

EPA Advance Notice of Proposed Rulemaking on Stormwater Discharges from Forest Roads

We have learned that EPA has drafted an “Advance Notice of Proposed Rulemaking” (ANPRM) concerning forest roads.

An ANPRM is a public comment process invented by agencies to use when they are unsure of what they want to propose in a rulemaking but have identified specific issues on which they are seeking public comment. They sometimes contain regulatory text and sometimes not.

It appears the ANPRM is a more robust version of the May 2012 Notice of Intent (NOI). The ANPRM will apparently lay out options to implement the broad range of regulatory and non-regulatory approaches section 402(p)(6) of the Clean Water Act (Phase 2 of the stormwater program) that EPA alluded to in the NOI.

We believe that among these options will be:

- assistance to states for their BMP programs;
- Establish minimum criteria for state and tribal land programs and requiring review and certification that programs meet the criteria, and specifying that forest road owners and operators would be in compliance if they operated pursuant to the certified program. Among the criteria would:
 - inventory of forest roads;
 - requirements for BMPs;
 - guidelines for prioritizing and addressing water quality concerns related to stormwater discharges from forest roads;
 - accountability measures;
 - public involvement; and
 - program to monitor/audit compliance and effectiveness.
- Require forest road owners and operators to develop and implement a stormwater discharge management plan using BMPs. It is not clear if these would be state BMPs or EPA-established BMPs. This would be used as a backstop using EPA-developed BMPs in state that do not obtain certification under the alternative above. This could also allow multiple owner and operators to develop an area-wide plan or a cooperative plan.

The ANPRM will not contain any proposed regulatory text. It seems that it will essentially be a detailed call for information. It is currently in the EPA policy office for review and must undergo OMB review before being published. EPA would like to publish it this summer, a schedule requiring an alignment of the stars.