Supreme Court Rules on Logging Road Controversy
The US Supreme Court issued a ruling on March 20 that effectively put an end to the current case on logging roads by overruling the 9th Districts Court of Appeals finding that would have required storm water discharge permits for logging roads in the Pacific Northwest. This had ramification for the rest of the country including Kentucky and we have been watching this issue closely. In a nut shell, there was the potential for EPA to determine that any of our logging roads that had haul roads OR constructed skid trails would require stormwater permitting. What started this mess was the Northwest Environmental Defense Center (NEDC) suing the Oregon State Forester and several timber companies for not having stormwater discharge permits for old logging roads and requested current and historical damages. They indicated that EPA’s ruling that Silvicultural activities of this type were in fact industrial sites and are thus required to have stormwater discharge permits just like sawmills and other industrial sites. In the initial suit the 9th Circuit Court ruled against NEDC. However, the 9th District Court of Appeals overturned the 9th Circuits Court ruling and thus the whole mess to the US Supreme Court for hearing in December of 2012. Christopher Reeves, UK’s certification forester was on hand for the Supreme Court hearing and has kept up with the proceedings. Chris indicated the thoughts of many at the time, that the Court would most likely kick the case back to the 9th Circuit Court of Appeals given that EPA had issued a new ruling that was relevant to the case. However, in an unexpected turn of events, the Court ruled 7-1 on March 20 that the EPA was correct in its initial finding and ruling that logging operations do not fit the definition of industrial sites, in that they are not permanent industrial facilities. Scalia was the lone dissenting judge. This means that for the meantime we do not have to be looking over our shoulders trying to determine when the permitting bomb would get dropped on us. However, the NEDC has already filed a new lawsuit in the 9th Circuit Court challenging that the EPA has incorrectly interpreted the Clean Water Act in their regulations of logging roads runoff. As always nothing is ever really “over”.