Primary Nursery Areas
SA	Saltwaters suitable for commercial shellfishing
SB	Saltwaters for primary recreation including swimming on a frequent or organized basis
SC	Saltwaters for secondary recreation, fishing, aquatic life, wildlife
Sw	Swamp waters
SWL	Coastal wetlands
Tr	Trout waters
UWL	Unique wetlands
WL	Waters that meet the state definition of wetlands
WS-I WS-II WS-III WS-IV WS-V	Water supply watershed classifications; WS-I is the most protected with the highest quality water.

Also Refer To...

The classifications and water quality standards are in 15A NCAC 02B .0100 to .0200.

The least stringent and most common of these water quality standards are those for freshwater 'Class C' waters, and are cited in Appendix 1.

Information on all North Carolina surface water classifications is available at: <http://portal.ncdenr.org/web/wq/ps/csu/swstandards>

The turbidity standard for Class C waters is cited in the Glossary.

North Carolina Surface Water Quality Standards

These standards are:

- Specific criteria for physical, chemical and biological water properties.
- Prescribed limits on the levels of various pollutants.
- Specific to each waterbody’s use-classification.
- The goals for managing the water quality of surface waters in the state.

Surface waters that have a progressively higher and better use-classification also have more stringent corresponding water quality standards. Examples include HQW; ORW; Tr; and WS-watersheds (as noted in Table 2-1).

Effect on Forestry: The performance standards in the Forest Practices Guidelines Related to Water Quality come from the water quality standards. For forestry operations, the BMPs in this manual address the principal sources of potential nonpoint source pollution noted in the water quality standards.

A Note on Forestry Compliance Inspections

The N.C. Forest Service (NCFS) handles the vast majority of forestry-related water quality compliance inspections and resolutions. However, the N.C. Division of Water Resources (NCDWR) has the authority to independently evaluate and take action on violations of the North Carolina water quality standards, through the issuance of a Notice of Violation and/or civil penalty.

- The NCDWR may take these actions in parallel, or in conjunction with, NCFS pursuit of FPG compliance on that site.
- The NCDWR may also take action independently and without prior notice, even if the FPG standards are in compliance at that time, but there is still a violation of the state’s Surface Water Quality Standards.

Two examples related to forestry activities are noted here as reference:

- 1 - A forest harvest site has all FPGs in compliance and visible sediment is contained, but high levels of turbidity are created by that forestry operation within the stream or waterbody. In this case, the NCDWR may determine that the surface water quality standards for turbidity are in violation.
- 2 - NCDWR cites a loss of best use for a stream, due to the accumulation of sediment onto the streambed as a result of a forestry operation. In this case, it is very likely that the FPGs also are not in compliance since visible sediment reached the stream.

Coastal Nonpoint Source Pollution Management Program

Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) established the Coastal Nonpoint Pollution Control Program. The CZARA requires coastal states with approved coastal zone management programs to address nonpoint source pollution that impacts coastal waters.

The North Carolina Coastal Nonpoint Source Program applies within the 20 coastal zone “CAMA” counties described in Table 6-1 in Chapter 6.

Effect on Forestry: The FPGs and the BMPs described in this Manual encompass the forestry management measures described in the 1993 USEPA guidance document for coastal nonpoint source pollution, referenced as: *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters. USEPA Publication Number 840-B-92-002. January 1993.*

Part 3 -- Statewide Regulations

Sedimentation Pollution Control Act

Responsible Agency:
-- NCDEMLR
Contact:
-- Land Quality Section
Web site:
<http://portal.ncdenr.org/web/lr/erosion>
Defining law:
-- NCGS Ch113A, Art4, par. 50-52, Sedimentation Pollution Control Act of 1973

The purpose of the North Carolina Sedimentation Pollution Control Act of 1973 (SPCA) is to control the sedimentation pollution of surface waters of the state. The regulatory program specified by the SPCA is called the North Carolina Erosion and Sediment Control Program. The SPCA requires that an erosion and sediment control plan be approved by the State for qualifying land-disturbing activities.

Effect on Forestry: The provisions of the SPCA may be required on a forestry site if the activity is deemed to be in non-compliance with the FPGs upon a referral by NCFS to NCDEMLR (discussed below).

