



Protecting Streams

NEFA BACKGROUND PAPER

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The Forestry Corporation have a long history of regularly flouting laws and rules to reduce the impacts of their activities on erosion and streams, despite being legally required to implement them since 1975 (see **The Battle to Protect Soils and Streams**). Even when implemented, many of their requirements are grossly inadequate to achieve their intended purposes (see **The Need for Stream Buffers**).

The Environment Protection Licence was applied to forestry operations on public lands in 1999 as an outcome of the Regional Forest Agreement. This provided comprehensive conditions to limit erosion and runoff, while also providing for stream buffers and excluding logging from excessively steep land. Unfortunately most of the requirements were significantly weakened by the Forestry Corporation and thus do not represent best practice (i.e. see **The Battle to Protect Soils and Streams** and **The Need for Stream Buffers**).

To make matters worse, in response to the EPA's first prosecution of the Forestry Corporation under the EPL, in 2004 the Environment Protection Licence (EPL) was amended so as to exclude over 90% of logging operations from its ambit (see **The Battle to Protect Soils and Streams**). For example, in 2009/10 across both lower and upper north east NSW there were 384 logging operations, of which only 20 (5.2%) were covered by EPLs.

It appears the Forestry Corporation primarily got rid of the EPL for most operations to allow them to log “unmapped” drainage lines. After 2004 they routinely targeted unmapped drainage lines for logging, apparently blissfully ignorant that the Fisheries Licence still applied and required the protection of unmapped drainage lines where Eastern Freshwater Cod (and theoretically other threatened fish) occurred downstream (see **Protecting Threatened Fish**).

For example in our audit of Yabbra State Forest (Pugh 2009) NEFA identified 5 unmapped drainage lines which had not been marked in the field and documented 22 trees that had been illegally removed from their stream banks. From NEFAs small sample it was evident that many other unmapped streams had also been subject to logging and burning, with estimates that over 100 trees were likely to have been illegally logged. The Forestry Corporation had not switched on the EPL, though their harvest plan (which is a legal document) claimed “*all EPL conditions will apply to harvesting and roading operations*”, as well as identifying that the Fisheries Licence applied. The Forestry Corporation’s own audit failed to identify any problems.

When we discussed our complaints with Forestry Corporation senior staff they maintained there was no problem because the EPL was switched off and they provided us with their protocol for logging unmapped stream buffers. They were apparently blissfully unaware that the Fisheries Licence still required the exclusion of logging from unmapped stream buffers because of the presence of the Eastern Freshwater Cod downstream.

Fisheries NSW upheld our complaint and issued a Penalty Infringement Notice and \$500 fine for failing to mark exclusion boundaries on unmapped drainage lines, and a Penalty Infringement Notice and \$500 fine for logging, bulldozing and burning within 10m of these unmapped streams. A fine of less than \$10 per tree illegally obtained, with no rehabilitation required. These were the first penalties issued by Fisheries NSW to their colleagues. The Forestry Corporation would have sold the trees for many times this cost to sawmillers and profited from this illegal logging. It is likely that they had been regularly logging unmapped drainage lines since 2004 in contravention of the Fisheries Licence until we caught them out. We also found roads draining directly into streams, inadequate cross banks and wetlands logged.

Despite having exempted over 90% of their operations from the EPL, the EPA’s audits from 2005/6 to 2011/12 recorded over 1,300 breaches of the EPL, with an average of over 19 breaches recorded on each audit. Given the small number of operations sampled and the EPA’s failure to investigate many breaches, these results are indicative of a lot bigger problem.

EPA assessed non-compliances with Environment Protection Licence

Audit results	2005/ 2006	2006/ 2007	2007/ 2008	2008/ 2009	2009/ 2010	2010/ 2011	2011/ 2012
UNE							
Audits	2	5	3	2	8	8	6
Non-compliance incidents	7	146	122	19	64	18	33
LNE							
Audits	4	5	4	3	4	6	8

Non-compliance incidents	155	51	88	33	63	154	355*
TOTAL NON-COMPLIANCES	162	197	210	52	127	172	388
AVERAGE NON-COMPLIANCES PER AUDITR	27	19.7	30	10.4	10.6	12.3	27.7

*In 2011/12 The EPA also determined 16 additional offences against provisions of the POEO Act

The EPA do not bother to assess compliance with the EPL on many audits on the grounds that the EPL does not apply. For example at Yabbra (Pugh 2009) NEFA documented a variety of contraventions of the EPL (Schedule 4; 17, 20C D6, D15, D19B, D20, D20J, D20R, D20S, D20T, D21, D22, D23, H70, Schedule 5; I 37) such as;

- 3 sites where snig tracks had caused extensive soil disturbance to areas adjacent to and across unmapped drainage lines;
- failure to identify, delineate or protect 5 unmapped streams from logging roading and burning;
- failure to delineate or protect drainage depressions from significant machinery disturbance;
- failure to identify, delineate and protect 2 wetlands from logging roading and burning;
- inadequate drainage of a snig track; and,
- drainage off roads and tracks being diverted directly into streams.

