



**Nonpoint Source Status of Forestry Activities**  
NAFO Meeting with the Office of Management and Budget  
May 18, 2010

**NAFO's Request: Oppose any change by EPA to its long-standing interpretation that forest pesticide use is a nonpoint source activity.**

**Basis for Request:**

- 1. There is no legal requirement to change EPA's long-standing silviculture rule.**
  - For more than 30 years, EPA's silviculture rule (40 C.F.R. § 122.27) has defined an exclusive list of four "silvicultural point sources" and classified all other forestry activities as nonpoint sources.
  - The Ninth Circuit in *Forsgren* found that forest pesticide application over waters was a "point source" discharge. In response, EPA in 2003 declined to follow the *Forsgren* ruling and reaffirmed that forest pesticide use would remain a nonpoint source outside the Ninth Circuit.
  - The Sixth Circuit's decision in *National Cotton Council v. EPA* invalidated EPA's 2006 pesticide rule, but did not address the silviculture rule or its statutory basis.
- 2. Sound environmental and economic policy supports maintaining the nonpoint source status of forest pesticide use.**
  - Private working forests provide important benefits to water quality.
  - Policies that support the economic viability of working forests reduce the conversion of forests to other uses and maintain the water quality benefits of forest lands over the long term.
  - State-based forestry Best Management Practices (BMPs) are widely used and highly effective at protecting water quality and, specifically, at preventing unintended application of pesticide to waters.
  - NPDES regulation of forest pesticide use would harm forest owners and an important segment of the national and Southern economies.
    - Regulation that impairs or precludes the effective and timely control of vegetative competition (i.e., the use of herbicides) would carry tremendous cost beyond the direct cost of permitting and permit compliance.
    - Because of the prevalence of wetlands and ditches in the South, regulating forest herbicide use as a "point source" discharge would harm millions of private forest owners, reduce the productivity of some of the nation's most productive forest lands, and further weaken an important segment of the regional economy.