



ESFPA "The People Behind New York's Healthy Forests and Quality Wood Products"

the Empire ENVOY

The Official Publication of the Empire State Forest Products Association

STATE BUDGET FOR FY 2021

FORESTRY AWARENESS DAY IS MARCH 17, 2020

Governor Cuomo delivered his FY 2021 State Budget Proposal in late January which includes several proposals which may affect New York's forests and wood products industry. **Forestry Awareness Day**, which will be held in Albany on **March 17th**, is our opportunity to bring these issues and our positions to our legislative leaders. The Day will begin with a legislative review to ensure these issues and positions are discussed and understood by all of our participants. Over 40 legislative visits are already confirmed as this issue of The Envoy goes to press. To register for Forestry Awareness Day, a free event, please visit www.esfpa.org or contact our office at (518) 463-1297.

The following issues are slated for discussion at FAD and are paramount to our Industry.

Likely the issue which will take center stage on March 17 is the **Amendments to the Freshwater Wetlands Act**, which is set to reform wetland maps and amend wetland regulations to advance the goals described in other legislative efforts to address climate risks identified in the Community Risk and Resiliency Act, the recently signed Climate Leadership and Community Protection Act, and the Governor's "Restore Mother Nature" initiative. However, it would also remove a 49-year standing exemption of certain forest management practices within wetlands and adjacent buffer areas that have not been proven to have any harmful impacts to wetlands. This proposal adds regulatory burdens to forest landowners which may discourage continued retention and management of private forest lands.

ESFPA supports the changes in the freshwater wetlands act which would streamline the mapping and regulatory process, but we cannot support this legislation which unduly restricts private landowners from managing their forests while providing protection to wetlands and other natural resources.

ESFPA also supports the \$300 million proposed funding for the **Environmental Protection Fund (EPF)**. Specifically, the funding will support the following programs carried over from last year: **Land Acquisition** and our priority for State Working Forest Conservation Easements, **Urban Forestry** as this is often the largest interaction of urban residents and communities with trees and forests, **Biodiversity / Landowner Habitat Conservation Programs**. Our

private forests represent over 14 million acres of habitat and biodiversity and we hope to see some of this effort benefit private forest lands to encourage sustainable forestry and achieve these goals, **Invasive Species** in both our water and terrestrial forest environments including funding for Hemlock Wholly Adelgid, **Regenerate NY grant program** for project cost sharing with private forest landowners to help address forest impacts from deer browsing, invasive species and to ensure the next generation of New York forests, and funding for the **Wood Products Development Council**.

Also, new EPF funding proposals for FY 2021 which ESFPA supports are commitments for funding to develop **Easements for Land Trusts** to expand the easement program to smaller forest landowners and funding to create **Community Forest** for municipalities and NGOs. Included in the EPF Funding proposal which ESFPA does not support is the use of EPF funding for agency personal services costs and the transfer of \$5 million from the Regional Greenhouse Gas Initiative to the EPF.

ESFPA is currently following the details surrounding funding for **The Environmental Bond Act of 2021 "Restore Mother Nature,"** which would authorize the issuance of \$3 billion of bonds to finance environmental improvements that preserve, enhance, and restore New York's natural resources and reduce the impact of climate change. Capital projects eligible to be financed include those to: restore habitats and reduce flood risk; improve water quality; protect open space, preserve forest and invest in recreational infrastructure associated there to; expand the use of renewable energy to mitigate climate change.

In order to support the Bond Act, ESFPA would like to see how this proposal would benefit New York's public and private forests while not removing significant acreage from management and timber harvesting. Additionally, ESFPA also wants to be sure that the role of private forest lands and markets that help support them are complimentary to the Restore Mother Nature Bond Act and Initiative.

The Governor's new **Product Stewardship Program** for the recycling of carpets is another proposal ESFPA is monitoring.

(See "State Budget" continued on page 3)

The Empire Envoy

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Founded in 1906, ESFPA is dedicated to improving the economic climate for the forest products industry and to promote management of New York's Forests to meet the resource needs of today and for future generations. ESFPA counts among its 400 members furniture companies, lumber manufacturers, forest landowners, timber harvesters, pulp and paper companies, and other wood products manufacturers from across New York State. Members own and manage 1.5 million acres of New York's forests and employ over one-third of the 60,000 individuals who work in the forests and wood-using mills around the state. **The Empire Envoy** is the newsletter of the Empire State Forest Products Association, Copyright© by ESFPA. Articles may be reproduced with permission of the publisher. **The Empire Envoy** is produced monthly for ESFPA members and interested parties. For information on subscriptions or membership, please contact ESFPA.

Chairman's Remarks

Michael McLarty, ESFPA Chairman of the Board

I write this letter to offer you my deepest appreciation to be given the opportunity to serve you, the membership, as your Chair of the Board for the 2020 and 2021 terms; it is both a great honor and responsibility.

