

Wild Virginia
108 5th St SE, Charlottesville, VA 22902

February 12, 2016

Via EPA's Rulemaking Docket, [http:// www.regulations.gov](http://www.regulations.gov).

Mr. Prasad Chumble
EPA Headquarters
Office of Wastewater Management
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Docket No. EPA–HQ–OW–2015–0668; comments to EPA on possible regulatory approaches to adopt a national regulatory program to address water quality impacts from forest roads.

Dear Mr. Chumble:

I submit these comments on behalf of Wild Virginia, in response to the referenced public notice. Our organization is a non-profit corporation dedicated to protecting the ecological health of Virginia's National Forests and preserving the rights of the public to use the Forests for purposes that are consistent with ecological protection. We represent hundreds of members and volunteers who use the George Washington and Jefferson National Forests on a regular basis and our organization conducts educational and recreational programs on the Forest. Both Wild Virginia and individual members have ongoing interests directly related to and affected by the actions being considered by the Environmental Protection Agency ("EPA") in relation to water quality impacts from forest roads.

Thank you for the opportunity to comment on the need for the U.S. Environmental Protection Agency (EPA) to regulate stormwater discharges from forest roads to protect water quality. This letter is Wild Virginia's response to the Federal Register notices of November 10, 2015 (80 Fed. Reg. 69653) and December 17, 2015 (80 Fed. Reg. 78728). Please respond to the points made in these comments in writing and inform us about any actions EPA takes in response to this round of public comments.

In addition to these comments to the referenced docket, this letter also constitutes a Petition for Rulemaking. By this document, we petition the Administrator of the

Environmental Protection Agency to prepare and advertise for adoption regulations that will effectively control pollutant discharges and pollution impacts from forest roads.

Such a program must include provisions to: 1) set minimum levels of pollution control for the construction, repair, and maintenance of all “forest roads;” 2) ensure compliance with state water quality standards; and 3) ensure that sufficient monitoring and enforcement programs are in place to make sure that both minimum pollution controls and measures necessary to uphold water quality standards are in place and are effective.

Though we appreciate the EPA’s efforts to gather information and opinions on this issue, the time for gathering information and continued deliberation as to whether EPA should act is over. The time to propose a regulatory system that fulfills the EPA’s obligations under the Clean Water Act is here.

Water Quality Impairment from Forest Roads

EPA is authorized to regulate forest road pollution sections 402(p)(5) and (6) of the Clean Water Act, 33 U.S.C. §§ 1342(p)(5) & (6). Section 402(p)(6) requires EPA to issue regulations that “designate stormwater discharges ... to be regulated to protect water quality and [to] establish a comprehensive program to regulate such designated sources.” 33 U.S.C. § 1342(p)(6); *see also* 33 U.S.C. § 1342(p)(5)(C). We maintain that the EPA has not only the authority to adopt and implement regulations for forest roads, it has an obligation to do so.

The proof that forest roads currently impair water bodies and that they have done so throughout the period since the Clean Water Act was adopted in 1972 is extensive and unassailable. This is true despite the presence of both regulatory and non-regulatory programs, such as those discussed in the notice. A thorough recitation of such evidence, with references to the scientific literature, is already entered into the record for this docket on behalf of Northwest Environmental Defense Center and other groups.¹ We wish to incorporate those comments by reference herein, to the extent they are consistent with our assertions.

In addition, EPA’s own documents admit that “[s]tormwater discharges from logging roads, especially improperly constructed or maintained roads, may introduce significant amounts of sediment and other pollutants into surface waters and, consequently, cause a variety of water quality impacts.” 77 Fed. Reg. at 30476. But the evidence shows that forest roads not only *may* pollute U.S. waters, they do so in many

¹Comment submitted by Paul A. Kampmeier and Chris Winter, Attorneys at Law, Washington Forest Law Center on behalf of Northwest Environmental Defense Center, et al., Posted 02/10/2016.

instances. The study by the Great Lakes Environmental Center,² which the Notice cites as a primary source of information for EPA's considerations, states "since forest roads and stream crossings are recognized as major contributors of sediment to surface waters regardless of region, the potential effects of this pollution may be found wherever silvicultural activity occurs." Id. at 39.

And though the EPA offers what would seem to be an obvious conclusion: "that not all forest roads cause water quality impacts," this truism in no way addresses the vital issue that the EPA must finally confront - that all forest roads are capable of cause water quality impairments and causing or contributing to water quality standards violations and that, therefore, that many roads do cause these problems, and that the EPA cannot provide any assurance that the goals of the Clean Water Act are upheld unless it develops and implements a broad, systematic process to ensure that the correct factors are assessed and addressed for every forest road to prevent degradation of waters or restore high quality where degradation already exists.

As in other Clean Water Act programs, rather than assume that the existing mishmash of regulatory and voluntary programs meets Clean Water Act goals unless given proof otherwise, the EPA must act on its acknowledged recognition that these programs currently do not uphold the Act's goals in many instances. To provide reasonable assurance that water quality standards will be met wherever forest roads are built or maintained in conformance with EPA regulations should be the target of EPA's efforts.

In that regard, we note that EPA's Notice, the Great Lakes Center Study, and many other sources examine pollution from forest roads with an eye to "minimize" water pollution discharges and impairments. However, a generalized goal of minimization does not uphold water quality standards and must not be the ultimate measure the EPA uses in deciding whether and how to move forward with regulations.

We would assert, for example, that here can be few, if any, circumstances in which the implementation of antidegradation policies adopted under state law, and as mandated by the Clean Water Act, can be more important than in the construction and maintenance of roads in forested areas. Streams, ponds, and wetlands in intact forests comprise a large portion of our remaining un-impaired waters. Thus, the EPA analyses and the various programs that purport to address pollution impacts from forest roads must be focused on the need to meet these anti degradation requirements in all of their facets. Despite this fact anti degradation is rarely mentioned in the cited documents, if at all.

²Great Lakes Environmental Center, National Level Assessment of Water Quality Impairments Related to Forest Roads and Their Prevention by Best Management Practices, December 4, 2008.

Thank you for considering and responding to these comments. Please inform the us in writing of any action you take related to the regulation of stormwater discharges from forest roads. In the meantime, please contact me at 434-964 7455 if you have any questions about these comments or if you would like to discuss these issues further.

Thank you.

Sincerely,

David Sligh
Conservation Director