Despite undertaking an audit the EPA (DECCW 2010) refused to investigate any of the breaches of the EPL, stating "*Forests NSW did not seek, and were not required to seek, Environmental Protection Licence coverage for harvesting and burning operations in compartment 162 and 163 of Yabbra State Forest. As such, operations ... are not regulated under the Environment Protection Licence*". Only the wetland breach was considered as this was also a breach of the Threatened Species Licence.

At Yabbra the Forestry Corporation subsequently repaired drainage on four stream crossings and one track because they were not up to pollution control requirements, though NEFA is not aware of the Forestry Corporation being held accountable by anyone (including themselves) for those EPL breaches not covered by the Fisheries Licence.

NEFA's experience is that the EPA frequently fail to investigate breaches that we report to them (usually with GPS localities and photos), even when EPL breaches are also TSL breaches. For example at Doubleduke SF NEFA (Pugh 2010) reported a variety of breaches that the EPA did not investigate, including logging and roading within a wetland and an unmapped stream. The wetland had two roads constructed through it, trees dropped into it and its buffer logged, despite complaining of this to the Minister for the Environment and its being a breach of both the TSL and FL as well as the EPL (and involving mechanical disturbance to a nationally endangered plant that itself required 50m buffers), the EPA refused to investigate it despite investigating the same area for other breaches.

At Royal Camp SF NEFA (Pugh 2014) consider that the EPA took no action in response to 14 of our complaints, including not bothering to inspect construction of 2 illegal stream crossings across first order streams while the area was supposedly being audited by the EPA, and the use of machinery on saturated soils in a riparian special operational zone

when the soil was saturated causing deep rutting that had not then been rehabilitated over 5 months later.

Even where Forestry Corporation do find breaches of the EPL for themselves they often fail to take appropriate action or remediate damage. For example the Forestry Corporation identified breaches in Girard SF in April 2010, stating "*Bulldozer driver opening old road for snig track, pushed through 2 unmapped drainage lines*". Despite appropriate stream crossings not being constructed, large amounts of fill being pushed into the drainage lines and both crossings being situated upstream (50-80m) from a Stuttering Frog exclusion zone, Forestry Corporation concluded that there was no environmental harm and failed to undertake any remedial or disciplinary action. When NEFA (Pugh 2010d) audited the operations in August they independently identified these breaches, observed that erosion had commenced, and that erosion was expected to rapidly worsen. While logging had finished no attempt had been made to remove the spoil from the streams or undertake rehabilitation.

The above examples are only a small sample of the breaches of the EPL regularly found by NEFA and other community groups while auditing. Sparkes (2010) identified 27 breaches of NSW environmental regulations by the Forestry Corporation in the UNE that were subsequently verified by the EPA (then DECCW), noting:

Ten of these involved failures to implement adequate erosion controls after logging, in the worse case 27 cross-banks had been so poorly constructed that they failed and caused significant pollution of Washpool Creek. In one case a bridge had collapsed into a 4th order stream and in another Forests NSW had failed to properly assess, and thus under-estimated, soil erodibility. DECCW directed that remediation should be undertaken for 8 of these breaches and sent warning letters in respect to 3 others. No action was taken in respect to the failure to properly assess soil erodibility.

Five of the breaches involved logging of stream exclusions imposed to protect habitat for an array of threatened species (TSL 5.7a) and water quality, with up to 2,150m² being logged in the worst case. DECCW issued a Penalty Infringement Notice for one of these incursions and issued warning letters for three others.

The EPL is the only licence requiring protection of drainage depressions. Drainage depressions are the heads of streams above where defined beds and banks begin to form. The EPL requires that 5 meter buffer strips are retained along drainage depressions within which soil disturbance during forestry activities must be prevented to the greatest extent practicable. Since regulation of these has been removed it is open slather on drainage depressions, even though the Forestry Corporation continue to claim they voluntarily apply the EPL.

It is apparent that the Forestry Corporation are regularly and frequently breaching requirements of the Environment Protection Licence. Commissioner Gentle's 1980 admonishment that erosion mitigation conditions are "*being breached, and seriously, almost all the time*" is as relevant now as it ever was. For four decades the Forestry Corporation have proven themselves incapable of self regulation, and for over two decades the EPA have proven they are ineffective regulators. What is most worrying is that the 40 years of frequent breaches has created a toxic legacy for our streams.

For soil conservation purposes logging has long been banned on excessively steep and erodible slopes. Since 1975 erosion mitigation conditions have sought to have logging excluded from the most erodible slopes. This is reflected in the current licence. The proposal by the EPA (2014) to now allow logging on excessively steep slopes (in excess of 30°) and highly erodible soils, while making EPL's less prescriptive, variable and voluntary, heralds a return to the worst excesses of the past.

The Battle to Protect Soils and Streams

Logging impacts on streams

The Need for Stream Buffers

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