At the ESFPA board meeting in December, I offered thoughts on 2020 and I will share them with you in this letter. In 2020, a unique combination of global economics, trade dynamics, National and State politics, local markets and an increased focus on climate change will create challenges for our industry. I believe despite those challenges, significant opportunities exist. Participating in that process will give us opportunity to enhance our industry importance and awareness and will assist us in making progress in our other objectives, such as: promoting new markets, attracting a next generation of forest industry workers, combatting proposed negative legislation and enhancing/implementing new legislation and State programs that will benefit our industry.

Overcoming these challenges and seizing the opportunities requires your help and support as members of the ESFPA. I ask of you the following:

- **Participate:** over the course of the year we have a Forestry Awareness Day in the legislature, regional meetings across the State and numerous other events and meetings. Make a point of showing up and making your voice heard.
- **Give the board and organization feedback:** as an organization and a board, we work for you, the membership. In order to align our work with our membership's needs and best support your needs we need to hear from you.
- **Communicate your importance:** don't ever underestimate your importance to the well-being of New York's economy (especially the rural economy) and the health of New York's environment. Many without an intimate connection to our industry take the benefits we provide for granted. Many don't realize our economic contribution, how the forests we manage provide clean air, clean water and wildlife habitat and how our products and forest management help combat climate change. It is through grass roots advocacy that the message eventually percolates to State legislation.
- **Support the organization through your membership dues:** we fund the operations of the organization largely in part through our membership dues. Ensuring that you continue to pay your annual membership dues on time helps us run the organization efficiently and continue our advocacy and support efforts.
- **Help us recruit other members:** More contributing members gives us the resources to do more to represent your interests. Reach out to your friends and neighboring businesses and encourage them to become members. Also send us contacts that we can reach out to, promote our organization to and convince them to become a member.

I again want to thank you for your continued membership in the ESFPA and your active involvement in 2020. Our staff is readily available to receive feedback, answer questions and help you with your needs. Please do not hesitate to reach out to them or any Board member including myself.



ESFPA Sustaining Members



The Forestland Group, LLC



STATE BUDGET FOR FY 2021 *(continued from page 1)*

Stewardship programs are also known as Extended Producer Responsibility (EPR) programs, which require manufacturers and/or brand owners to assume costs associated with managing waste from their products. However, consistently high voluntary recovery rates, and the industry's ongoing efforts to increase voluntary recovery, make mandates like Product Stewardship on some packaging unnecessary and this legislation does not provide for this exception.

The proposal as drafted does not sufficiently reflect the success of voluntary, market-based recycling and recovery efforts that have happened to date in the paper and paper-based packaging industry. Imposing a mandatory Stewardship Program has not demonstrated that it would complement or enhance recycling or recovery in this well-established market. ESFPA would like to see this legislation amended to strengthen stewardship programs already in place so that successful, voluntary based efforts supported by strong markets and market resiliency are recognized as worthy product stewardship programs.

There are several tax and workforce issues in the Governor's Budget proposals that ESFPA is also monitoring. The Governor is proposing to continue to phase in proposals to **Reduce Tax Burdens on Small Business**, which are intended to alleviate the tax burden on small businesses. These amendments include the reduction of the corporate franchise tax rate on business income and to eliminate estimated tax underpayment penalties for New York S corporations. The budget creates a new refundable, discretionary **Green**

Jobs Tax Credit totaling up to 7.5 percent of wages for each net new job created fostering the expansion of green economy businesses and position New York State to further capitalize on significant projected green economic growth. The State will also create a refundable, discretionary **Green Investment Tax Credit** totaling up to 5 percent of qualifying new capital investments in connection with qualifying green economy projects and increasing to up to 8 percent of eligible investment for research and development in qualifying green economy projects. ESFPA supports both tax proposals.

The Governor's proposal would add a new section of the Labor Law, §224-a, to **require prevailing wage to be paid on certain construction projects that are funded with public funds**. This includes projects that are paid for with at least 30 percent public funds and where project costs are over \$5 million. Public subsidy may include money as well savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions or tax increment financing. Faced with legislation which would require prevailing wage on any public funded project, ESFPA prefers the Governor's proposal with high public subsidy thresholds. This Executive Budget proposal would add new employer requirements for **Mandatory Sick Leave** section 196-b to the Labor Law to require: employers with 0-4 employees to provide five unpaid sick days each calendar year; employers with 5-99 employees to provide five paid sick days each calendar year; and employers with 100 or more employees to provide seven paid sick days each calendar year. ESFPA is working with the Business Council to ascertain whether these sick days are part of existing paid time off or new additional leave requirements.

STATE NEWS

NYS DEC PROPOSES REVISION IN ENDANGERED SPECIES REGULATIONS

The NYS DEC has started its phased approach to amending 6 NYCRR Part 182 regulations regarding endangered species. Last fall, the first part of these revisions involved regulations for "experimental species", effectively providing landowners and managers relief from "takings" as defined in part 182 when they are working on re-establishing populations of species (e.g. Spruce Grouse).

Late last fall, DEC issued a pre-proposal to revise the list of endangered, threatened and special concern species. These changes are based on the species status assessments developed in support of the State Wildlife Action Plan in 2015 and their subsequent review in relation to the regulations

regarding the listing of Endangered, Threatened and Special Concern species in Part 182.

