

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FOREST SERVICE EMPLOYEES FOR	)	
ENVIRONMENTAL ETHICS; ALLEGHENY	)	
DEFENSE PROJECT; SIERRA CLUB,	)	<b>CIVIL ACTION NO. 1:08-cv-323-SJM</b>
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
UNITED STATES FOREST SERVICE,	)	
	)	
Defendant.	)	
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**FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF  
(NATIONAL ENVIRONMENTAL POLICY ACT)**

**INTRODUCTION**

1. This is a civil action for declaratory and injunctive relief under the Administrative Procedures Act (APA), 5 U.S.C. 551-706. The claims arise from defendant's violations of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370(d), and its implementing regulations, 40 C.F.R. 1500-1508.

2. This action is brought pursuant to the right of review provision of the APA, 5 U.S.C. 702.

3. Defendant, the United States Forest Service ("Forest Service"), violated federal law in issuing "Notices to Proceed" (NTPs) to oil and gas companies on the Allegheny National

Forest (which includes land in Elk County, Forest County, McKean County, and Warren County in Pennsylvania), allowing those companies to conduct logging, road-building, and related activities on the public lands, without preparing environmental analysis under the National Environmental Policy Act (NEPA).

4. Plaintiffs seek an order:
  - a. Declaring that defendant failed to comply with NEPA;
  - b. Enjoining defendant from issuing Notices to Proceed unless and until defendant complies with NEPA and the APA;
  - c. Awarding plaintiffs' reasonable attorneys' fees and costs associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412;
  - d. Such additional and further relief as the Court deems just and equitable.

5. The requested relief is necessary to preserve the status quo, to prevent illegal agency action, and to forestall irreparable injury to the environment.

#### **JURISDICTION, VENUE, AND BASIS FOR RELIEF**

6. This Court properly has jurisdiction over this action under 28 U.S.C. 1331 (federal question) and 28 U.S.C. 1346 (United States as defendant). Judicial review is authorized by 5 U.S.C. 706 because plaintiffs are adversely affected within the meaning of relevant statutes.

7. The decisions giving rise to this complaint were made by the Forest Supervisor at the Allegheny National Forest, Supervisor's Office, in Warren, Pennsylvania; as well as by the Forest Service's District Rangers located at Forest Service District Offices in Forest and McKean Counties. Venue is properly vested in this Court by 28 U.S.C. § 1391(e).

8. Declaratory relief is appropriate under 5 U.S.C. 703 and 28 U.S.C. 2201.

Injunctive relief is appropriate under 5 U.S.C. 703 and 28 U.S.C. 2202.

### **PARTIES**

9. Plaintiff Forest Service Employees for Environmental Ethics (FSEEE) is a nonprofit organization, with its principal place of business in Eugene, Oregon. FSEEE is comprised of thousands of concerned citizens, present, former and retired Forest Service employees, and other resource managers. FSEEE's mission is to forge a socially responsible value system for the Forest Service based on a land ethic that ensures ecologically and economically sustainable resource management. FSEEE members hold the Forest Service accountable for responsible and legal land stewardship. Plaintiff's members include individuals who use the Allegheny National Forest, including the areas affected by oil and gas exploration, for recreational, spiritual, and scientific pursuits of all kinds. The interests of FSEEE's members will be adversely affected and irreparably injured if the Forest Service continues to act as alleged herein. The injuries would be redressed by the relief sought.

10. Plaintiff Allegheny Defense Project ("ADP") is a non-profit corporation organized under the laws of Pennsylvania, and maintains its offices in Pittsburgh, Pennsylvania. ADP's members and staff use, enjoy, and recreate on lands that are likely to be affected by the challenged projects. Members and staff of ADP live, exercise, work, homestead, garden, recreate, fish, hunt, bike, rappel, spelunk, hike, camp, swim, boat, cross country ski, snowshoe, geocache, bird watch, photograph, construct and maintain segments of the North Country National Scenic Trail, volunteer maintenance time on the ANF, practice sustainable forestry on private woodlands, conduct aerial and field monitoring of logging and oil and gas drilling,

