



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 9712/S 9379

Honorable Chris Burdick
Member of Assembly
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Albany, NY 12248

Via email burdickc@nyassembly.gov

Honorable Pete Harckham
Senator
315 LOB
Albany, NY 12247

Via email harckham@nysenate.gov

May 15, 2024

Dear Assemblymember Burdick and Senator Harckham:

The Empire State Forest Products Association (ESFPA) has concerns with **A. 9712/S. 9379** which enable 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 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 pre-emptive 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.

With over 1,500 cities (61), towns (933), villages (534) and counties (57) in New York this legislative delegatory scheme could result in a patchwork of regulation of pesticides and a regulatory nightmare for responsible use, application, and sale of pesticides throughout the State. With the most recent amendments in this bill limiting jurisdiction to wetlands “connected to any reservoir, reservoir stem, class A waterway or other source of public water supply” this may reduce the number of municipalities that may regulate pesticide use, it nonetheless does not warrant encroachment on DEC’s exclusive jurisdiction.

This legislation could also 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 U.S. Supreme Court has ruled that FIFRA does not prevent local regulation of pesticides, as long as local regulation is allowed by the state. The preemptive language of Article 33 would prohibit delegation of pesticide regulation from the state. If Article 33 is undermined it could undermine the Environmental Protection Agency delegation.

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 are currently being drafted. These changes regarding freshwater wetlands will add 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 in regard to delegated wetland jurisdiction with these changes. It is also unclear how local governments will know where wetlands exist under the new regulatory scheme.

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.

While we appreciate the amendments to this legislation in containing provision allowing the State to override a local prohibition of the application of certain aquatic pesticides, and more recent changes to class A streams and public water supplies, more needs to be done.

For the above stated reasons, we cannot support this legislation as drafted. We would be happy to discuss amendments that could make this legislation supportable.

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

For More Information Contact:

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