Forest Practices Guidelines Related to Water Quality

FPG

Responsible Agency:
-- NCFS (delegated)
Contact:
-- Water Quality & Wetlands Staff Forester
Web site:
www.ncforestservice.gov
Defining Rule:
-- 02 NCAC 60C .0101 through .0209

The FPGs became effective Jan. 1, 1990.

The Forest Practices Guidelines Related to Water Quality (FPGs) are performance standards for forestry operations that, if followed, provide for exemption of those operations from the permitting requirements of the SPCA. This manual provides recommendations of BMPs that may be used to help forestry operations remain in compliance with the FPG performance standards.

Effect on Forestry: As long as the FPG performance standards are met, the operation remains exempt from the requirements of the SPCA that relate to land-disturbing activities.

The N.C. Forest Service (NCFS) is delegated the authority to monitor compliance of the FPGs on forestry operations and assist you to remain in compliance by providing technical service assistance and site inspections. However, if enforcement action is needed, NCFS staff must make a referral to the appropriate state regulatory agency.

The topics covered by the FPGs are listed below. The full rule citation is in Appendix 1: (*The administrative code is 02 NCAC 60C .0100 to .0209*)

- .0201 Streamside Management Zone
- .0202 Prohibition of Debris Entering Streams and Waterbodies
- .0203 Access Road And Skid Trail Stream Crossings
- .0204 Access Road Entrances
- .0205 Prohibition of Waste Entering Streams, Waterbodies and Groundwater
- .0206 Pesticide Application
- .0207 Fertilizer Application
- .0208 Stream Temperature
- .0209 Rehabilitation of Project Site

FPG

For example, in this manual "FPG .0201" refers to that portion of the administrative code.

History of FPGs

Prior to a 1989 amendment to the SPCA, land disturbing forestry activities were exempt from the permitting requirements of the SPCA that apply to land development and construction activities. The amendment:

1. Provided for the development and implementation of the FPGs.
2. Specified that land disturbing forestry activities not conducted in accordance with the FPGs would be subject to the provisions of the SPCA.

Current FPG Rules

Implemented on January 1, 1990, the FPGs are administrative rules that provide performance criteria for the protection of water quality during land-disturbing activities related to the production, harvesting and utilization of forest resources in North Carolina.

FPGs are regulations defined under N.C. Administrative Code, but the BMP methods of complying with them are voluntary.

Did You Know?

The NCFS conducts flight missions on a routine basis.

These flights help to:

- Support wildfire location and suppression.
- Identify potential water quality problems.
- Locate harvest sites.
- Assess forest insect & health conditions.

Such flights increase field work efficiency, allowing field staff to locate forestry sites while they are still ongoing. Flights also provide assurances that NCFS is inspecting some of those forestry sites that may otherwise be difficult to find.

Flights increase our confidence that the pool of inspected sites is an accurate sample of the number and types of forestry operations across the state.

NCFS attempts to conduct flights for water quality purposes on a monthly basis or as fire control, budget, aircraft or other constraints allow.

Monitoring Compliance of the FPGs

N.C. Forest Service personnel routinely inspect timber harvesting, site preparation and other forest management activities on sites across the state for compliance with the nine performance standards of the FPGs. Sites selected for compliance inspections are identified in several different ways, including:

- Ongoing or recently completed forestry activities noted by NCFS staff.
- Aerial location using NCFS aircraft (*see sidebar*).
- As they coincide with the development of forest management plans.
- Technical evaluation for approval of state or federal cost-share assistance.
- As a result of citizen complaints.
- At the request of foresters, timber buyers, loggers or landowners.

For any forest management project for which the landowner applies for state or federal cost share assistance, the NCFS is required to verify that the forestry practices are carried out in an environmentally sound manner.

FPG Inspection and Follow-Up Process

A typical inspection of a logging operation or other site disturbing activity is conducted in the presence of the identified responsible party (forester, contractor, logger, foreman, timber buyer, etc.) when possible.

NCFS personnel will attempt to conduct FPG exams while the operator is actively working the site.

Such face-to-face meetings on active sites usually lead to better communication, faster turnaround on bringing tracts back into FPG compliance, and the benefit of identifying and avoiding potential problems before they occur.

Following examination of the active job, an NCFS representative also attempts to follow up with a closeout FPG exam after the operation has ended.

