WASHINGTON STATE DEPARTMENT OF
Natural Resources

PETER GOLDMARK
Washington State Commissioner of Public Lands

MEMORANDUM

January 13, 2011

TO: Forest Practices Board

FROM: Marc Engel
Forest Practices Policy and Services Section

SUBJECT: Ron Mally Petition to the Board for Rule Making

The attached Petition for Rule Making from Ron Mally was received on December 10, 2010. At the February meeting the Board must decide whether to accept the petition and initiate rule-making through a proposal initiation to adaptive management or deny the petition. Upon your decision, a response will be sent to Mr. Mally to notify him of the Board's decision.

Mr. Mally's petition states "that there is lack of instructions on what to do with slash when crossing a stream during road construction". The forest practices rules in chapters 222-24 WAC (Road Construction and Maintenance) and 222-30 WAC (Timber harvesting) address proper placement and disposal of forest debris, slash, and spoils to provide resource protection.

DNR staff recommends the Board deny this petition. The rules when taken as a whole provide clear direction for the removal and placement of slash generated by road construction within the riparian management zone. In the road chapter, rules directing the proper disposal and placement of spoils, debris, and slash are found in WACs 222-24-010 road construction policy, 222-24-030(5) clearing debris from stream channels, 222-24-030(9) spoils and debris waste disposal, and WAC 222-24-030(9)(a) deposition of spoils and debris above 100-year flood level. In the timber harvesting chapter rules directing the proper removal and placement of slash and debris is found in WAC 222-30-100(5) removing slash and debris from streams addresses placement of slash in relation to timber harvest. If a road is constructed and timber is harvested, WAC 222-30-100(5) purposely states "Slash or debris which can reasonably be expected to cause significant damage to the public resource shall be removed and placed above the 100-year flood level from any Type S, F or Np Waters, and left in a location or manner minimizing risk of re-entry into the stream, lake or pond and if substantial accumulations of slash exist below the 100-year flood level of Type S, F or Np waters, slash disposal is required". These rules when collectively applied do provide adequate instruction to landowner's and operators on required removal and placement of forest slash and debris when crossing a stream during road construction.

Please feel free to call me with any questions at (360) 902-1390. I look forward to our discussion at the February meeting.

ME/
Attachment

1111 WASHINGTON ST SE • PO BOX 47041 • OLYMPIA, WA 98504-7041
TEL: (360) 902-1250 • FAX: (360) 902-1780 • TTY: (360) 902-1125
Equal Opportunity / Affirmative Action Employer

DATE RECEIVED
DEC 10 2010
Forest Practices Division

Petition to amend WAC 222-24-030

Board Members;

I would like to petition the Forest Practice Board to amend WAC 222-24-30 sub paragraph (9) "Waste Disposal", see attached, in chapter 222-24 Road Construction and Maintenance due to the lack of instructions on what to do with slash when crossing a stream during road construction. At this time there is a considerable amount of money and time being spent by contractors and land owners on removing slash piles that was placed in the RMZ during road construction due to a misinterpretation of the wording. In WAC 222-24-30 it addresses debris and spoils disposal, but does not mention slash which has caused the problem. In chapter 222-16 WAC 222-16-010 "General Definitions" the difference between debris and slash is "debris is woody material less than 3 cubic feet and slash is woody material over 3 cubic feet". As of now there is no mention of slash in Chapter 222-24, other than removal from streams and not placing in road prism.

The amendment would state where slash can be placed during construction across streams.

The rational for this amendment would be that all parties; Land Owners, Contractors, and Forest Practice would know where slash can be placed when crossing stream.

Response to WAC 222-08-100 sub paragraph (8)

(a) Not applicable
(b) None
(c) Say where slash can be placed when crossing streams
(d) Addressed above
(e) None
(f) None

Sincerely

Ron Mally

3254 W Jump Off Joe
Valley, Wa 99181

Home (509) 937-4104
Work (509) 685-2724

(c) Detailed plans for bridges, large culverts or other complex elements of the proposal; and

(d) Other information identified by the department.

WAC 222-24-026 *Temporary roads. Temporary roads as defined in WAC 222-16-010 shall:

(1) Be constructed in a manner to facilitate closure and abandonment when the intended use is completed.

(2) Be designed to provide the same level of protection for public resources as provided by the rules during the length of its use.

(3) Be identified on the forest practices application or notification, along with an abandonment date. Abandonment must be accomplished under WAC 222-24-052*(3) to the specifications approved by the department by the date specified in the approved forest practices application.

WAC 222-24-030 Road construction.

(1) Right of way timber shall be removed or decked in suitable locations where the decks will not be covered by fill material or act as support for the fill or embankment.

*(2) In permanent road construction, do not bury:

(a) Loose stumps, logs or chunks if they will contribute more than 5 cubic feet in the load-bearing portion of the road.

(b) Any significant amount of organic debris within the top 2 feet of the load-bearing portion of the road.

(c) Excessive accumulation of debris or slash in any part of the load-bearing portion of the road fill.

(3) Compact fills. During road construction, fills or embankments shall be built up by layering. Each layer shall be compacted by operating the tractor or other construction equipment over the entire surface of the layer. Chemical compacting agents may be used in accordance with WAC 222-38-020.

*(4) Stabilize soils. Erodible soil disturbed during road construction and located where it could reasonably be expected to enter the stream network must be seeded with noninvasive plant species. The use of local area native species, adapted for rapid revegetation is preferred. Treatment with other erosion control measures may be approved by the department.

*(5) Channel clearance. Within 50 feet upstream from a culvert inlet clear stream channel of all debris and slash generated by the operations that reasonably may be expected to plug the culvert prior to the removal of equipment from the vicinity, or the winter season, whichever is first. (See the board manual, section 4 for debris removal guidelines.)

