

# ESFPA news & updates

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## EPR EXTENDED PRODUCER RESPONSIBILITY

### ESFPA's EPR Grassroots Advocacy Campaign Needs YOU!

**Stop the EPR!**

The NYS Legislature will act soon on Senate Budget Bill S.2508B which would establish an extended producer responsibility (EPR) program for paper and paper-based packaging.

ESFPA is working hard, attending meetings with legislators and other advocacy organizations. However, your legislators and Governor Cuomo need to hear from you.

ESFPA has prepared an advocacy campaign through our One Click Politics Software, an editable, pre-written letter is prepared with automatic links for your legislator and the Governor based on your zip code. Please follow this [link](#) and send in your letters! the whole process takes 5-7 minutes.



### Forestry Awareness **DAYS** are coming!

That isn't a typo! We are currently planning a few DAYS of Forestry Awareness VIRTUAL appointments.

Things might be a little different in how we get the job done, but make no mistake, there is a job we need to do this year!

Our need to let all our legislators know our position on a few key pieces of legislation as well as the role of forests and wood products in addressing climate change.



### NY Court of Appeals Hears Timber Case

On Tuesday, March 23<sup>rd</sup>, the NYS Court of Appeals heard oral arguments on the Protect vs DEC “timber” case stemming from DEC removing trees in the development of a snowmobile trail. ESFPA Counsel Dennis Phillips who filed ESFPA’s amicus brief in the case provided the following insight as to how the arguments went. You can also read news coverage of the case [here](#).

The constitutional timber case was argued in the New York’s highest court Tuesday, the Court of Appeals. The case was heard by six judges instead of a full bench of seven because Judge Feinman resigned from the Court for health reasons effective yesterday, the day of the arguments. DEC and APA were represented by the New York State Attorney General’s Office with attorney Jennifer Clark presenting the arguments. PROTECT! was represented by John Caffry, a Glens Falls lawyer. Since it was DEC’s appeal, attorney Clark was first to argue.

As expected, Ms. Clark was met with a barrage of hard questions posed by the various members of the Court, including a question posed by Judge Fahey asking for a definition of “Forever Wild.” The members of the Court touched on the word “timber” in various questions and comments, including making reference to DEC’s three-inch DBH standard, but did not appear to actively probe the difference between trees and timber trees, the issue that ESFPA thought was the constitutional point of beginning for a sound analysis of the case. To be sure, ESFPA thought the case should begin with a count of timber trees cut, not all trees cut, so the Court could then weigh whether the number of timber trees cut would substantially or materially erode the “wild forest” condition of the Adirondack Park, bearing in mind that the 1895 Constitution was in reaction to the perception of cut and run logging and stripping of the forest cover and in defense of water flows and protection

Issues for 2021:

- Extended Producer Responsibility Act
- Freshwater Wetland Legislation
- Stream Protections
- Clean Fuel Standard

We are working on scheduling appointments for April 20th, 21st and 22nd. We will have a legislative review session for all participants at 8:30 am on April 16th.

Mark your calendars NOW! We will inform members how sign ups will occur when meetings are finalized.

...Stay tuned.....



## PPP Extended to May 31<sup>st</sup>

The Paycheck Protection Program is set to expire at the end of the month — and the Senate voted today on the House measure passed last week to allow business owners to apply for PPP and the forgivable loans through May 31st, instead of March 31st, and give the Small Business Administration until June 30th to process the loans. The program, which was established by the CARES Act to provide forgivable funding to small businesses, reopened in January with \$284 billion in funding. Through March 21st, the SBA had awarded more than 3.1 million loans worth a total of nearly \$196 billion.

for the canals and rivers of the state, especially the Hudson River for the benefit of New York City and its future water supply. It unfortunate that the definition of timber issue was not fully developed in the record at the trial court level. A full record would have required testimony from an objective historian not a member of PROTECTS! board of directors, various landowners, loggers, truckers, sawmill owners, paper manufacturers and firewood cutters.

In response to Ms. Clark, Mr. Caffry pretty much relied on the 1930's Lake Placid pre-Olympic Bobsled case as "good law," a thought articulated by Judge Fahey and apparently not disputed. On the other hand, the ESFPA brief did dispute that case and asked the Court to revisit it, because that case interchangeably addressed "trees and timber" in reaching the conclusion that the construction of a bobsled run— something akin to a clearcut — would violate the constitution. In a general sense, the questions posed to Mr. Caffry by the Court did not appear to disturb PROTECTS! position.