In addition to the rest of the FPGs, a heavy emphasis during this final exam focuses on whether disturbed areas on the site that might affect water quality have been permanently stabilized.

Response to FPG Violations

When FPG violations are noted during inspections, the responsible parties are encouraged to implement appropriate onsite corrective measures using BMPs or other effective means. Typically, there is some degree of education and/or technical advice provided by the agency or person performing the inspection.

Specific violations are documented and shared with the responsible parties as needed (logger, timber buyer, consultant, landowners, etc.) so corrective actions can be made. Original documents are sent to that responsible party who was deemed to be in ‘operational control’ at the time of the violation. Usually there is a determined period of time provided for the site to be brought into compliance with the FPGs.

FPG Compliance Re-Inspections

Upon a re-inspection after the initial period of time has elapsed, there are usually one of three courses of action taken by the NCFS:

1 - Temporary Compliance: A tract may be determined to be in ‘Temporary FPG Compliance’ if the necessary rehabilitation work has been done, but the site still needs additional time for soil to stabilize and/or groundcover to become established.

In such cases, a new follow-up date is established. Ideally the follow-up visit(s) will confirm that the site has stabilized and there are no water quality problems. Once this is confirmed, the site can be put into ‘Permanent FPG Compliance.’

2 - Permanent Compliance: A tract may be determined as in ‘Permanent FPG Compliance’ during the initial follow-up inspection if there are no areas of the tract that require additional time for adequate stabilization to occur. Generally, once the site is determined to be in ‘Permanent FPG Compliance’ within the prescribed timeframe, no further action is taken.

NOTE: Once a site is in ‘Permanent Compliance’ future water quality problems usually become the landowner’s responsibility to correct.

3 - Additional Follow-Up: More time may be provided to make corrective actions if, upon the first follow-up visit, it is deemed that extenuating circumstances led to the lack of compliance. In these cases, the responsible parties must show that they made a good faith effort on their first attempt at corrective actions. In this case, a new compliance deadline is established.

Helpful Hints:

You should closely monitor your site if it is in temporary compliance, to make sure it doesn’t fall back into a non-compliance condition.

If compliance with the FPGs is proving difficult to attain due to bonafide reasons, it is critical that you communicate your situation to the NCFS representative who is overseeing the FPG case.

Such communication is vital so that all parties are working together towards a resolution that benefits water quality in a timely and reasonable manner.

Referrals for Enforcement

If FPG compliance fails to occur on the tract within the established timeframe, then the violation will be referred to the appropriate state agency for potential enforcement action. The four most common examples of referrals are:

1 - Tracts that have uncorrected sedimentation violations.

- These are referred to the N.C. Div. of Energy, Mineral and Land Resources (NCDEMLR) for assessment and potential enforcement.
- At this point, that forestry site loses its exemption from the full requirements of the Sedimentation Pollution Control Act (SPCA).
- To achieve compliance with SPCA requirements, the responsible parties will be required to submit a sediment and erosion control plan, have it approved by NCDEMLR, and implement the approved plan.

2 - Tracts that have uncorrected water quality violations other than sedimentation.

- This may include petroleum spills or stream temperature violations.
- These situations are referred to the N.C. Division of Water Resources (NCDWR) for further assessment and potential regulatory action.
- The forestry operation does not lose its SPCA exemption for these types of referrals. However, actions must be taken to correct the violations and assure that the water quality resources are protected.

3 - Tracts that have stream or ditch obstruction violations.

- If not corrected within the established deadline, these sites are referred to the NCFS Law Enforcement Unit. The law enforcement personnel will take the necessary actions to bring the responsible party into compliance.
- If compliance is still not achieved, the law enforcement personnel will begin the necessary deliberations with the county district attorney for prosecution as a crime, according to N.C. General Statutes.

4 - Observed potential water quality violations not related to FPGs.

- There are situations when a NCFS representative may observe what is perceived to be a potential violation of a state or federal water quality rule or law that is not covered by FPGs or state laws.
- The NCFS is required to document and communicate these observations according to protocols described by the agency's policy.
- The two most common examples of such situations include NCDWR riverbasin and watershed 'Riparian Buffer Rules' and U.S. Army Corps of Engineers' areas of jurisdiction within wetlands.