educate legislators on ANF issues, work with and provide information to other conservation, recreation and community groups, disseminate information obtained through Freedom of Information Act requests and publicly available NEPA documents to the public in presentations, press releases, newsletters, editorials, websites and issue hikes, maintain and make available a photo library of impacts resulting from agency decisions on the ANF, participate in administrative commenting and appeals processes, and will continue to do so on a regular basis in McKean, Warren, Forest, Elk and other counties in Pennsylvania where oil and gas wells, pipelines, storage tanks, brine pits and other related oil and gas development infrastructure are proposed. ADP would sustain injury to its interests if the challenged projects were undertaken in the absence of a public, legally and scientifically sufficient analysis of the projects' environmental and socio-economic impacts. The interests of plaintiff and its members would sustain further injury because the project will degrade air quality, recreation opportunities, wildlife habitat and water quality in and around the project areas and the areas where members and staff of ADP participate in the above mentioned activities. In addition, a NEPA analysis that fully and fairly compared the proposed oil and gas drilling project to other alternatives would provide ADP with valuable information about economic and environmental impacts of the proposed oil and gas drilling versus other options such as renewable energy and demand side management. Defendant's violations of NEPA deny ADP this valuable information.

11. The Sierra Club is a national nonprofit organization of approximately 1.3 million members and supporters dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human

environment; and to using all lawful means to carry out these objectives. The Pennsylvania Chapter of the Sierra Club has approximately 27,000 members. The Sierra Club's concerns encompass protecting the natural beauty of Pennsylvania and ensuring that the natural resources of Pennsylvania will be available for future generations. The Club's particular interests in this case, and the issues which are raised in this case, affect members who hike, fish, camp, and view wildlife in the Allegheny National Forest.

12. Plaintiffs have frequently and persistently advised the Forest Service that plaintiffs believe that NEPA requires defendant to prepare Environmental Assessments or Environmental Impact Statements before issuing the Notices to Proceed.

13. Defendant U.S. Forest Service is a federal agency within the U.S. Department of Agriculture. Defendant is, by law, responsible for the management policies and actions undertaken with respect to the public lands. By statutory authority, and the agency's own regulations, defendant is also responsible for implementing NEPA and other land management laws and regulations pertaining to actions and decisions on lands administered by defendant.

## **COUNT I**

### **Violation of NEPA**

#### **Failure to Prepare NEPA Analysis**

14. Plaintiffs incorporate by reference the preceding paragraphs.

15. The National Environmental Policy Act (NEPA) is the "basic national charter for protection of the environment." 40 C.F.R. 1500.1.

16. Among the critical purposes of the statute are to "insure that environmental information is available to public officials and citizens before decisions are made and actions are

taken," and to "help public officials make decisions that are based on understanding of environmental consequences." Id. 1500.1(b)-(c).

17. To accomplish these purposes, NEPA requires all agencies of the federal government to prepare a "detailed statement" regarding all "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. 4332(C). This statement is known as an Environmental Impact Statement ("EIS").

18. An EIS must describe (1) the "environmental impact of the proposed action," (2) any "adverse environmental effects which cannot be avoided should the proposal be implemented," (3) alternatives to the proposed action, (4) "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity," and (5) any "irreversible or irretrievable commitment of resources which would be involved in the proposed action should it be implemented." 42 U.S.C. 4332.

19. NEPA requires that when an agency proposes to undertake an "action" -- which includes activities that "are potentially under federal control," such as "new and continuing activities, including projects and programs entirely or partially financed, assisted, conducted, regulated, or approved by federal agencies," as well as "federally assisted activities," 40 C.F.R. 1508.18 -- the agency "must first determine whether the action is one that normally requires" the preparation of an EIS pursuant to NEPA and the Council on Environmental Quality ("CEQ") regulations implementing NEPA. 40 C.F.R. 1501.4(a).

20. If the agency is not certain whether an EIS is required, it must prepare an Environmental Assessment ("EA") to determine whether an EIS is necessary. 40 C.F.R. 1501.4.

