



SB 859, Proposed Guidelines for Implementation

Senate Bill [859](#), signed into law on September 14, 2016, added Section 399.20.3 to the Public Utilities Code, which, among other things, includes the following:

399.20.3(b) In addition to the requirements of subdivision (f) of Section 399.20, by December 1, 2016, electrical corporations shall collectively procure, through financial commitments of five years, their proportionate share of 125 megawatts of cumulative rated generating capacity from existing bioenergy projects that commenced operations prior to June 1, 2013. At least 80 percent of the feedstock of an eligible facility, on an annual basis, shall be a byproduct of sustainable forest management, which includes removal of dead and dying trees from Tier 1 and Tier 2 high hazard zones and is not that from lands that have been clear cut. At least 60 percent of this feedstock shall be from Tier 1 and Tier 2 high hazard zones.

The criteria for eligibility of a power generating facility to enter into a procurement agreement with an electrical corporation relies on the terms and phrases “byproduct of sustainable forest management” and “lands that have been clear cut.” The definition of these terms must be commonly understood.

1. Sustainable Forest Management

The phrase “byproduct of sustainable forest management” can be defined by the four types of activities identified by the Public Utility Commission (PUC) when implementing SB 1122 as sustainable forest management. For the purpose of SB 1122, the PUC identifies material generated from fire threat reduction, fire safe clearance activities, infrastructure clearance projects, and other sustainable forest management activities (see requirements of the Forest Biomass Sustainability Byproduct Eligibility Form) as meeting this definition. See section 2.2.3 of the Public Utilities Commission’s (PUC) decision implementing SB 1122, [D.14-12-081](#), for a full discussion of the PUC action to define “sustainable forest management”.

2. Addressing the Meaning of Clear Cut Per SB 859

Unless a Timber Harvest Plan designating the clear cut silvicultural prescription is being utilized, the harvest of dead and dying trees is not clearcutting for purposes of SB 859. In response to the current tree mortality, Emergency Notices and Exemptions under 14CCR 1052 and 1038, respectively, are the harvest documents that are being typically used.

Clearcutting, as used in SB 859, applies only to the current harvesting of trees in the in the context of a Timber Harvest Plan, not past or historical harvesting.

Discussion

The characterization of the methods of harvesting timber in California is provided by the Z’Berg-Nejedly Forest Practices Act of 1973 (“Act”), and the State Forest Practice Rules (“Rules”) promulgated by the Board of Forestry and Fire Protection. The term “clear cut” is specifically characterized as a regeneration method used in even-aged management silvicultural systems in the Rules:



14CCR 913.1, 933.1, 953.1(b) Clearcutting The clearcutting regeneration method involves the removal of the stand in one harvest. Regeneration after harvesting shall be obtained by direct seeding, planting, sprouting, or by natural seedfall. When practical, clear cuts shall be irregularly shaped and variable in size in order to mimic natural patterns and features found in landscapes. Site preparation and slash disposal measures, if necessary for successful regeneration, shall be described in the plan.

The ability to remove an area of green, healthy trees greater than 2 ½ acres in size is limited in the Rules to areas approved as part of a Timber Harvest Plan.

Under the Rules, trees that are dead, dying, or diseased are typically harvested through the application of the “sanitation-salvage” intermediate treatment in the context of a Timber Harvest Plan. However, there are allowances in the Rules for removal of dead or dying trees under a “Notice of Emergency Timber Operations” (14CCR1052) or several exemptions from preparing a Timber Harvest Plan (14CCR1038). Under our current conditions of extensive mortality due to drought stress and insect infestation, the 1038(k) exemption is likely the most widely used harvest document.

In the context of the Rules, the complete removal of dead or dying trees under current circumstances using the emergency notice or exemption harvest documents, even though in areas greater than 2 ½ acres, generally would be considered an application of the sanitation-salvage intermediate treatment, not clearcutting.

Thus, “clear cut”, in the context of harvesting and removal under exemptions or emergency notices in response to the current tree mortality, should be applied rather narrowly to those situations where the silvicultural prescription is being applied in the context of a Timber Harvest Plan. The qualifier that “lands that have been clear cut” should be limited to those where clearcutting is occurring, or has occurred recently, under an active Timber Harvest Plan.

3. Chain of Custody Verification

SB 859 contains the following chain of custody requirements

“At least 80 percent of the feedstock of an eligible facility, on an annual basis, shall be a byproduct of sustainable forest management, which includes removal of dead and dying trees from Tier 1 and Tier 2 high hazard zones and is not that from lands that have been clear cut. At least 60 percent of this feedstock shall be from Tier 1 and Tier 2 high hazard zones.”

In order to track and verify these requirements, we propose the following:

1. “Is not from lands that have been clear cut”: this refers to the operation of cutting the dead trees, not harvesting that has occurred prior to the tree mortality event.
2. “A byproduct of sustainable forest management”: The definition of sustainable forest management from SB 1122 can be used as discussed above.



-
-
3. Fuel Suppliers and bioenergy facilities can document that their feedstock is 80 percent a byproduct of sustainable forest management, not clear cut, including removing dead and dying trees from Tier 1 and Tier 2 high hazard zones, and that at least 60 percent of this feedstock came from Tier 1 and Tier 2 high hazard zones through certification by a California Registered Professional Forester (RPF). The RPF would be responsible for documenting the chain of custody on request, to a level of detail including individual trip tickets.