Stream and Ditch Obstructions

There are two North Carolina General Statutes that relate to obstructions in streams and/or ditches, and each applies to forestry sites:

North Carolina G.S. §77-13 Obstructing streams a misdemeanor

North Carolina G.S. §77-14 Obstructions in streams and drainage ditches

Did You Know?

NCDEMLR staff may issue a "Notice of Violation" (NOV) for sedimentation problems.

Daily civil penalties may be levied until the tract is brought into compliance with the SPCA.

NCDWR staff may levy daily civil penalties until corrective action is satisfactorily completed on water-quality related violations.

Responsible Agency:

-- NCFS

Contact:

-- Water Quality &
Wetlands Staff Forester
-- Chief Investigator,
Law Enforcement

Web site:www.ncforestservice.gov**Defining Rule:**

NC General Statutes
(GS) §77-13 and §77-14

Effect on Forestry: Each state law specifies the conditions under which the law applies, and what penalties may be levied if no corrective action is taken. It is important to recognize that these two General Statutes are different from the performance standard defined under FPG .0202 *Prohibition of Debris Entering Streams and Waterbodies*. However, NCFS field staff may cite a violation of either a FPG or appropriate statute law that best applies to your site conditions, depending upon the circumstances.

A Note on Streams and Ditches in North Carolina

Historical land-use activities in North Carolina have resulted in formerly natural looking streams now appearing with characteristics that are more similar to a ditch than a stream.

However, just because a stream looks like a ditch or canal, it still requires the same level of protection as a natural looking stream.

If you have doubts about the condition and status of a stream or ditch on your forestry site, you can seek assistance from the NCFS or other qualified natural resources professionals.

General Development Buffer Rule

The SPCA defines rules for erosion and sediment control during land disturbing activities related to land development and construction. Contained in these rules is a requirement for maintaining a buffer along the margins of lakes and natural watercourses during land clearing and grading for development. A portion of the rule is cited from the SPCA, as reference: *<start citation>* “No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity.” *<end citation>*

Responsible Agency:

-- NCDEMLR (EMC)

Contact:

-- Land Quality Section

Web site:

[http://portal.ncdenr.org/
web/lr/erosion](http://portal.ncdenr.org/web/lr/erosion)

Defining Rule:

Part of the SPCA,
NC GS 113A-57(1)

Effect on Forestry: As long as the forestry activities are in compliance with the FPGs, the general development buffer rules do not apply to forestry operations. However, if a site is designated as noncompliance with the FPGs, then it may be subject to this buffer rule.

Pesticide Use and Handling

There are several state laws and rules dealing with pesticide use, handling, licensing and application.

Effect on Forestry: Consult with a licensed pesticide applicator if you have questions about how to work with, or what requirements are needed, for pesticide use on forestry sites. The extensive rules are beyond the scope of this manual for discussion. Two of the more notable portions of these laws and rules that deal with forestry are noted here:

Responsible Agency:

-- NC Department of
Agriculture & Consumer
Services (NC-DACS)

Contact:

-- Pesticide Section,
Food and Drug Prot.Div.

Web site:

[www.ncagr.gov/SPCAP/
pesticides/index.htm](http://www.ncagr.gov/SPCAP/pesticides/index.htm)

Defining Rule:

NC GS §143-434 through
§143-470.1

Pesticide applicator licensing: (NC G.S. §143-452(a)) *<start citation>*
“No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the North Carolina Pesticide Board.” *<end citation>*

Aerial application of pesticides: (02 NCAC 09L .1001 - .1009)
These extensive Rules include sections on general recommendations, drift control, restricted areas and notification requirements, among other items.

Spills of Pesticides, Petroleum and Other Hazardous Substances

North Carolina law requires that discharges of pesticides, petroleum products or other hazardous substances to any stream or waterbody or land surface in close proximity to a stream or waterbody in the state be removed or otherwise appropriately treated and that such spills be reported to the appropriate state agency.

Effect on Forestry: There are specific rules on when you must notify the state of a fluid spill. These rules are explained, in detail, on the first page of *Chapter 8 - Equipment Fluids and Solid Waste* in this manual.

Definitions and designation of hazardous substances and quantities of hazardous substances that are deemed harmful to the environment follow the guidelines established by the U.S. Environmental Protection Agency (*see N.C. G.S. 21A, 143-215.77A.*) Applicable sections of the statute are included in Appendix 1.