ESFPA commented on the pre-proposal noting the successes that were reflected in changes to the list as well as some of the additions. ESFPA also noted that with change in status for the Long-eared Bat to "Threatened" we were one step away from the species being listed as endangered which will bring significant impacts to forest management and timber harvesting. ESFPA has already started discussions with DEC on NLEB and what can be done to avoid unintended consequences when the bat is listed as endangered which is just a matter of time.

ANCA ANNOUNCES CLEAN TRANSPORTATION SUMMIT

Clean Transportation and Energy leaders are working on establishing a foundation for an inclusive, region-wide transition to a low carbon transportation future for the Adirondack North Country. The meeting, entitled the **Clean Transportation: the Adirondack ON RAMP** will be held April 22-23, 2020 at the Hotel Saranac in Saranac Lake. ON-

RAMP will bring experts and community members together to develop a roadmap for the region, utilizing the Climate Leadership and Community Protection Act and other State Programs as a foundation. For more information visit <https://adirondack.org/CleanTransportationSummit>.

STATE NEWS: NEW DRAFT STATE FOREST ACTION PLAN

The NYS Department of Environmental Conservation has released a new draft State Forest Action Plan, which serves as a 10-year strategic plan for DEC and the New York forestry community. The draft talks about the important role forests and forest products play in mitigating total greenhouse gas emission levels through carbon sequestration and long-term storage. The draft plan identifies ways that New York's forests can realize this potential as part of the state's comprehensive climate change solution and leverages New York's forests in the fight against climate change.

The Federal Cooperative Forestry Assistance Act requires each state forestry agency to develop "Statewide Assessment and Strategies for Forest Resources," collectively referred to as the State Forest Action Plan. A final State Forest Action Plan, which will be an update to New York's 2010 Plan, is due in June 2020. New York's State Forest Action Plan addresses the three national priorities identified by the U.S. Forest Service:

- Conserve and manage working forest landscapes for multiple values and uses;
- Protect forests from threats; and
- Enhance public benefits from trees and forests.

In addition, the 2020 draft plan leverages New York's forests in the fight against climate change, utilizing the CLCPA, the Plan and builds on these priorities and identifies four primary goals for New York's forests:

- Keep New York's forests as forests;
- Keep New York's forests healthy;
- Ensure forests benefit humans and all living creatures; and
- Ensure support, protection, and appreciation of New York's forests

Comments on the Draft Plan are due by April 3, 2020 and can be sent to ForestActionPlan@dec.ny.gov. You can view the full draft plan at <http://www.dec.ny.gov/lands/60829.html>.

NYS DEC FOREST TAX LAW 480-A REFORM

In 2018, the Department of Environmental Conservation (DEC) made a commitment to undertake a public and administrative review of 6NYCRR Part 199 regulations governing New York's forest tax law pursuant to Section 480-A of the Real Property Tax Law. The goals of the review were to maximize the eligibility of properties that could enroll under 480-A within the current statutory framework (i.e. a timber stocking program), try to streamline administrative requirements for both participating landowners and the Department, and to update the "Handbook" for 480-A. DEC is preparing the necessary documentation to release proposed regulatory changes to 6NYCRR Part 199 and over the past couple of months has been outlining what may be included. The following draws from DEC's presentations on the proposals.

Timeline

Draft express terms are nearly complete. The major changes DEC anticipates proposing are essentially the same as presented during the initial public meetings held across the state in 2018-2019. Given the mandatory comment period and the process it takes to get approval to release the draft regs, DEC will not be able to have new regulations in place before March 1, 2020. However, the department will still proceed with any handbook revisions and updates that do not require regulatory changes. The new goal is to have the regulations out for public comment in the spring/summer of 2020 to have them published by December 2020. It is intended that implementation will take place by March of 2021.

Recommendations for regulation reform

Clarification of the 500 stems/60 square feet thresholds so that appropriate salvage operations can take place;

- Requirement was only intended for initial entry into the program and we want to support all types of sound silvicultural treatments to get positive regeneration response. Sometimes a stand needs to be dropped below this threshold to get this response.

Landowners must sign a forest management plan and must sign an attestation that they have corresponded with a DEC forester and understand the provisions of the program;

- *Helping the landowner understand the purpose of the program is for the "continuing production of a merchantable forest crop". Want to ensure the landowner understands they are probably going to need to do some timber harvesting and forestry work to continue in program.*

Addressing boundary line marking;

- *Now requiring property boundary lines to be permanently marked with paint. Stonewalls, posted signs etc. will not be accepted;*
- *Ineligible acres will NOT have to be marked;*
- *Boundary between eligible non-committed acres and committed acres need to be marked;*
- *All regions would now have the same boundary line provisions.*

Changing the deadline for initial applications to September 1st to allow DEC staff more time to inspect property;

- *Allowing DEC foresters more time to inspect properties coming in would help eliminate issues down the road. This also would allow more time for landowner/foresters to address issues before taxable status date. Plus, a thorough inspection is not possible in the winter in areas due to access issues.*

Changing the work schedule format from an annual schedule to two ten-year work windows;

