



File Code: 2450/1950  
Route To:

Date: February 09, 2000

Subject: Clarifying order and Categorical Exclusions for Hazard Trees

To: Regional Foresters, Station Directors, Directors, Area Director, and IITF Director

This is a follow-up to Associate Chief Diaz-Soltero's October 1, 1999, memorandum regarding the nationwide injunction precluding use of the timber harvest Categorical Exclusion (CE) in Heartwood v. USFS, No. 98-CV-4289-JPG (S.D. Ill.). As you know, the court retroactively enjoined "all project decisions approved relative to the timber harvest CE (FSH 1909.15, Chapter 30, section 31.2(4)) since September 16, 1998." As a result, category 4 Timber Harvest CE's (FSH 1909.15, section 31.2) may not be used any longer.

On December 17, 1999, the Court issued a clarifying order authorizing certain fuelwood activities (See Enclosure). The Court clarified that in some instances the Forest Service could appropriately reauthorize enjoined activities under a different categorical exclusion. The Court stressed that it would not tolerate abuse of this common sense approach, nor will this office.

Examples given for each CE in the National Environment Protection Act (NEPA) handbook (FSH 909.15, section 31) are not intended to be an exhaustive list of activities covered by each CE. Many other examples could be listed for each category. Therefore, it is appropriate to review your timber harvest decisions to determine whether some projects currently enjoined may be reclassified and correctly reauthorized under a different CE.

In making such determinations, you are cautioned to proceed carefully and in good faith.

1. Take care not to arbitrarily reclassify an enjoined timber sale project under another CE. Acting in bad faith may be cause for the court to reexamine and reconsider its order.

2. Be sure that the level of NEPA analysis and documentation is commensurate with the degree and scope of resource impact.

3. Be sure that you adequately document the reason why the project is being correctly reauthorized under a different CE.

4. If there is any question at all about the applicability of an alternate CE, prepare an Environmental Assessment (EA) instead.

The Forest Service will abide by the spirit and letter of the Court's Order. Reclassification and reauthorization will occur only when correct and appropriate. For example, categories 31.1b.3 ("Repair and maintenance of administrative sites") and 31.1b.4 ("Repair and maintenance of roads, trails, and landline boundaries"), and 31.1b.5 ("Repair and maintenance of recreation sites and facilities") can include activities such as trimming, felling or removing individual hazardous trees,



and other vegetation from around administrative sites, recreation sites, roads, and trails, where the material could be sold. To correctly apply these CEs, the primary reason for the action must be the hazard, and that the hazard must clearly pose an immediate public danger or threat in campgrounds, recreation facilities or other high use areas; or public danger or threat along open roads.

We cannot overstate our expectation that discretion will be exercised with prudent judgment. Appropriate documentation and explanation must be prepared in your files that demonstrates why the activity is correctly being authorized pursuant to a different category.

Please work with your local NEPA experts who should call the Regional NEPA coordination or call Mary Reddan at (202)205-1318 or Rod Sallee at (202)205-1766 if there are any questions.

/s/ James R. Furnish

JAMES R. FURNISH  
Deputy Chief  
National Forest System

Enclosure