

North Carolina Department of Environment and Natural Resources

MEMORANDUM OF UNDERSTANDING

Between

Division of Land Resources

And

North Carolina Department of Agriculture and Consumer Services
North Carolina Forest Service

{ A } PURPOSE

North Carolina General Statute 113A-52.1 requires that if land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practices Guidelines Related to Water Quality (Forest Practices Guidelines), the provisions of the Sedimentation Pollution Control Act of 1973, as amended (SPCA), shall apply to such activity and any related land-disturbing activity on the tract. The SPCA is administered by the Division of Land Resources (DLR) under the direction of the Sedimentation Control Commission. The North Carolina Forest Service (NCFS) is responsible for the protection and development of forest resources in North Carolina, and has been designated by the Secretary of North Carolina Department of Environment, and Natural Resources as the State Agency best able to assist the Secretary in the implementation of the Forest Practices Guidelines and associated rules. Thus the NCFS and DLR find it necessary and desirable to closely coordinate activities to effectively carry out their legislated intent and public need.

{ B } MUTUAL UNDERSTANDINGS

(I) NCFS and DLR agree that the NCFS is the lead agency in determining compliance with Forest Practices Guidelines, and that the DLR is the lead agency in determining if a land-disturbing activity is for the production and harvesting of timber and timber products or if the land-disturbing activity is for residential, industrial, educational, institutional or commercial development or highway and road construction and maintenance.

(II) NCFS and DLR agree that if during an initial site visit by either NCFS or DLR, the purpose of the land-disturbing activity is not clear, the NCFS and the DLR should arrange a joint evaluation of the site as soon as possible to determine the nature of the activity and the course of

action. If necessary, the DLR may request an affidavit from the landowner, documenting that the intent of the operation is for continued forest management.

(III) NCFS and DLR agree to share such information, records, documents, communications, photographs, case histories and other pertinent information that would be of value and interest to the other on specific cases related to the Forest Practices Guidelines provisions within the SPCA.

(IV) NCFS and DLR recognize that making a determination as to whether or not a tract qualifies for the application of the forestry exemption from the SPCA can be challenging in some cases, due to circumstances either observed on the site or encountered by personnel of either NCFS or DLR in the course of conducting a site inspection. NCFS and DLR agree to develop mutually-agreeable guidance (“indicators”) for use by NCFS and DLR personnel to help in the determination of the applicability of the Forest Practices Guidelines on a specific site. This guidance may be revised as needed by mutual agreement between the NCFS and DLR and will be developed and maintained separately from this MOU.

(V) NCFS and DLR agree to work together to review and discuss comments on proposed federal or state rules, regulations, or policies introduced by federal or state entities that can directly or indirectly affect forestry operations as they relate to the Forest Practices Guidelines.

(VI) NCFS and DLR agree to work together as needed to develop and review public information materials to be used to inform landowners, timber buyers, loggers, consulting foresters, registered foresters, or other involved parties of the Forest Practices Guidelines.

(VII) NCFS and DLR agree that when NCFS refers a tract to DLR due to non-compliance with the Forest Practices Guidelines, the entire tract is encompassed in that referral. The tract will remain under the jurisdiction of DLR and all land-disturbing activities, including harvesting, occurring on that tract will be under the jurisdiction of DLR until such time that DLR deems the tract to be in permanent compliance with the SPCA and releases the tract.

(VIII) NCFS and DLR agree to designate key contacts for this agreement. The Water Quality and Wetlands Staff Forester will be the key contact for the NCFS, and the State Sedimentation Specialist will be the key contact for the DLR. These agency officials (or designees) will coordinate meetings as needed to discuss and review matters related to this document.

{ C } AGENCY AGREEMENTS

To best meet the responsibilities described in Part {A} of this Agreement, and to utilize prudent procedures consistent with the intent of the law and good judgment:

(I) The NCFS agrees to:

1. Educate, train and inform members of the forestry and logging communities, as well as forest landowners and the general public of the Forest Practices Guidelines and Best

Management Practices (BMPs) that may be used to achieve compliance with the Forest Practices Guidelines Related to Water Quality.

2. Conduct on-site inspections of forestry activities to determine and monitor compliance with the Forest Practices Guidelines Related to Water Quality, 15A NCAC 01I.
3. Document when Forest Practices Guidelines non-compliance is discovered during a site inspection. Written documentation and when possible, verbal communication, shall be used to inform the responsible parties of the deficiencies, to describe needed corrective actions, and to establish a deadline for completing the corrective actions.

Timeframes for Forest Practices Guidelines-related deadlines should take into account the current and potential impacts on the natural resource. Examples of reasonable timeframes for deadlines on “average” sites would include 7-14 working days to install measures for stopping sedimentation issues and 21-30 working days to provide groundcover to these sites. Circumstances can exist that may provide reason for giving longer timeframes or there may be justified reasons to grant an extension after a deadline has been established.

Cases involving non-compliant repeat offenders of Forest Practices Guidelines or “significant” environmental degradation such as severe stream sedimentation will be subject to a shorter mitigative timeline or may be subject to an immediate referral to the DLR (see #4 below for immediate referrals).

A follow-up site inspection will be conducted by the NCFS immediately after the passage of the established deadline to determine if corrective actions have been taken to achieve compliance with the Forest Practices Guidelines.