21. The EA must discuss the need for the proposal, evaluate alternatives that would

cause less adverse environmental impacts, and provide sufficient evidence and analysis to support the agency's determination as to whether the proposed action will significantly affect the environment. Id.

22. The only time environmental analysis is not required is when the agency has "categorically excluded" the action from NEPA review. 40 C.F.R. 1501.4 (a). However, a categorical exclusion may only be invoked for those actions which do not "individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementing [the Council on Environmental Quality] regulations." 40 C.F.R. 1508.4.

23. Defendant has consistently asserted that NEPA does not apply to its "Notices to Proceed" for oil and gas exploration and drilling on the Allegheny National Forest, even though other National Forests do conduct NEPA analysis prior to issuing Notices to Proceed.

24. Specific recent examples of Notices to Proceed which defendant issued without conducting NEPA analysis include the following:

- a. September 13, 2007, "Notice to Proceed" issued to East Resources, Inc., for oil, gas, and minerals Cases 538, 540 and 544 for East Resources' proposed drilling of 1 oil and gas test well in Warrant 3781, Highland Township, Elk County, Pennsylvania; 1 oil and gas test well in Warrant 2366, Highland Township, Elk County, Pennsylvania; and 3 oil and gas test wells in Warrants 2022 and 2812, Howe Township, Forest County, Pennsylvania, respectively; including related logging on the National Forest.

- b. September 13, 2007, "Notice to Proceed" issued to ARG Resources, Inc., for oil, gas and minerals Case 542 for ARG Resources' proposed drilling of 5 oil and gas wells and associated pipelines and roads in Warrant 3760, Highland Township, Elk County, Pennsylvania; including related logging and road-building on the National Forest.
- c. October 19, 2007, "Notice to Proceed" issued to East Resources, Inc., for oil, gas and minerals Case 548 for East Resources' proposed cross-country pipeline in Warrants 2366 and 2850, Howe Township, Forest County, Pennsylvania; including related logging on the National Forest.
- d. October 4, 2007, "Notice to Proceed" issued to East Resources, Inc., for oil, gas and minerals Case 550 for East Resources' proposed compressor site and gas tie-in to a Pennsylvania General Energy pipeline in Warrant 2812, Howe Township, Forest County, Pennsylvania; including related stone pit expansion on the National Forest.
- e. December 5, 2007, "Notice to Proceed" issued to Hanley & Bird, Inc., for oil, gas and minerals Case 599 for Hanley & Bird's proposed drilling of one gas well and a 2" cross-country gathering pipeline in Warrant 3254, Jones Township, Elk County, Pennsylvania; including related logging and road-building on the National Forest.
- f. December 18, 2007, "Notice to Proceed" issued to ARG Resources, Inc., for oil, gas and minerals Case 552 for ARG's proposed drilling of 8 oil and gas wells and associated pipelines and roads in Warrant 3775, Highland

Township, Elk County, Pennsylvania; including related logging and road-building on the National Forest.

- g. January 10, 2008, "Notice to Proceed" issued to Pennsylvania General Energy Company for oil, gas and minerals Case 601 for PGE's proposed drilling of 11 oil and gas wells and associated pipelines and roads in Jenks and Kingsley Townships, Forest County, Pennsylvania; including related logging and road-building on the National Forest.
- h. January 16, 2008, "Notice to Proceed" issued to Seneca Resources Corporation for oil, gas and minerals Case 603 for Seneca's proposed drilling of 2 oil and gas wells and associated pipelines, roads and a tank battery in Lot 228, Hamilton Township, McKean County, Pennsylvania; including related logging and road-building on the National Forest.
- i. January 31, 2008, "Notice to Proceed" issued to Mark Batista for oil, gas and minerals Case 553 for Mr. Batista's proposed drilling of 2 oil and gas wells and associated pipelines, roads and tank battery in Wetmore Township, McKean County, Pennsylvania; including related logging and road-building on the National Forest.
- j. February 15, 2008, "Notice to Proceed" issued to Pennsylvania General Energy Co., for oil, gas and minerals Case M101 for PGE's proposed drilling of 2 oil and gas wells in Warrants 3174 and 3179 and associated pipelines and roads in Jenks Township, Forest County, Pennsylvania; including related logging and road-building on the National Forest.

