

The “Forestry Exemption” and FPGs:

What It Means and Does Not Mean.

The FPGs are 9 statewide performance standards for protecting water quality during forestry operations. The rules were enacted in 1990, revised slightly and re-adopted in 2018.

The [NCFS Forestry Leaflet #WQ-1](#) outlines the FPGs.

The North Carolina [Sedimentation Pollution Control Act](#) (SPCA) of 1973 is the state law that requires land-disturbing activities to prevent and minimize sediment pollution into streams and waterbodies. The Act requires, in most situations, that the land disturbance must implement erosion control measures that are described in an approved erosion & sedimentation control plan. That plan must be approved by either the N.C. DEQ Division of Energy, Mineral and Land Resources; or a local delegated government program.

However, for forestry-related, land-disturbing activities, an erosion & sedimentation control plan is not required, as long as the operation complies with the FPGs. **That’s where the phrase “forestry exemption” comes from: It is an exemption from erosion control plan permitting, not an exemption from implementing protective measures or meeting other water quality standards.**

The FPGs are the baseline requirements to comply with the SPCA law. And, “forestry-related” means that trees will be planted or allowed to grow back after an area is logged.

- **Note: If trees are being cut as the first step for a land development activity, then an approved erosion & sedimentation control plan is required before logging can begin.**

Forestry BMPs are tools-in-the-toolbox that have shown to be effective in achieving compliance with the FPGs and meeting other water-quality objectives (such as habitat conservation) when conducting forestry/silviculture activities.

Limits on the FPG “Forestry Exemption”

The forestry exemption does not give forestry activities a ‘free pass’. The exemption relieves the owner and operator from having to prepare an erosion control plan, submit the plan, wait for approval and process the paperwork (and avoid having to pay the \$100/acre plan review fee!); and also avoid having to record rainfall on-site and self-report a noncompliance.

There are other state water quality standards that are still required on forestry jobs and the **FPGs do not provide an exemption from them**. Three situations commonly seen on forestry jobs are described below.

(1) Turbidity: This is ‘cloudy’ or ‘muddy’ water caused by microscopic-sized particles that are suspended in solution. There are numeric limits for turbidity in different types of waterbodies. The FPGs do not provide an exemption from meeting the turbidity standards. However, when land-disturbing activities use BMPs, then the turbidity standard may be deemed in-compliance if the numeric limit is exceeded during the activity. See the discussion about turbidity in the Forestry BMP Manual [Appendix 10, page A-10-7](#). This is an example of when using appropriate BMPs can help achieve compliance with a rule.

(2) Loss of Use: The state’s [water quality standards](#) protect streams and waterbodies for their beneficial use, including aquatic habitat (rule [15A NCAC 02B .0211, part 1](#)). If a forestry operation deposits sediment into a stream or waterbody, then it may impair its use by aquatic life. The N.C. DEQ Division of Water Resources (DWR) can issue a Notice of Violation (NOV) and require that the deposited sediment be removed by hand.

- **Note: The DWR can issue a NOV that is separate from the NCFS issuing a FPG compliance notice; they are different notices for different rule standards.**

[continued on next page]

(3) Petroleum Discharge: This includes leaks, spills or dumping petroleum products (diesel fuel, motor oil, hydraulic fluid, bar lube oil, grease tubes, etc.). State law requires that **any discharge** of petroleum into the soil immediately be removed and disposed at a proper disposal site.

If the petroleum discharge meets **any of the following three triggers**, then the owner or operator is required to notify N.C. DEQ within 24 hours, if it:

- ✓ Is 25 gallons or more.
- ✓ Causes a sheen on surface water.
- ✓ Is located within 100 feet of a surface water.

You can read more about this in the [BMP Manual, Chapter 9, Part 2 \(page 105\)](#). Disposal sites can be found at this website, <http://www.p2pays.org/dmrm/start.aspx>, also in the [BMP Manual, Appendix 6](#).

State Riparian Buffer Rules

There are 6 river basins and watersheds that have special buffer rules along designated streams and waterbodies. **These buffer rules are in-addition-to the FPGs.** Review the [NCFS Forestry Leaflets WQ-10, WQ-11 and WQ-12](#) to learn about the *Forest Harvest Requirements* of these buffer rules.

- **Note: The DWR can issue a buffer rule Notice of Violation that is separate from the NCFS issuing a FPG compliance notice; they are different notices for different rule standards.**

Threatened & Endangered Species 4(d)-Rules

There are federal rules to protect certain aquatic species listed as Threatened under the Endangered Species Act. Those 4(d)-Rules include requirements to protect waterways where the species occurs. While the FPGs **do not** provide an exemption from the 4(d)-Rules, the requirements and wording are very similar in some cases. Review the information leaflets about these rules on the [Water Quality Regulations](#) web page (scroll all the way to the bottom of that page).

Stream Crossings

Generally speaking, federal or state permits should not be required to install or replace a stream crossing that is intended for silvicultural/forestry/timber purposes. However, those permit exemptions come with required conditions, outlined in 15 federal mandatory BMPs. Those 15 requirements are for roads and skid trails in wetlands **and also** when crossing any "water of the U.S." which includes Intermittent and Perennial streams. The 15 BMPs are in the [BMP Manual, Chapter 8, Part 6 \(page 95\)](#).

Also, FPG rule .0203 requires that effective erosion & sedimentation control measures be installed at skid trail or access road stream crossings. The FPGs are state requirements and are separate from the 15 federal required BMPs, but both sets of rules must be followed.

Bottomline

The FPGs are baseline requirements that can prevent/minimize sediment pollution as required by the state's SPCA law. The exemptions provided by the FPGs are limited, and additional protective measures may be needed to comply with federal or state water quality standards.

Contact a [NCFS Water Quality Forester](#) for assistance in pre-harvest planning, training for your logging crew, identifying a questionable stream or waterway, and questions about FPG inspections.