4. Make a written referral to the appropriate DLR Land Quality Section, Regional Engineer at such time that NCFS personnel find a referral is justified. Such a referral to the Regional Engineer will occur even in areas with local delegated sedimentation control programs in place. Copies of the referral will be sent to the Director, DLR, and to the State Forester, NCFS. Any of the following conditions justify making a referral to the DLR:
 - a. The responsible party(ies) makes no effort to comply with the Forest Practices Guidelines / Best Management Practices requirements after sufficient notice from the NCFS; or
 - b. The responsible party(ies) fails to complete all actions necessary to bring the site or operation into compliance with the Forest Practices Guidelines following written notification and after a sufficient and specified amount of time has lapsed for installing the corrective actions; or
 - c. An immediate referral may be made with the approval of the State Forester of NCFS if the responsible parties have a history of Forest Practices Guidelines non-compliance, or where severe off-site sedimentation damage has occurred or is imminent.

The NCFS will provide written notification of referrals to all responsible parties, including the landowner. In the written referral, any information as to who was in operational control at the time the non-compliance occurred will be provided to the DLR.

NCFS and DLR agree that not all Forest Practices Guidelines - related referrals should be made to the DLR. Some violation referrals of the Forest Practices Guidelines should be made to other more appropriate regulatory divisions/agencies. Each of the nine Forest Practices Guidelines performance standards shall be referred as follows, with a copy provided to DLR Land Quality Section, Regional Engineer when a referral is made to other regulatory divisions/agencies:

FOREST PRACTICES GUIDELINES:	REFERRED TO:
15A NCAC 01I .0201: Streamside Management Zone	DLR
15A NCAC 01I .0202: Prohibition of Debris Entering Streams And Waterbodies	DLR and/or NCFS-LE*
15A NCAC 01I .0203: Access Road and Skid Trail Stream Crossings	DLR and/or NCFS-LE*
15A NCAC 01I .0204: Access Road Entrances	DLR
15A NCAC 01I .0205: Prohibition/Waste Entering Streams/Waterbodies/Groundwater	DWQ
15A NCAC 01I .0206: Pesticide Application	NCDA
15A NCAC 01I .0207: Fertilizer Application	DWQ
15A NCAC 01I .0208: Stream Temperature	DWQ
15A NCAC 01I .0209: Rehabilitation of Project Site	DLR

DLR: NCDENR Division of Land Resources

NCFS-LE: NCDA&CS NCFS Law Enforcement Officers pursuant to NCGS 77-13 and 77-14.

DWQ: NCDENR Division of Water Quality

NCDA: NC Department of Agriculture & Consumer Services - Structural Pest Control & Pesticide Division

* Woody debris obstruction/impediment cases will be referred to NCFS-LE. Non-woody debris obstruction/impediment cases will be referred to DLR.

5. Provide to the DLR a written notice of the status and/or outcome of each site or case that has been referred by the DLR within 30 calendar days of the NCFS's receipt of the written referral from the DLR. Written notice of the status and/or outcome may be accomplished either by hard-copy letter or electronic mail (email), and shall be addressed to the appropriate Regional Engineer. Copy DLR Land Quality Section, Regional Engineer on correspondence or inspection reports until compliance with Forest Practices Guidelines is achieved, or until a referral back to DLR becomes necessary.
6. Notify the DLR about those site disturbing activities where NCFS has been onsite or received a complaint and where evidence indicates that the operation is part of a land-use conversion from forestry to development. These types of cases will be regulated under

the SPCA by DLR. Non-compliance issues and referrals will be handled as outlined in Section C, Item I, Number 4 above.

(II) The DLR agrees to:

1. Provide technical guidance, as needed, to the NCFS and the forestry community related to the SPCA for the purposes of determining appropriate corrective actions that are needed to maintain or achieve compliance with the Forest Practices Guidelines.
2. Notify the NCFS about forestry activities where DLR has been onsite or received a complaint. These types of cases will be regulated under the Forest Practices Guidelines by NCFS. In the event of suspected Forest Practices Guidelines non-compliance, referrals will be made to the local NCFS District Forester in writing. Copies of the referrals will be sent to the Director, DLR, and to the State Forester, NCFS.
3. Administer and enforce the SPCA requirements on forestry activities that are referred by the NCFS to DLR. Sites referred by the NCFS for enforcement of the SPCA which are located within the jurisdiction of a delegated local sedimentation control program should be referred through the DLR Regional Engineer.
4. Provide to the NCFS a written notice of the status and/or outcome of each site or case that has been referred by the NCFS within 30 calendar days of the DLR's receipt of the written referral from the NCFS. Written notice of the status and/or outcome may be accomplished either by hard-copy letter or electronic mail (email), and shall be addressed to the local District Forester. Copy NCFS on correspondence or inspection reports until the project is permanently stabilized.
- 5.

{ D } EFFECTIVE DATE

This agreement shall become effective upon signature by the State Forester and the Director of DLR, and may be modified at any time by agreement between the State Forester and the Director of DLR with the concurrence of the Secretary, Department of Environment and Natural Resources and the Commissioner of Agriculture..


 Wib L. Owen, State Forester
 N.C. Forest Service


 James D. Simons, Director
 Division of Land Resources

1/27/12
 Date

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 Date