

INJUNCTION

5506

(No. 6 January 1999)

An injunction may take the form of a Temporary Restraining Order, a Preliminary Injunction, or a Permanent Injunction.

Such an action is authorized in the Forest Practice Act for violations of the Act, the forest practice rules, or Board of Forestry regulations by PRC Sections 4605 and 4606.

An injunction must be obtained through the Attorney General's office from the superior court, and as a matter of state policy cannot be sought through the District Attorney's office.

Although injunctive action is authorized for any actual or threatened violation, in practice the Attorney General's office will only support this action where existing or probable violations threaten to cause or are causing irreparable harm, damage, or effects that, if not stopped, will become widespread, and thereby severely multiply the irreparable effects, such as:

- Earth moving from road, landing, or skid trail construction in violation of plan provisions or rules that is likely to cause or is causing significant slides, deposition of quantities of earth and debris into streams and onto adjoining property, etc.
- Activities that are damaging streams by depositing debris, by causing siltation, by blocking the stream, by severely altering or compacting the stream bed, etc.
- Severe overcutting, clear-cutting, or damaging of trees otherwise required to be left, in violation of rule and timber harvesting plan requirements.
- Continued flagrant and repeated substantial violations over a relatively long period.

These are only examples. The injunctive process should be considered, and the region staff should consult with the Director's staff whenever it appears there might be a need for this swift, positive enforcement action not available through other enforcement means.

INJUNCTIVE PROCEDURES

5506.1

(No. 6 January 1999)

Whenever it appears an injunctive action is the best or most appropriate enforcement process, the region staff should use the telephone to discuss the situation with the department's forest practice enforcement forester and/or staff counsel. In this way, the key elements of the case can be discussed, a definite determination made as to whether this is the best enforcement action, and necessary information obtained that will enable the legal office to initiate action by the Attorney General's office. Additional instructions to obtain necessary information or written supporting material for the case involved also can be relayed to the region staff.

The elements outlined in the Confidential Report of Forest Practice Enforcement Recommendations, LE-80, must be set forth with particular care and detail. In addition to the LE-80, the written support material must include a clear showing of the irreparable damage or threatened damage resulting from the violation(s) and the need for swift action to prevent damage being caused by the violations from becoming more widespread.

This supporting information, including inspection reports, violation notices, pertinent related documents, and declarations or affidavits of CDF forest officers, should be sent to the Director's office on the same day the request for an injunctive action is made, or as soon as possible thereafter.

When the staff counsel has determined, in consultation with the regional office and the resource management staff, that an injunctive action is desirable, the legal office will prepare a letter to the Attorney General's office for the Director's signature requesting such action and transmitting copies of the LE-80 and supporting material.

Usually, the staff counsel, in coordination with the resource management staff, will prepare a draft complaint for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, or a combination of these. The complaint will consist of the following elements:

- Allegations (facts and charged violations).
- Reasons for enjoining the operation.
- Kind(s) of enjoinder sought.
- Points and authorities (precedent and grounds in previous cases) justifying the requested action.

- Supporting evidence, such as the LE-80, THP, Inspection Reports, Violation Notices, declarations of forest officers, etc.

Such draft complaint will be sent to the Deputy Attorney General assigned to the case at the same time or shortly after the Director's letter requesting the injunction.

The Deputy Attorney General will then, independently or in company with the staff counsel or resource management staff representative, travel to the town in which the appropriate superior court is located to file the complaint, having in the meantime given notice to the respondent or his/her legal counsel. The court will consider the complaint and, if granted, will issue an order enjoining the operation from continuing, or allow it to continue subject to those conditions and corrections the court considers proper.

The court order usually will specify time periods for the operator to accomplish certain things, or to make certain corrections by certain times before he/she can resume operations. After the injunction has been granted, the region will have their forest practice staffs periodically inspect and report on the operation to determine that the terms of the order are being complied with. Any violations should be reported immediately to the Director's office, as such violations will be grounds for "contempt of court," for which the Attorney General's office can obtain appropriate court action. Violation of an injunction is a misdemeanor (PRC Section 4601) and any person (not just the operator) can be charged with such a violation.

**FORMS AND/OR FORMS SAMPLES: RETURN TO ISSUANCE HOME PAGE
FOR FORMS/FORMS SAMPLES SITE LINK.**

[\(See next section\)](#)

[\(See Table of Contents\)](#)