- k. February 19, 2008, "Notice to Proceed" issued to East Resources, Inc, for oil, gas, and minerals Case 280 for East's proposed drilling of a test well and associated pipelines, tank set, and road in Lot 6, Corydon Township, McKean County, Pennsylvania; including related logging and road-building on the National Forest.
- l. March 3, 2008, "Notice to Proceed" issued to Cline Oil Company for oil, gas and minerals Case M102 for Cline Oil's proposed drilling of 2 oil and gas wells and associated pipelines and roads in Lot 259, Wetmore Township, McKean County, Pennsylvania; including related logging and road-building on the National Forest.
- m. March 18, 2008, "Notice to Proceed" issued to Gas & Oil Management Associates, Inc., for oil, gas, and minerals Case B-002-11/07 for GOMA's proposed drilling of 15 wells and associated pipelines, tank batteries, and roads in Lot 470, Mead Township, Warren County, Pennsylvania; including related logging and road-building on the National Forest.
- n. April 14, 2008, "Notice to Proceed" issued to Keane Development, for oil, gas, and minerals Case 283 for Keane's proposed drilling of 20 wells and associated pipelines, tank batteries, and roads in Warrant 3408, Lafayette Township, McKean County, Pennsylvania; including related logging and road-building on the National Forest.
- o. April 29, 2008, "Notice to Proceed" issued to East Resources, Inc., for oil, gas and minerals Case M118 for East Resources' proposed drilling of 6 oil

and gas wells and associated pipelines and roads in Warrant 3131, Wetmore Township, McKean County, Pennsylvania; including related logging and road-building on the National Forest.

- p. May 1, 2008, "Notice to Proceed" issued to Gas & Oil Management, for GOMA's oil, gas, and minerals Case 8-004-11/07 for proposed drilling of six wells and associated pipelines, tank batteries, and roads in Warrant 2978-E, Mead Township, Warren County, Pennsylvania; including related logging and road-building on the National Forest.
- q. May 7, 2008, "Notice to Proceed" issued to Seneca Resources Corporation for oil, gas and minerals Case M112 for Seneca's proposed drilling of 4 oil and gas wells and associated pipelines, tank battery and roads in Warrants 3231, 3251 and 3252, Jones Township, Elk County, Pennsylvania; including related logging and road-building on the National Forest.
- r. May 12, 2008, "Notice to Proceed" issued to Catalyst Energy, Inc., for drilling 10 oil and gas wells and associated pipelines, tank batteries, and roads in Warrant 5191 in Hickory Township, Forest County, Pennsylvania; including related logging and road-building on the National Forest.
- s. May 13, 2008, "Notice to Proceed" issued to Pennsylvania General Energy Co., for oil, gas and minerals Case M129 for PGE's proposed drilling of 3 oil and gas wells and associated pipelines and roads in Warrants 5136 and 5138, Kingsley Township, Forest County,

Pennsylvania; including related logging and road-building on the National Forest.

- t. May 20, 2008, "Notice to Proceed" issued to Sheffield Land & Timber Company for oil, gas and minerals Case M108 for Sheffield's proposed drilling of 50 oil and gas wells and associated pipelines, tank battery and roads in Warrant 2878, Howe Township, Forest County, Pennsylvania; including related logging and road-building on the National Forest.
- u. May 21, 2008, "Notice to Proceed" issued to U.S. Energy Development Corp., for oil, gas, and minerals Case 274 for U.S. Energy's proposed drilling of 16 wells and associated pipelines, tank batteries, and roads in Warrant 4872, Corydon Township, McKean County, Pennsylvania; including related logging and road-building on the National Forest.
- v. May 22, 2008, "Notice to Proceed" issued to Minard Run Oil Co., for oil, gas, and minerals Case B-008 for Minard's proposed drilling of 31 wells and associated pipelines, tank batteries, and roads in Warrant 3714, Corydon Township, McKean County, Pennsylvania; including related logging and road-building on the National Forest.
- w. May 29, 2008, "Notice to Proceed" issued to ARG Resources, Inc., for oil, gas and minerals Case M106 for ARG's proposed drilling of 44 oil and gas wells and associated pipelines and roads in Warrants 3779 and 3783, Highland Township, Elk County, Pennsylvania; including related logging and road-building on the National Forest.

