

ALGER COUNTY BOARD OF COMMISSIONERS

Mary Ann Froberg, Clerk

101 COURT STREET, MUNISING, MI 49862

RESOLUTION #2011-16

**RESOLUTION SUPPORTING A STATUTORY EXEMPTION FOR
STORMWATER RUNOFF FROM LOGGING ROADS**

WHEREAS, on August 17, 2010 the United States Court of Appeals for the Ninth Circuit held that a National Pollution Discharge Elimination System (NPDES) permit is required for stormwater runoff from logging roads; and

WHEREAS, the Clean Water Act (CWA) requires a National Pollution Discharge Elimination System (NPDES) permit for the discharge of any pollutant to any navigable water (AKA "water of the U.S.") from any point source. Since 1973, rules promulgated by the Environmental Protection Agency ("EPA") have distinguished between point source and non-point source pollution in the CWA. Non-point source pollution, which is not defined in the CWA, includes any source of water pollution not characterized as a point source discharge; and

WHEREAS, included in the CWA rules is the so-called Silvicultural Rule found at 40 C.F.R. § 122.27(b)(1), which has remained substantially in its current form since 1976. The Silvicultural Rule specifically defines timber "harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff" to be "non point source silvicultural activities," and thus, excluded from NPDES permitting requirements; and

WHEREAS, the Ninth Circuit disagreed with the Silvicultural Rule, holding that stormwater runoff that is collected and channeled in a system of ditches and culverts before being discharged into streams and rivers constitutes a point source, and that EPA lacks authority to promulgate a rule to the contrary. The Ninth Circuit stated that Congress has a history of providing specific statutory exemptions for certain categories of discharges. The court went on to say that federal courts have invalidated EPA regulations that provided similar regulatory exemptions; and

WHEREAS, the Court's decision has potentially sweeping implications. If broadly read, this opinion would require NPDES permits for every road in the country that is served by ditches or culverts that eventually discharge to natural surface waters and that is not already regulated by the CWA; and

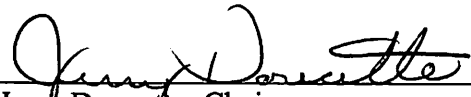
WHEREAS, the court's opinion also leaves many critical questions unanswered. Even if the opinion were limited to logging roads, what constitutes a logging road? Contrary to the court's assumptions of fact, many forest roads, including the roads at issue in this case, are not dedicated just to logging. They are used for a variety of purposes, both public and private, beyond just logging. If this is the case, who is responsible for obtaining these required permits? The court did not address whether the permit obligation rests with the owner of the roads or every entity that transports logs on the roads, or even those using the roads to access the forest for recreation. This Adopted Policy is consistent with current NACo policy that states that stormwater from all roads, gutters and ditches should not be considered a "water of the U.S." under the CWA; and

WHEREAS, if rural county owned roads, such as logging or forest roads, require federal NPDES permits, this will be an unfunded mandate and preemption on county governments.

BE IT RESOLVED, the Alger County Board of Commissioners supports legislation that enacts into law the Silvicultural Rule.

BE IT FURTHER RESOLVED, that a copy of this resolution shall be sent to Governor Snyder, Senators Levin and Stabenow, Congressman Dan Benishek, Senator Tom Casperson, and Representative Steve Lindberg, and also to the boards of County Commissioners of the other counties of the state, who we urge to join us in supporting legislation that enacts into law the Silvicultural Rule.

Dated: December 22, 2011

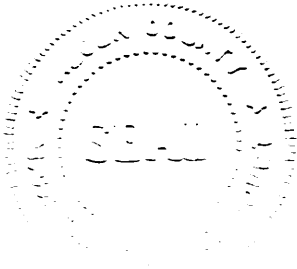


Jerry Doucette, Chair
Alger County Board of Commissioners

STATE OF MICHIGAN)
County of Alger)

I, Mary Ann Froberg, Clerk of the County of Alger and of the County Board of Commissioners, do hereby certify that the foregoing is a true and complete copy of the resolution adopted by the Board at a special meeting on December 22, 2011.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the County of Alger, this January 6, 2012 at Munising, Michigan.



Mary Ann Froberg

Mary Ann Froberg, Clerk