Part 4 -- Regional and Local Rules

Riverbasin and Watershed ‘Riparian Buffer Rules’

In certain river basins and watersheds of North Carolina, there are specific rules that overlay the already-mandated requirements of the FPGs.

These ‘riparian buffer rules’, as they are referred to in this manual, are established by the N.C. Environmental Management Commission and are administered through the N.C. Division of Water Resources (NCDWR). In some cases, you may hear these rules called the ‘DWR buffer rules.’

Effect on Forestry: The requirements of these rules are more specific than those of the FPGs, and in those watersheds/basins where the rules apply, they must be followed in addition to the FPGs. Generally, these riparian buffer rules establish stricter limits on what kind of forestry operations can occur within the designated buffer zone(s).

Responsible Agency:

-- NCDENR-DWR

Contact:

-- Surface Water
Protection Section

Web site:

[http://portal.ncdenr.org/
web/wq/swp](http://portal.ncdenr.org/web/wq/swp)

Defining Rule:

NC G.S. Art.21A §143-
215.75 to 215.85A

Responsible Agency:

-- NCDWR (EMC)

Contact:

-- DWR Nonpoint
Source Planning Unit

Web site:

[http://portal.ncdenr.org/
web/wq/swp/ws/401/
riparianbuffers/rules](http://portal.ncdenr.org/web/wq/swp/ws/401/riparianbuffers/rules)

Defining Rules:

-- Portions of 15A NCAC
02B .0200-series

A Note on Stream Identification, Definition and Determination

The stream identification process and definitions used in the ‘riparian buffer rules’ are different from how streams are defined under the FPGs. Be aware of this difference and consult the rules citations or a professional who is familiar with these rules for help if needed.

Stream Identification for ‘riparian buffer rules’

Each riparian buffer rule describes the types of streams and waterbodies to which the rule applies, as well as how each is identified. Identification methods may include consulting topographic maps and soil surveys. Any person can follow the descriptions to assess if the rule applies to the site.

Stream Determination for ‘riparian buffer rules’

If there is a question as to whether or not a rule applies to a specific stream or waterbody, only those individuals certified by the NCDWQ can provide the stream determination for these purposes (often known as ‘stream calls.’)

- Stream determinations may include the origin, location, and type of stream or waterbody, and requires an extensive on-site inspection.
- While certain staff of NCFS and individual N.C. Registered Foresters may be certified to make these ‘stream calls’, the NCDWR reserves the authority to make the final determination on any site in the state.

Watch Out!

There may be future buffer rules which could impact forestry operations within certain river basins or watersheds. Stay informed on new rules in your operating area.

At the time of this manual’s 2015 fourth printing, there are ‘riparian buffer rules’ in six North Carolina river basins or watersheds, and each of these rules was under review for possible changes. Refer to the actual rule code and the NCFS *Forestry Leaflet* for each respective rule to determine if the rule applies to your site and what conditions must be met in order to comply with the rule.

Remember: The stream definitions in these rules are different from the ones used in the FPGs. Consult the specific rules citation in Appendix 1.

Catawba River and Mainstem Lakes: Rule Code 15A NCAC 02B .0243.
Forestry Leaflet #WQ-10

Goose Creek Watershed: Rule Code 15A NCAC 02B .0600 to .0609.
Forestry Leaflet #WQ-13

Jordan Lake Watershed: Rule Code 15A NCAC 02B .0267.
Forestry Leaflet #WQ-14

Neuse River basin: Rule Code 15A NCAC 02B .0233.
Forestry Leaflet #WQ-11

Randleman Lake Watershed: Rule Code 15A NCAC 02B .0250
Forestry Leaflet #WQ12

Tar-Pamlico River basin: Rule Code 15A NCAC 02B .0259.
Forestry Leaflet #WQ-11

Water Supply Watershed Rules

In those watersheds classified as ‘water supply’, local governments are required to develop ordinances to protect the water quality of the watershed.

Effect on Forestry: These rules do not apply to forestry operations in North Carolina. As a reference, excerpts from the governing General Statutes and Administrative Code that provide this exemption are cited below. It is unclear as to whether these rules would apply retroactively if your forestry site was deemed in noncompliance with the FPGs.