- *Full update every 10 years;*
- *Eliminating the five-year update and replacing it with a brief narrative or questionnaire describing changes to the property;*
- *Flexible harvest acres within 10-year windows;*

(See "State News: Forest Tax Law" continued on page 5)

STATE NEWS: FOREST TAX LAW (continued from page 4)

- *This provision recognizes that timber markets are volatile and in some areas of the state it is difficult to sell timber on a tight schedule. This reform would allow the landowner to schedule treatments within a 10-year work window and get that work done anytime within that window. We still would require the landowner to give us the 30-day Notice of Commercial Cutting before the treatment begins.*

Allowing silvopasture as an approved treatment when implemented as part of an approved prescription;

- *This gives landowners an additional tool to remove invasive plants if it is part of silviculture treatment. DEC still would not allow grazing for an agricultural purpose on committed acreage.*

Allowing landowners to withdraw acreage without penalty after natural disturbance if they are not able to establish sufficient regeneration;

- *Landowners will need to show effort in regenerating stands through proper silviculture. If treatment does not yield regeneration after 10 years, then landowner is given another chance to install a treatment to establish regeneration. If this fails, then we can let the property out of program without penalty. If landowner refuses to attempt a treatment to establish regeneration, then a violation with penalty would be issued.*

Requiring management plans to be written using a DEC template;

- *Eliminates question of what is required for a passing grade on a forest tax law management plan;*
- *The aim is to develop two templates; one for larger landowners with strata level management and one for family forest owners under traditional model of stand level management.*

Requiring management plans to be written by foresters that have gone through a DEC Approved Management Plan Writing Certification.

- *Foresters would have to take short certification course on forest tax law to submit 480a plans for landowner;*
- *Allow DEC to spell out what is required from foresters that operate within 480a;*
- *Gives DEC the ability to remove foresters from approved list if quality of work is poor.*

Changes we anticipate making to the handbook and forms:

- *Eliminate need to notarize Annual Commitment form (still need approval from Legal to do this);*
- *Clarify that maple sap production and carbon credits are compatible uses;*
- *Clarify what uses are ineligible (statute defines "eligible tract" but not what is ineligible.*

Statutory issues that cannot be changes through this regulation reform:

- *50 acres of eligible forest land provision in law cannot be changed (lowered)*
- *Penalties are set by law.*
- *Primary aim of law is to "produce a merchantable forest crop". This is spelled out as timber or pulpwood, including veneer bolts, sawlogs, poles, posts and fuelwood in the statute. This means the primary purpose of a management plan cannot be maple sugaring operations, carbon credits, non-traditional forest products (ginseng, mushrooms etc.) or wildlife management can only be allowed as a compatible use and cannot preclude timber management.*
- *Stumpage tax of 6% on harvests is set by law*
- *Notification of harvest (Notice of Commercial Cutting) to DEC is set by law*

DEC PROPOSED REGULATORY CHANGES FOR 2020

Each year, pursuant to the State Administrative Procedures Act (SAPA), the New York State Department of Environmental Conservation publishes a Regulatory Agenda in the State Register and on its website. The following highlights regulatory change proposals the Department may undertake in 2020. If you have questions or concerns about these proposed regulatory changes please feel free to contact us at ESFPA or look at the State Register for January 8, 2020 at <https://www.dos.ny.gov/info/register/2020/jan8.pdf>.

Division of Air Resources

6 NYCRR Part 247, Outdoor Wood Boilers. The existing regulation will be amended to conform to the emission standards and certification requirements of the federal NSPS rule for residential wood combustion devices. As a result, new Part 247 will encompass a wider range of appliances compared to the existing rule.

6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel and Best Available Retrofit Technology for Heavy Duty Vehicles. The existing regulation will be amended to make it consistent with

the amendments to the ECL section 19-0323 compliance dates, update the definition of heavy duty vehicle to incorporate changes made to the New York State Vehicle and Traffic Law that add additional exceptions, revises Section 248-3.1(d) and (e) to add "on behalf of", and clarifies the annual reporting period.

6 NYCRR Part 252, "Greenhouse Gas Limits and Reporting." This rulemaking will satisfy the requirements of setting greenhouse gas emission limits as described in the Climate Leadership and Community Protection Act (CLCPA). This rulemaking will also satisfy the requirements of the CLCPA by setting GHG limits for 2030 and 2050.

Division of Environmental Remediation

6 NYCRR Parts 596, 597, 598, and 599, Chemical Bulk Storage Regulations. In this second phase of rule making for revisions to the Chemical Bulk Storage (CBS) regulations, the Department proposes to amend Part 597 to update the

(See "State News: DEC Regulatory Changes" continued on page 6)

STATE NEWS: DEC PROPOSED REGULATORY CHANGES *(continued from page 5)*

list of hazardous substances and clarify the spill reporting requirements. The Department also proposes to repeal Parts 596, 598, and 599 and replace them with a new Part 598 to: (1) achieve equivalency with 40 CFR Part 280 (Underground Storage Tank regulations), which is needed in order for the State to receive State Program Approval from U.S. Environmental Protection Agency (EPA) by incorporating new requirements from the federal regulations that the EPA promulgated in their July 2015 rule making; and (2) incorporate State-initiated changes pertaining to the administration of the CBS program and its consistency with the Petroleum Bulk Storage program, where applicable.

