

15A NCAC 04B .0128 RAILROAD COMPANIES

- (a) The Commission recognizes that under the Federal Railroad Safety Act of 1970 (FRSA), 45 U.S.C. 421 et seq., as interpreted by federal administrative rules and court decisions, existing railroad roadbeds comprise a zone of federal preeminence within which federal law takes precedence over the Act [the SPCA].
- (b) While the specific definition of this zone of federal preeminence is a question of federal law and regulation, in general the zone of federal preeminence extends outward from the center of the railroad roadbed to and including drainage ditches and spoil banks on either side of the roadbed.
- (c) In the event of a derailment, washout, or other emergency condition which requires immediate action to protect public safety, the zone of federal preeminence temporarily expands, for the duration of the emergency condition, to encompass areas adjacent to the roadbed within which emergency repairs are undertaken pursuant to the FRSA and Federal Railroad Administration rules.
- (d) The Act and rules do not apply to activities conducted within the zone of federal preeminence. The Act and rules apply to all other activities conducted by railroad companies. Railroad companies shall take all reasonable measures that are consistent with the requirements of federal law to control sedimentation originating in the zone of federal preeminence.
- (e) A railroad company's failure to comply with a requirement of the Act or rules in order to avoid creating a safety hazard or to avoid noncompliance with a federal safety requirement is not a knowing or willful violation of the Act or rules.
- (f) The Commission will provide advice and technical assistance to railroad companies in the development and implementation of voluntary best management practices to reduce environmental impacts that may otherwise result from activities conducted within the zone of federal preeminence.

History Note: Authority G.S. 113A-52(6); 113A-54(b); 113A-54(c); 113A-54(d)(4); 113A-57(1);
Eff. August 1, 1995.