G.S. §143-214.5 (d1). Water supply watershed protection *<start citation>*

“A local ordinance adopted to implement the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities shall be no more restrictive than those adopted by the Commission. In adopting minimum statewide water supply watershed management requirements applicable to agriculture activities, the Commission shall consider the policy regarding agricultural nonpoint source discharges set out in subsection (a) of this section. The Commission may by rule designate another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities. If the Commission designates another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities, management requirements adopted by local governments shall not apply to such activities.” *<end citation>*

<start citation>

15A NCAC 02B .0104 (v) CONSIDERATIONS / ASSIGNING / IMPLEMENTING WATER SUPPLY CLASSIFICATIONS

“Silviculture activities are subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15A NCAC 1I .0101 - .0209). The Division of Forest Resources is the designated management agency responsible for implementing the provisions of the rules in 15A NCAC 2B .0200 pertaining to silviculture activities.” *<end citation>*

Trout Waters Buffer Rules

This rule applies to development activities adjacent to streams and waterbodies and restricts timber harvesting that is related to development. This so-called ‘trout buffer rule’ is a requirement contained in the SPCA of 1973 and mandates a minimum 25 foot undisturbed vegetative zone along waterbodies classified as Trout Waters (Tr) by the EMC.

Effect on Forestry: As long as the forestry activities are in compliance with the FPGs, these ‘Trout Waters Buffer Rules’ do not apply to forestry operations. However, if a site is designated as noncompliance with the FPGs, then it may be subject to these special buffer rules.

Helpful Hints:

In this citation, the term ‘Commission’ refers to the N.C. Environmental Management Commission.

Responsible Agency:

-- NCDEMLR

Contact:

-- Land Quality Section

Web site:

<http://portal.ncdenr.org/web/lr/land-quality>

Defining Rule:

Part of the SPCA,
NC GS 113A-57(1)

A Note on Different “Trout Waters” Designations

The Environmental Management Commission / Division of Water Resources Trout Waters (Tr) classification is not the same as the N.C. Wildlife Resources Commission (NCWRC) trout waters designation.

Helpful Hints:

The NCWRC trout waters are denoted by on-site signs and are generally a subset of the ‘Tr’ classifications.

NCWRC regulations are found at www.ncwildlife.org

Trout Waters classified by the EMC / DWR are mountain streams that are cool, ‘High Quality Waters’ that are capable of supporting trout populations and are protected with the ‘Tr’ classification to protect that habitat.

The NCWRC Designated Public Mountain Trout Waters are streams with fishable trout populations, are managed or protected to maintain a fishable trout population and to which NCWRC trout fishing regulations apply.

Local Government Ordinances

In recent years, there has been an increasing interest from local governments to enact ordinances, or zoning laws, that impose additional limits on forestry operations.

Did You Know?

SB681 is commonly referred to as the ‘Right to Practice Forestry’ bill.

Refer to “Woodland Owner Note No.41 - Practicing Forestry Under Local Regulations”: www.ces.ncsu.edu/forestry/pdf/WON/won41.pdf

Effect on Forestry: With the 2005 enactment of North Carolina Session Law 2005-447 Senate Bill SB681 *An Act To Clarify The Role Of Counties And Cities In Regulating Certain Forestry Activities*, forestry activities should generally remain exempt from local ordinances. The Session Law bill is cited in Appendix 1, and describes when forestry activities are exempt.

Local governments retain their ability to exercise planning and zoning authority, and there may be cases where local zoning laws could affect forestry. This zoning authority typically extends beyond the city’s actual city limits into its extra-territorial jurisdiction, or ETJ. In some cases, a town or city ETJ can extend well past the built-up areas, and out into rural, undeveloped areas.

Temporary Driveway Access Permit Exemption

Effective with Session Law 2013-265:

Forestry operations and silviculture operations, including the harvesting of timber, and other related management activities that require temporary access from a property to a State road shall be exempt from the temporary driveway permit process of the NCDOT for State-maintained roads, except for controlled access highways, if the operator of the temporary driveway has attended an educational course on timbering access and obtained a safety certification. Driveway access points covered by this section shall be temporary and shall be removed upon the earlier of six months or the end of forestry or silviculture operations on the property.