6 NYCRR Part 611, Environmental Priorities and Procedures in Petroleum Cleanup and Removal. The Department proposes to repeal and replace Part 611 to incorporate requirements from Article 12 of Regulatory Agenda NYS Register/January 8, 2020 70 the Navigation Law, which prohibits the discharge of petroleum and provides for cleanup and removal of any petroleum discharge.

6 NYCRR Part 613, Petroleum Bulk Storage Regulations. In this second phase of rulemaking for revisions to the Petroleum Bulk Storage (PBS) regulations, the Department proposes to amend Part 613 to: (1) achieve equivalency with 40 CFR Part 280 (Underground Storage Tank regulations), which is needed in order for the State to receive State Program Approval from EPA by incorporating new requirements from the federal regulations that the EPA promulgated in their July 2015 rule making; (2) clarify language of the existing requirements; and (3) incorporate State-initiated changes pertaining to the administration of the PBS program and its consistency with the CBS program, where applicable.

Division of Fish & Wildlife

6 NYCRR Part 182, Section 182.5, Pertaining to endangered species, threatened species, and species of special concern. The existing regulation will be revised to update the list of endangered, threatened and special concern species based on the best available data. The current list has not been vetted for necessary changes since 1999, with only mandatory changes

based on federal listing decision occurring over the last twenty years. See article on page 3.

Division of Lands & Forests

6 NYCRR Part 199, Taxation of Forest Land. Amend the existing regulations to update them and provide effective administration of the program by lessening the administrative burden on participants and provide clarity for addressing issues and situations that arise due to changing circumstances associated with private forest land ownership.

6 NYCRR Part 575, Prohibited and Regulated Invasive Species. Amend sections 575.3, Prohibited Invasive Species and 575.4, Regulated Invasive Species to update these lists and establish control and management of listed prohibited or regulated invasive species. The purpose of this Part is to establish procedures to identify and classify invasive species and to establish a permit system to restrict the sale, purchase, possession, propagation, introduction, importation, and transport of invasive species in New York, as part of the Department of Environmental Conservation's statewide invasive species management program as required by ECL sections 9-1709 and 71-0703.

Division of Materials Management

6 NYCRR Part 368, Product Stewardship and Product Labeling. This rulemaking will repeal and replace the existing Recycling Emblem regulations in 6 NYCRR Part 368 to be consistent with national labeling guidelines for recycling terms. It will also include regulations for mercury-added consumer products labeling, and product stewardship requirements for the E-Waste take back program resulting from legislation adopted in 2010 for E-Waste management.

Division of Water

6 NYCRR Parts 609, and 700 – 706 Water Quality Standards. Revisions would add/revise ambient water quality standards, standard setting procedures, implementation procedures, and other regulatory provisions.

CLIMATE NEWS

LOW CARBON FUEL STANDARD

ESFPA is a member of the Clean Fuels NY Coalition which is comprised of industry, environmental and policy advocates looking to enact a Low Carbon Fuel Standard (LCFS) in NY as part of the Climate Leadership and Community Protection Act. On January 29th the Coalition held a legislative briefing and informational panel discussion on legislation that would implement an LCFS in NY and what it means for the entire transportation sector.

An LCFS requires fuel suppliers to reduce GHG emissions associated with the fuels they make and sell. The LCFS:

- Can create a dependable market for cleaner fuels, which drives steady investment into non-petroleum fuels (e.g. biodiesel).

- Would reduce GHG emissions from New York's highest emitting sector
- Can require oil refineries and importers to reduce carbon intensity of fuels, reducing carbon and air pollution, supporting expanded transportation electrification and creating more homegrown jobs in the production of electricity and low-carbon fuels.

The current legislation calling for an LCFS standard in New York is A. 5262 (Woerner)/S. 4003 (Parker). ESFPA is working with Clean Fuels NY Coalition partners on trying to get this legislation included in the 2021 Budget negotiations.

CLIMATE ACTION COUNCIL APPOINTMENTS

On January 31st, Governor Cuomo announced his appointments of SUNY Empire College President Jim Malatras and former Parks, Recreation, and Historic Preservation Commissioner Rose Harvey to the Climate Action Council.

The appointments are key for the Council to begin its work of Commencing the Scoping Planning process called for in the Climate Leadership & Community Protection Act. The 22-member Climate Action Council (10 non-agency appointments and 12 agency heads) is being tasked with determining how the state will reach emissions goals of an 85 percent reduction from 1990 levels by 2050 with a deadline of January 2022.

Legislative appointees, which we have reported on earlier include:

- Assembly Speaker Carl Heastie appointed former DEC Commissioner Peter Iwanowicz, now the

executive director of Environmental Advocates of New York, as well as Bob Howarth, a Cornell environmental biology professor, and Stony Brook University Dean Bob Shepson;

- Senate Majority Leader Andrea Stewart-Cousins appointed Anne Reynolds of the Alliance for Clean Energy New York, environmental attorney Raya Salter, and energy consultant Dennis Eisenbeck;
- Senate Minority Leader John Flannigan appointed Gavin Donohue of the Independent Power Producers of New York, and
- Assembly Minority Leader Brian Kolb appointed Donna DeCarolis, a fuel executive with National Fuel Gas.

