



Empire State Forest Products Association

The people behind New York's healthy forests and quality wood products
www.esfpa.org

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Memorandum of Opposition

A 6930/S 5983

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Albany, NY 12248

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Honorable Pete Harckham
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Via Email harckham@nysenate.gov

May 12, 2025

Dear Assemblymember Burdick and Senator Harckham:

The Empire State Forest Products Association (ESFPA) has concerns with **A. 6930/S. 5983** which enables local governments to prohibit the application of pesticides to certain local freshwater wetlands where local governments have implemented a freshwater protections law.

The Empire State Forest Products Association (ESFPA) represents over 350 member businesses, industries and landowners engaged in forest resource production and stewardship of New York's 19 million acres of forest. In total, \$22.9 billion dollars in annual industry production and nearly 100,000 jobs are attributable to operations of various industries within the forest related sectors. Over 200,000 private forest landowners depend on wood product markets to provide a return of investment on their forests lands which in turn enable them to keep their forests as forest and steward their lands in ways that benefit all New Yorkers.

Article 24 of the Environmental Conservation Law (ECL), the Freshwater Wetlands Act, provides for a delegatory scheme to allow local governments to enact local freshwater wetlands regulations and seek delegation of permitting authority from the Department of Environmental Conservation. This delegatory scheme is for the regulation of freshwater wetlands and not for the regulation of pesticides. Article 33 of the ECL, Pesticides, provides for the registration, commercial use, purchase, and custom application of pesticides (insecticides, fungicides, and herbicides). Article 33 is preemptive of delegation and does not contemplate local regulation.

Specifically, under Environmental Conservation Law Article 33:

§ 33-0303. Powers and duties of the commissioner and the department.

1. Jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides, is by this article vested exclusively in the commissioner.

This legislation could put at risk the delegation under the Federal Insecticide, Fungicide, and Rodenticide Act, known as FIFRA. Under FIFRA the federal and state governments have express authority to regulate pesticides. The preemptive language of Article 33 would prohibit delegation of pesticide regulation from the state. If Article 33 is undermined it could undermine the EPA delegation to New York. Moreover, should local governments be authorized to regulate pesticides in wetlands we could end up with a patchwork of regulations that residents and businesses would find confusing and in some instances inconsistent between municipalities where wetlands overlap with multiple local jurisdictions.

This legislation also does not take into consideration the statutory changes that were made to the Freshwater Wetlands Regulations in 2022 and the regulations that became effective on January 1, 2025. These changes regarding freshwater wetlands have added millions of additional acres of wetlands throughout New York and will remove the requirement for mapping wetlands. It is unclear at this time what DEC will do regarding delegated wetland jurisdiction with these changes. It is also unclear how local governments will know where wetlands exist under the new regulatory scheme since mapping is no longer required and the Department must make all classifications and jurisdictional determinations where wetlands exist.

This legislation, as well as several other bills before the New York Legislature relating to the control or prohibition of certain herbicides and pesticides, circumvents the rigorous technical and scientific review process that exists in New York. It also sets a precedent to make such decisions regarding the labeling, packaging, storage, use and application of pesticides and herbicides in the political realm as opposed to by the experts in the scientific and technical fields.

ESFPA supports efforts to address environmental and public health issues posed by an ever-increasing number of products that may harm the environment or the public. No professional forester or forest landowner takes the use of pesticides or herbicides lightly. They are expensive and we have an ethical responsibility to use these products prudently and responsibly. What we cannot have is a labyrinth of regulatory structures to go through and manage.

For the above stated reasons, we cannot support this legislation as drafted.

cc: Assembly Environmental Conservation Committee Members
Senate Environmental Conservation Committee Members

For More Information Contact:

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