

# Private Forests and Water Quality Q&A

## How do forests benefit water quality?

Trees help filter sediment and nutrients from water runoff before it enters streams, lakes, and other water bodies. This is why streamside buffers are a universal component of the best management practices (BMPs) and are a key element of responsible forest management. In the U.S., 53% of surface water is filtered naturally through forests.

## How are forestry operations regulated to maintain water quality?

Since the passage of the Clean Water Act (CWA), the U.S. Environmental Protection Agency (EPA) has contended that the most effective way to ensure forestry activities maintain water quality is to treat them as nonpoint sources regulated through best management practices (BMPs) by the states rather than through federal permits. EPA was right. After 35 years, forestry adversely affects water quality in just ½ of 1 percent of the nation's river and stream miles.

## What types of activities are regulated to protect water quality?

State BMPs, tailored to the specific conditions and needs within a state or region, address such things as harvesting, planting, and roads. Studies show that these widely used practices are highly effective at protecting water quality and help maintain the U.S. as a world leader in sustainable forest management.

## What is the difference between a point source and a nonpoint source in the CWA?

Point sources are typically more confined and identifiable sources (e.g., a waste discharge from a factory or a water treatment facility) while a nonpoint source is diffused, such as runoff from land uses, like managed forests, that cover a landscape. Point sources require CWA permits administered by the EPA directly or by states with delegated EPA authority. Nonpoint sources are regulated through best management practices and related state laws, regulations, and guidance more appropriately applied to large areas and land uses. This system enables permit regulators to focus limited resources on specific activities with the greatest impact on water quality.

## How does a recent Ninth Circuit decision affect forestry activities?

The Ninth Circuit recently overturned an Oregon court and 35 years of precedent by ruling that forest roads and associated ditches are point sources subject to the same kinds of permits required for factories, landfills, and industrial parking lots.

EPA has not vigorously defended its longstanding rules and has signaled that it may apply the Ninth Circuit decision nationally either directly or by making permits “available” to potentially “vulnerable” parties outside the 9<sup>th</sup> Circuit.

## **How does the 9<sup>th</sup> Circuit decision affect U.S. jobs supported by private forests?**

Forest owners depend on an economic return from their forests to afford sound, long-term forest management that supports 2.5 million jobs nationwide. Unnecessary new regulatory and legal costs make forestry uneconomic and ultimately force forests into other non-forest uses. Increased wood costs make U.S wood processing mills less profitable at a time of severe economic hardship and intense international pressure. This jeopardizes both the jobs in the forest and the mills as U.S manufacturing is replaced by lower cost manufacturing in other countries.

## **How do the citizen lawsuit provisions of the CWA threaten the conservation of private forests to other land uses?**

The federal permit provisions of the CWA allow individual citizens and special interests groups to file lawsuits alleging CWA violations for activities requiring CWA permits. When applied to private forest roads, these provisions allow lawsuits against the EPA to seek more onerous paperwork and process requirements for permits or more onerous restrictions on forest management activities, like timber harvests, that use forest roads.

The citizen lawsuit provisions also enable individual citizens and interest groups to sue forest owners directly over alleged permit violations, including paperwork and process violations or the failure to have a permit, even when the forest owner is operating in good faith. Plaintiffs in such lawsuits typically ask the courts to stop forest management activities, impose more onerous permit requirements, and require forest owners to pay civil penalties and attorney fees. Because they are easy to file, citizen lawsuits invite a costly ongoing cycle of litigation adding considerable uncertainty and cost to forest management. This in turn makes private forest ownership significantly less economic, drives the conversion of private forests to non-forest uses, and eliminates the jobs that private forests sustain.

## **Why is legislation needed?**

Congress must affirm in legislation the EPA's 35 year treatment of forestry as a nonpoint source under the Clean Water Act to overcome the Ninth Circuit's decision and provide certainty for the future. Supreme Court review of the Ninth Circuit's decision is uncertain. EPA can and should clarify in its stormwater regulations that forestry activities do not trigger point source permit requirements for forest roads, but such regulations will be subject to litigation, which will introduce further uncertainty. Forest owners need regulatory and legal certainty to make the investments that will keep working forests as forests. Legislation will provide this certainty and thereby promote sustainable forestry for the long-term.