With the Council now appointed, the co-chairs, DEC Commissioner Basil Seggos and NYSERDA President Alicia Burton, can convene the first Council meeting and look to appointing people to the 6 Advisory Panels and 3 Work Groups called for in the legislation.

TRANSPORTATION CLIMATE INITIATIVE (TCI)

ESFPA continues to closely follow the TCI and its potential impact on New York State. The states participating in the Transportation and Climate Initiative (TCI) have released a Draft Memorandum of Understanding to establish a regional cap and invest program to transition to a more sustainable, resilient, low carbon transportation sector. Also released were initial projections of the potential economic and public health benefits such a program could achieve.

TCI is what is referred to as a “cap and invest” program where the states will “cap” the volume of petroleum based on-road transportation fuels (i.e. gasoline and diesel) and place a fee on each gallon sold (6-10%) and use this as a market intervention to encourage consumers to move to electric vehicles, mass

transit or some other non-petroleum based fuel source. Funds raised from the added fuel prices would be used to invest in conversion to electric vehicles (e.g. charging stations) or alternative fuel vehicles.

New York along with 11 other northeast and mid-Atlantic states and the District of Columbia have been participating in TCI but now must make a decision as to whether or not they will commit to implementing the program through an MOU. Some states need legislative authorization to commit to the program, NY does not. New Hampshire has already indicated that they will not commit to TCI and latest news reports are that several other states will not commit, but no one else has formally opted out as this issue of the ENVOY is going to publication.

FEDERAL NEWS

TRADE & TARIFFS

The start of this new decade has brought some optimism on the trade and tariffs front following over 18 months of uncertainty and tit-for-tat retaliations and miscommunications. The good news is trade deals with China and a finalized US-Mexico-Canada Agreement (USMCA) materialized late in 2019 and have been signed into law at the end of January 2020. There remains some uncertainty and a lot of work to be done both at home and abroad, but at least a ray of sunshine has broken through those dark, dark trade clouds.

Of most interest to the industry was the January 15th “Phase One” signing ceremony between U.S. President Donald Trump and Chinese Vice Premier Liu. The hardwood sector

was pleased to see that hardwood lumber and logs were specifically mentioned, under U.S. manufactured goods. Exactly how this will play out in tariff relief and movement of material will take some time and with an extended Chinese New Year due to the Corona virus outbreak, it may take longer than initially anticipated.

Regarding the USMCA, the Senate approved the USMCA agreement by a vote of 89-10 in a rare show of bipartisanship. The President signed the legislation on January 29th. Canada and Mexico are in the top four trading partners for U.S. hardwoods. Finalizing this agreement will provide much needed certainty to these markets. Mexico has also ratified

(See “Federal News: Trade & Tariffs” continued on page 8)

FEDERAL NEWS: TRADE & TARIFFS *(continued from page 7)*

the revised agreement. Canada is expected to consider final passage of USMCA in the early months of 2020. Analysts expect the Canadians to approve USMCA, but it may take a few months given Canadian political dynamics.

Hopefully, 2020 brings long awaited certainty and predictability to international trade in our sector and we begin to recover losses over the past few years.

WOTUS FINAL RULE

After years of litigation and rulemaking, on January 23rd, the US Environmental Protection Agency and the US Army Corps of Engineers announced the finalization of the Navigable Waters Protection Rule (NWPR) to further define "Waters of the United States" (WOTUS). The NWPR establishes four categories of waters that are federally regulated: (1) territorial seas and traditional navigable waters, (2) perennial and intermittent tributaries to those waters, (3) certain lakes, ponds and impoundments, and (4) wetlands adjacent to jurisdictional waters. NWPR details twelve categories of exclusions that are not "waters of the US", such as groundwater, many ditches, streams that flow only in response

to precipitation, artificial lakes and ponds, and water-filled depressions.

The effect of these exclusions is that the listed water features will NOT, by themselves, subject forest land to EPA Clean Water Act permit requirements governing such things as the aerial application of pesticides. The wetlands exclusion will also significantly strengthen the application of "normal silviculture" permit exemption for forested wetlands. The forested wetlands provisions have been in existence since 1977. To read more about the final WOTUS ruling, see page 9 and the New York Farm Bureau guest article on this subject.

CARBON NEUTRALITY

Chalk this up to an end of year win in 2019. The 2020 Omnibus Budget Bill includes a directive to the Federal Departments of Energy and Agriculture and US Environmental Protection Agency to develop a federal policy on bioenergy including recognition of the carbon neutrality of biomass. We at ESFPA, together with our federal affiliates, particularly NAFO, worked hard on keeping this language in the final bill. This is the third year we have been able to retain this language and it continues to keep the dialogue alive on

biomass. We also learned in late January that EPA will have a draft biomass policy out by March 2020. Kudos to several NY Representatives who helped get this in the Omnibus bill, particularly Congressman Brindisi, and those that reached out to the White House in early 2020 to ensure that EPA start to move this policy for adoption, particularly Congresswoman Stefanik.