High court decisions are unpredictable, but with New York's strong Constitution and the "Forever Wild" meme the path of least resistance might be to let the lower court decision stand relative to the meaning of constitutional timber in the Adirondack and Catskill Parks, a result that could produce unintended consequences for New York's private and modern timber industry. Nevertheless, by filing the amicus brief ESFPA has stood up and staked out its position on the meaning of timber in the real world and can always rely on it in the event of future cases, controversies, rules, and regulations that might wind up in a court of law.

If you missed the oral arguments and would like to hear the hours worth of statements you can follow this [link](#). On Monday, March 29<sup>th</sup> and the archived oral arguments will be available.



## Lake George Basin Stormwater & Stream Protection Regulations Effective on 4/1/21

New requirements within the Lake George Basin go into effect on April 1<sup>st</sup> and will impact any timber harvest 5,000 sq. ft. or larger. Enclosed is a [letter](#) from the Lake George Park Commission and a [NOTICE OF INTENT / SOIL CONSERVATION PLAN FORM](#) that will need to be filed with the Lake George Park Commission. While ESFPA was successful in keeping silviculture and timber harvests as exempt under the new stormwater and stream regulations, the NOI has to be filed at least two weeks prior to commencing of a harvest or logging activity. Stream crossing regulations will still be

under the DEC Protection of Streams regulations but an NOI has to also be filed if crossing a stream. Note that in the **Towns of Bolton, Queensbury, Lake George or Lake George Village, you do not have to file an NOI with the Commission but must contact the planning or zoning administrator of that municipality for requirements related to logging activities.**

This week the Lake George Association and The FUND for Lake George announced the merger of the two organizations, see [here](#). According to the release: 'By combining our teams' scientific, technical, advocacy and

## ESFPA and NYLT Signs on FRA Legger Relief Letter to USDA Secretary Vilsack

ESFPA and New York Logger Training, Inc. have joined the Forest Resources Association and over 35 other forest and logging associations in [writing](#) to USDA Secretary Tom Vilsack urging him to make immediately available the entire \$200 million in logger relief assistance provided by Congress. Assistance for timber harvesting and timber hauling businesses impacted by the COVID-19 pandemic was authorized in the Consolidated Appropriations Act of 2021.

Loggers across the country have been anticipating the release of these funds, however we had been hearing that USDA may not release the full \$200 million and the delay in getting to program going has been inordinately long compared to other COVID assistance.

## ESFPA Signs on Business Tax Letter

Led by the Business Council of NY, ESFPA signed onto a business tax letter opposing a range of proposed tax increases in the Senate and Assembly one-house bill. We believe these increased taxes – in addition to being unnecessary – will adversely impact businesses, investment levels and jobs at a time when New York should be focused on rebuilding its economy. See the letter [here](#).

On Monday, Governor Cuomo and Budget Director Robert Mujica also indicated that with resources from the federal American Rescue Plan Act and better than anticipated State revenues in the first quarter there was [no need](#) for tax increases to meet the State budget gap. Whether the Governor can persuade Legislative leaders on this no need is yet to be seen.



**NYFOA**  
New York Forest Owners Association



## ESFPA, NYFOA & NY SAF to Sponsor Webinars on the Ag. & Forestry CLCPA Recommendations

Last week the Agriculture & Forestry Advisory panel received the draft recommendations for the CLCPA Scoping Plan and Commissioner Ball, Chair of the Advisory Panel, is scheduled to present the recommendations to the full Climate Action Council on **April 12<sup>th</sup>**. ESFPA together with the New York Forest Owners Association, and the New York Society of American Foresters, are co-sponsoring 3 webinars to present the Forest related recommendations on:

- **Wednesday April 13<sup>th</sup> 6:30 – 8 p.m. – Forest Management Recommendations**
- **Wednesday April 26 6:30 – 8 p.m. – Avoided Conversion Recommendations**
- **Tuesday May 4<sup>th</sup> 6:30 – 8 p.m. – Bioeconomy Recommendations**

John Bartow, Bob Malmshemer, Tom Gerow and Donna Wadsworth who all serve on the Advisory Panel will provide an overview of the recommendations and field questions and take comments on how these recommendations will move forward in the development of the CLCPA Draft Scoping Plan due by January 1, 2022. Next week we will have Zoom links and more details. In the mean time you can see the draft recommendations as presented to the Ag. & Forestry Advisory Panel on March 2<sup>nd</sup> [here](#).

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