- x. June 9, 2008, "Notice to Proceed" issued to Seneca Resources Corporation for oil, gas and minerals Case M122 for Seneca's proposed drilling of 5 oil and gas wells and associated pipelines and roads in Warrant 3174, Jenks Township, Forest County, Pennsylvania; including related logging and road-building on the National Forest.
- y. June 10, 2008, "Notice to Proceed" issued to East Resources, Inc., for oil, gas and minerals Case M118 – Well T-10 for East Resources' proposed drilling of one well and associated road in Warrant 3131, Wetmore Township, McKean County, Pennsylvania; including related logging and road-building on the National Forest.
- z. June 16, 2008, "Notice to Proceed" issued to Seneca Resources Corporation for oil, gas and minerals Case M133 for Seneca's proposed drilling of 6 oil and gas wells and associated pipelines and roads in Warrants 3766, 3778 and 3782, Highland Township, Elk County, Pennsylvania; including related logging and road-building on the National Forest.
- aa. June 20, 2008, "Notice to Proceed" issued to Howard Drilling, Inc., for oil, gas and minerals Case M114 for Howard Drilling's proposed drilling of 1 oil and gas wells and associated pipelines and roads in Lot 261, Wetmore Township, McKean County, Pennsylvania; including related logging and road-building on the National Forest.
- bb. June 20, 2008, "Notice to Proceed" issued to Catalyst Energy, Inc., for oil,

gas and minerals Case M124 for Catalyst's proposed drilling of 4 oil and gas wells and associated pipelines and roads in Lot 47 North, Howe Township, Forest County, Pennsylvania; including related logging and road-building on the National Forest.

- cc. June 20, 2008, "Notice to Proceed" issued to Pennsylvania General Energy Co., for oil, gas and minerals Case M132 for PGE's proposed drilling of 4 oil and gas wells and associated pipelines and roads in Warrant 5136, Kingsley Township, Forest County, Pennsylvania; including related logging and road-building on the National Forest.
- dd. June 20, 2008, "Notice to Proceed" issued to Howard Drilling, Inc., for oil, gas and minerals Case M121 for Howard Drilling's proposed drilling of one well in Warrant 3122, Wetmore Township, McKean County, Pennsylvania; including related logging on the National Forest.
- ee. June 20, 2008, "Notice to Proceed" issued to Howard Drilling, Inc., for oil, gas and minerals Case M110 for Howard Drilling's proposed drilling of 7 oil and gas wells and associated pipelines and roads in Lots 186 and 219, Hamilton Township, McKean County, Pennsylvania; including related logging and road-building on the National Forest.
- ff. June 25, 2008, "Notice to Proceed" issued to East Resources, Inc., for oil, gas and minerals Cases M126, M134 and M137 for East Resources' proposed drilling of 4 oil and gas wells and associated access roads in Warrants 2812 and 2995 Lot 49, Howe Township, Forest County,

Pennsylvania; proposed drilling of oil and gas well in Warrant 3159, Jenks Township, Forest County, Pennsylvania; and proposed drilling of one and gas well in Warrant 4133, Jenks Township, Forest County, Pennsylvania, respectively; including related logging and road-building on the National Forest.

gg. June 25, 2008, "Notice to Proceed" issued to ARG Resources, Inc., for oil, gas and minerals Case M141 for ARG's proposed fracing of the existing well #75 Wagner and placement of a pipeline in Warrant 2025, Highland Township, Elk County, Pennsylvania.

hh. Undated "Notice to Proceed" issued to East Resources, Inc., for oil, gas and minerals Case 546 for East Resources' proposed drilling of 1 test well in Howe Township, Forest County, Pennsylvania; including related logging and road-building on the National Forest.