COMMUNITY WOOD ENERGY & WOOD INNOVATIONS FUNDING

In the final week of the 2019 legislative session, Congress passed a \$5 million allotment for the new Community Wood Energy and Wood Innovations Program in the massive \$1.4 trillion spending deal. ESFPA has been working with the Biomass Thermal Energy Council (BTEC) and our Congressional delegation to improve and expand the Community Wood Energy Program since 2016, which was accomplished through the passage of the 2018 Farm Bill. In 2019 our focus was on obtaining appropriations to establish the new program.

The Community Wood Energy and Wood Innovations Program is authorized to receive \$25 million annually. BTEC will continue to track the implementation of the program in 2020, working with the US Forest Service to disperse funds of up to \$1 million or 35% of the capital costs of individual projects. Efforts to increase the program's funding for FY 2021 will begin later this year.

EPA FINALIZES GLYPHOSATE MITIGATION

In a release dated January 30th, the EPA announced that it had reached a conclusion of their regulatory review of the herbicide Glyphosate, determining that there were no risks of concern to human health when it is used according to the label. The release further stated that Glyphosate is not

a carcinogen. This decision follows decades of research on Glyphosate, among its other uses, is the leading herbicide used for pastures, rangeland, forests and public lands.



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PRESIDENT TRUMP RELEASED HIS 2021 BUDGET PROPOSAL

Last week President Trump released his 2021 budget proposal. The proposal includes the President's funding justifications for next fiscal year, beginning October 1. This proposal fully funds many state and private forestry programs that will assist family forest owners to keep their forests as forests and healthy for future generations. President Trump's budget proposal also increased funding for Farm Bill conservation programs, such as the Environmental Quality Incentives Program (EQIP) and the Conservation Stewardship Program (CSP), which will help landowners to improve their

forest management and address barriers families face while acting on their land.

The President also declared in his State of the Union Address that the United States will join the One Trillion Trees Initiative, an effort to plant new trees around the country. It is a positive thing to see that our leaders are recognizing the role forests can play in the fight against climate change is being recognized. ESFPA will continue to monitor this issue to determine how our industry will play a role and update our membership.

GUEST SUBMISSION

NEW WOTUS RULE VICTORY FOR ALL LANDOWNERS

By Steve Ammerman, New York Farm Bureau

The Environmental Protection Agency and Army Corps of Engineers announced a replacement to the 2015 Waters of the United States (WOTUS) Rule on January 23rd, called Navigable Waters Protection Rule, a major action that New York Farm Bureau applauded.

NYFB had vigorously pushed back on the old WOTUS rule out of concern over its ambiguity and federal overreach on to farmland.

In its announcement, the EPA said, "The Navigable Waters Protection Rule ends decades of uncertainty over where federal jurisdiction begins and ends. For the first time, EPA and the Army are recognizing the difference between federally protected wetlands and state protected wetlands. It adheres to the statutory limits of the agencies' authority. It also ensures that America's water protections – among the best in the world – remain strong, while giving our states and tribes the certainty to manage their waters in ways that best protect their natural resources and local economies."

The revised definition identifies four clear categories of waters that are federally regulated under the Clean Water Act: the territorial seas and traditional navigable waters; perennial and intermittent tributaries; certain lakes, ponds, and impoundments; and wetlands that are adjacent to jurisdictional waters.

This final action also details what waters are not subject to federal control, including features that only contain water in direct response to rainfall; groundwater; many ditches, including most farm and roadside ditches; prior converted cropland; farm and stock watering ponds; and waste treatment systems.

This follows years of advocacy by Farm Bureau and others in New York and across the country, but this isn't just a victory for family farms, but for everyone who works the land, including forest owners, forest managers, timber operations, developers, even roadside crews in town and county governments.

The 2015 rule would have expanded federal authority to streams, ditches and even dry land that may run wet following heavy rains, but what land was covered and what wasn't raised many questions that led to ongoing confusion. It would

have required permits to do routine farm practices, like tilling the soil or using fertilizer on what would now be federally regulated land. Farm Bureau believed that farmers should be able to look at their land and know is a Water of the U.S. under the Clean Water Act.

"The problem was farmers didn't know what specifically the rule covered and what didn't. That opens up my farm and countless more to potential fines all because the rule wasn't clear," said Paul Molesky, Rensselaer County Farm Bureau member and American Farm Bureau Federation Young Farmers and Ranchers Chair during a press event last fall with the EPA.

Following this latest announcement, NYFB President David Fisher said, "Farmers will continue to maintain high environmental standards under this new rule. Their families, crops and livestock all depend on having clean water. It also recognizes that states have the jurisdiction to control their own environmental landscape beyond the four categories that are now clearly laid out in the federal Clean Water Act."

EPA Region Two Administrator Pete Lopez added that this move also reaffirms that states have their own authority to regulate additional waterways and land. New York has some of the strictest environmental protections in the country in this regard. Farmers also have worked with a number of programs like Agriculture Environmental Management and through their Soil and Water Conservation Districts to meet strict stewardship standards. Use of no till, buffer strips, cover crops and precision technology have greatly reduced runoff, both in New York and nationally.

