

# Silviculture Regulatory Consistency Act

## Background:

- The 1972 Clean Water Act defines two sources of water pollution:
  - Point sources (e.g. waste discharge from a factory or a water treatment facility) require federal National Pollutant Discharge System (NPDES) permits administered directly by the EPA or states with delegated EPA authority.
  - Nonpoint sources are diffused sources that cover larger areas, such as rainwater runoff from managed forests, and are regulated through best management practices (BMPs) and related State laws, regulations and guidance.
- In 1976, EPA defined sources in forest management, including forest roads, as “nonpoint” to be addressed by the States through BMPs. This regulation, known as the “silviculture rule,” recognized that responsible management of a working forest requires a variety of BMP approaches to address water runoff.
- In the recent *NEDC v. Brown* decision, the 9th Circuit Court of Appeals ruled that the measures used to manage stormwater runoff from forest roads are “point sources” and therefore subject to NPDES permits under the Clean Water Act. The court declared that EPA’s definition of these roads a “nonpoint” source best regulated under state-adopted BMPs was contrary to the Clean Water Act.

## The Silviculture Regulatory Consistency Act:

- The bill codifies the EPA silviculture rule by amending the Clean Water Act to exempt discharges from the listed forest management activities, including forest roads, from permits under the National Pollution Discharge Elimination System (NPDES). It does not overturn any EPA policies or rules.
- The bill restores the EPA regulation and intent by:
  - Amending the Clean Water Act to specify that the activities listed in the EPA silviculture rule do not require a permit under section 402 of the Clean Water Act. Section 402 establishes the NPDES permit program.
  - Clarifying that even if these are considered discharges, no permit is required. Since the EPA regulation defines these activities as nonpoint sources, they will remain subject to best management practice programs.
  - Clarifying that use of a forest road does not require a permit. While the EPA definition specifies road construction and maintenance, the lawsuit decided by the Ninth Circuit focused on use of the road and named four companies using the road as defendants in addition to the Oregon state agencies that own the road.
  - Ensuring that forest road runoff managed through control measures such as ditches and culverts does not require a permit. Questions were raised in the lawsuit that the word “natural” in the silviculture rule meant that managed runoff was not included in the nonpoint definition. In fact, EPA’s original definition merely referred to runoff caused by precipitation and “natural runoff” was added in a later reorganization. To avoid future confusion, the bill refers only to runoff.
  - Maintaining the clarification in the EPA silviculture rule that this only applies to the NPDES permit program and does not affect any of the provisions of the dredged and fill permit program under section 404 of the Clean Water Act.