*(6) Drainage.

(a) All required ditches and drainage structures shall be installed concurrently with the construction of the roadway.

(b) Uncompleted road construction to be left over the winter season or other extended periods of time shall be drained by outsloping or drainage structures. Water bars and/or dispersion ditches may also be used to minimize eroding of the construction area and stream siltation. Water movement within wetlands must be maintained.

*(7) Moisture conditions. Construction shall be accomplished when moisture and soil conditions are not likely to result in excessive erosion and/or soil movement, so as to avoid damage to public resources.

*(8) End haul/sidecasts. End haul or overhaul construction is required where significant amounts of sidecast material would rest below the 100-year flood level of any typed water, within the boundary of a Type A or Type B Wetland or wetland management zones or where the department determines there is a potential for mass soil failure from overloading on unstable slopes or from erosion of side cast material causing damage to the public resources.

*(9) Waste disposal. When spoil, waste and/or other debris is generated during construction, this material shall be deposited or wasted in suitable areas or locations and be governed by the following:

(a) Spoil or other debris shall be deposited above the 100-year flood level of any typed waters or in other suitable locations to prevent damage to public resources. The material shall be stabilized using the recommended schedule and procedures found in the board manual, section 3.

(b) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones. Spoils shall not be located within the boundaries of forested wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands. (See WAC 222-24-015, Construction in wetlands.)

(10) Disturbance avoidance for northern spotted owls. Road construction, operation of heavy equipment and blasting within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(11) Disturbance avoidance for marbled murrelets.

(a) Road construction and operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season; and

(b) Blasting shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the critical nesting season.

(c) Provided that, these restrictions shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

WAC 222-24-035 Landing location and construction.

(1) Landing location:

Locate landings to prevent potential or actual damage to public resources. Avoid excessive excavation and filling. Landings shall not be located within natural drainage channels, channel migration zones, RMZ core and inner zones, Type Np RMZs, sensitive sites, equipment limitation zones, and Type A or B Wetlands or their wetland management zones. Minimize placement and size of landings within forested wetlands. (See WAC 222-24-015, Construction in wetlands.)

(2) Landing construction.

(a) Landings requiring sidecast or fill shall be no larger than reasonably necessary for safe operation of the equipment expected to be used.

Supporting WACs
Petition for Rule Making – Ron Malley

WAC 222-24-010 Policy.
*(1) A well designed, located, constructed, and maintained system of forest roads is essential to forest management and protection of the public resources. Riparian areas contain some of the more productive conditions for growing timber, are heavily used by wildlife and provide essential habitat for fish and wildlife and essential functions in the protection of water quality. Wetland areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems.

*(2) To protect water quality and riparian habitat, roads must be constructed and maintained in a manner that will prevent potential or actual damage to public resources. This will be accomplished by constructing and maintaining roads so as not to result in the delivery of sediment and surface water to any typed water in amounts, at times or by means, that preclude achieving desired fish habitat and water quality by:

• Providing for fish passage at all life stages (see Washington state department of fish and wildlife hydraulic code Title 220 WAC);

• Preventing mass wasting;

• Limiting delivery of sediment and surface runoff to all typed waters;

• Avoiding capture and redirection of surface or ground water. This includes retaining streams in their natural drainages and routing subsurface flow captured by roads and road ditches back onto the forest floor;

• Diverting most road runoff to the forest floor;

• Providing for the passage of some woody debris;

• Protecting stream bank stability;

• Minimizing the construction of new roads; and

• Assuring no net loss of wetland function.

The road construction and maintenance rules in this chapter must be applied in achieving these goals. Additional guidance is identified in board manual section 3. If these goals are not achieved using the rules and the applied guidance, additional management strategies must be employed.

*(3) Extra protection is required during road construction and maintenance to protect public resources and timber growing potential. Landowners and fisheries and wildlife managers are encouraged to cooperate in the development of road management and abandonment plans. Landowners are further encouraged to cooperate in sharing roads to minimize road mileage and avoid duplicative road construction.

*(4) This section covers the location, design, construction, maintenance and abandonment of forest roads, bridges, stream crossings, quarries, borrow pits, and disposal sites used for forest

road construction and is intended to assist landowners in proper road planning, construction and maintenance so as to protect public resources.

WAC 222-24-030 Road construction.
*(5) Channel clearance. Within 50 feet upstream from a culvert inlet clear stream channel of all debris and slash generated by the operations that reasonably may be expected to plug the culvert prior to the removal of equipment from the vicinity, or the winter season, whichever is first. (See the board manual, section 4 for debris removal guidelines.)

*(9) Waste disposal. When spoil, waste and/or other debris is generated during construction, this material shall be deposited or wasted in suitable areas or locations and be governed by the following:

(a) Spoil or other debris shall be deposited above the 100-year flood level of any typed waters or in other suitable locations to prevent damage to public resources. The material shall be stabilized using the recommended schedule and procedures found in the board manual, section 3.

(b) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones. Spoils shall not be located within the boundaries of forested wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands. (See WAC 222-24-015, Construction in wetlands.)

WAC 222-30-100 Slash disposal or prescribed burning.
*(5) Removing slash and debris from streams.
"Slash" or "debris" which can reasonably be expected to cause significant damage to the public resource shall be removed from Type S, F or Np Waters, to above the 100-year flood level and left in a location or manner minimizing risk of re-entry into the stream, lake or pond and if substantial accumulations of slash exist below the 100-year flood level of Type S, F or Np Waters, slash disposal is required. See the forest practices board manual section 4 for "Guidelines for clearing slash and debris from Type Np and Ns Waters."