Also, the Safe Drinking Water Act remains in full effect. It is the primary statute that assures the safety of our nation's public drinking water supplies. Changes to Clean Water Act regulations do not restrict or diminish Safe Drinking Water Act protections.

New York Farm Bureau appreciate that the EPA and Army Corps along with the President's administration listened to the thousands of farmers and forest landowners in New York and across the country who advocated for clean water and clear rules.

OTHER NEWS

FORESTRY AWARENESS DAY - MARCH 17, 2020

On Tuesday, March 17 ESFPA will be hosting our annual Forestry Awareness Day at the Legislative Office Building in Albany. We have already begun scheduling pre-arranged meetings with key legislators for productive discussions on pertinent issues for our industry. Registration is free but required. Our leaders will hold an informational session in the morning to ensure that all for our members are well versed in the topics at hand and confident to handle discussions during the day. Each visit will have a Group Leader who will ensure the topics are discussed and the conversation easy. Please consider attending, ***“the world is run by those who show up.”***

9 am Registration, Room 104 A of Legislative Office Building*, LOB Concourse Level - Empire State Plaza

9:30 am – 10:45 am Legislative Issue Brief – This session provides an overview of current legislation and proposals regarding forestry issues – preparing you for discussions during legislative visits. Topics will include:

1. Support for Funding in the Environmental Protection Fund for forestry related items

2. Clarity on the Environmental Bond Act “Restore Mother Nature” Program
3. Amendments to the Freshwater Wetlands Act
4. Proposals for Product Stewardship Initiative
5. Support to Reduce the Tax Burden on Small Business and Clarity in the Green Economy Tax Credit to ensure our industry is represented

10:00 am – 4:30 pm Pre-Arranged Legislative Visits – Participants will break into small groups on pre-arranged legislative visits. Visit sign-up sheets will be at the registration table and are on a first come basis. Groups are limited to the number of slots available on each visit sheet. All groups will have a group leader to help facilitate the meeting.

11:30 – 2:00 pm Lunch – Boxed lunches are available for all registered participants in the meeting room in the LOB.

For more information or to volunteer to be a group leader, please call Muriel Church at the Empire State Forest Products Association at (518) 463-1297.

Register for FAD at www.esfpa.org



WELCOME NEW ESFPA MEMBERS
(AS OF FEBRUARY 2020)

Root Logging, Andrew Root, Boliver, NY

Rich Langer, Glen Spey, NY

Jason Hoffner, Youngsville, PA

Mahlon Miller Logging, Mahlon Miller, Panama, NY

O’Niell Logging, Mike O’Niell, Titusville, PA

Patriotic Logging, Justin Brown, Portageville, NY

Rudy Wengerd Logging, Reuben Wengerd, Clymer, NY

Steve Keith Logging, Steve Keith, Clymer, NY



ESFPA Headquarters at the NY Forestry Resource Center, Rensselaer NY

IN MEMORIAL – JOEL BOWMAN, A. D. BOWMAN AND SON, INC.

It is with the deepest sympathies that we announce the passing of Joel Bowman on Tuesday, January 28, 2020 after a ten-month battle with cancer. Joel was the third generation

in the family business of A.D. Bowman & Son, Inc, a long time and established member of the Empire State Forest Products Association. We extend the deepest condolences to his family and friends.

CONGRESSMAN ANTONIO DELGADO TAKES FORESTRY TOUR

With the aid of some unseasonably warm weather, along with several ESFPA members and ESFPA Executive Director, U.S.

Congressman Antonio Delgado had his first tour of the forestry industry in New York State late last month. Congressman Delgado is a freshman representative, who's district covers points from just below Utica to just north of Newburgh and most of Rensselaer County. The Congressman's 19th District is also comprised of all parts of the New York City Watershed west of the Hudson River, which supplies unfiltered drinking water to over 9 million New Yorkers. The Congressman's District is the third most forested district in the state and Congressman Delgado has shown significant interest in issues pertaining to his new district including consideration for joining the Congressional Working Forest Caucus.



This tour provided a great opportunity to show the Congressman just how vital our industry is to New York

State. The forests of District 19 protect the watershed, 64 percent of which is privately owned. Our members discussed trade and tariff issues, invasive and endangered species and forest health, climate change and ecosystems benefits of forests and forest markets.

Special thanks to ESFPA Vice Chair, Jennifer DeFrancesco and fellow B & B Forest Products co-owner Bill Fabian who led the tour which began at the Company's facility and log yard in Cairo, NY. In addition to the Congressman, others who joined

the tour included: John Bartow – Executive Director, Empire State Forest Products Association, Ty Bowgren – Head of Procurement, Wagner Lumber, Matt Gutchess – Owner, Gutchess Lumber, Tom Pavlesich – Watershed Agricultural Council, Forestry Program Manager, Ben Povak – Wood Procurement Manager, Finch Paper, John Zemanick – V. P. Natural Resources, Gutchess Lumber, ESFPA Board Member.

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