25. Defendant advises oil and gas companies that they are not authorized to proceed with work until the Notice to Proceed is issued.

26. Once the Notice to Proceed is issued, the oil and gas companies are allowed to proceed with logging, roadbuilding, and other activities on the public lands related to the oil and gas drilling, which activities affect the environment.

27. Defendant does not advise the public that these Notices are being issued; and does not offer a "notice and comment" period to the public.

28. Plaintiff ADP obtained the 34 Notices to Proceed listed above only because it sent a Freedom of Information Act (FOIA) request to defendant seeking such documents.

29. Once the Notice to Proceed is issued, there is virtually no time or opportunity for the public to seek review of the project before the logging, roadbuilding, and other oil and gas-related work begin.

30. Therefore, this complaint will likely need to be supplemented from time to time to add the new oil and gas projects which are subsequently approved by the Forest Service; in particular, one very large and controversial project which is imminent (but does not yet have a Notice to Proceed), planned by U.S. Energy in the sensitive "Rimrock" area.

31. Although the Forest Service's decision-making process on U.S. Energy's Rimrock project is not yet final, that project is so imminent as to likely result in an emergency motion for injunctive relief by the plaintiffs, and it also is representative of ongoing and potential harm caused by defendant's pattern and practice of not conducting NEPA analysis before issuing the Notices to Proceed, and is therefore described in this complaint.

32. U.S. Energy's proposal is located in an area of High Scenic Integrity as identified by the Forest Service, an area which "currently appears unaltered to most visitors," according to the Forest Service.

33. Although defendant has given no indication it will conduct NEPA analysis for the U.S. Energy project (and in fact has repeatedly stated it believes NEPA does not apply to the Notices to Proceed), defendant has acknowledged that there are significant environmental concerns regarding that project, having issued the following statement from the Allegheny N.F. Supervisor's Office:

This development may also drastically alter the scenic quality of the area due to the level of development and placement on the landscape and possible visibility from the Allegheny Reservoir or the Longhouse Scenic Byway. Given the density of the development, and an unknown but certain road and pipeline development scenario it

appears that impacts on the trail itself will be severe. Impacts would be evident from noise associated with initial road construction and well development followed by periodic automated pumping. Impacts would be evident due to road, well pad, and tank battery construction. Impacts would also be noticed through a dramatic rise in activity and encounters of visitors with the industrialized development found in this section as well as neighboring sections that are planned for similar development. There are also possible impacts to the Rimrock Road, SR 59 and possibly the Allegheny Reservoir that I cannot determine due to the lack of geographical information in the proposal.

34. The following allegation is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery: The Allegheny National Forest has more oil and gas drilling occurring on the public lands than any other national forest in the United States.

35. A Forest Service Notice to Proceed, allowing oil and gas companies to log and build roads within the National Forest, is a major federal action as defined by NEPA.

36. Defendant has violated NEPA by failing to prepare either an EA or an EIS before issuing each of the Notices to Proceed described herein.

37. Each of the Notices to Proceed is a final agency action and the NTP's listed above are ripe and are not moot.

38. In the alternative, the effectiveness of the Notices to Proceed is of short enough duration that those final agency actions will evade judicial review, yet are capable of repetition, and therefore the court has jurisdiction to review defendant's pattern and practice of violating NEPA by failing to prepare NEPA documents prior to issuing Notices to Proceed.

39. Defendant's decision to forego environmental review violates NEPA, and is arbitrary, capricious, and not in accordance with procedures required by law, in violation of the Administrative Procedures Act, 5 U.S.C. § 706(2)(A) and (D).

40. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

## RELIEF REQUESTED

Plaintiffs seek an order:

- a. declaring that defendant has failed to comply with NEPA and the APA in issuing its Notices to Proceed;
- b. enjoining defendant from issuing any Notices to Proceed unless and until defendant has complied with NEPA and the APA;
- c. awarding plaintiffs their reasonable attorneys fees and costs incurred in this action pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412; and
- d. granting plaintiffs such additional relief as the Court deems just and equitable.

Respectfully submitted December 4, 2008.

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