



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

2023 POST SESSION SUMMARY

By John K. Bartow, Jr.

The New York State Legislature was late on everything this Legislative Session. The State Fiscal Year (SFY) 2023-24 Budget was adopted a month late, the State Senate adjourned a day late on June 10th and the Assembly finally adjourned on July 21st after a two-week break from leaving on June 10th. You can see more on our legislative outcomes for our priority bills in the **"2022 Legislative Wrap up"** on page 3.

While we can consider the Legislature late on a few matters, they certainly authorized a lot of spending in the SFY 2023-24 Enacted Budget, with a record \$227 billion in spending. Budget Highlights can be found on page 4. This year's budget saw a number of our priorities funded which is good, but it also depends on a significant amount of federal aid, which is not likely to continue into future years. In fact, the recently released **"2024 State Budget Financial Plan"** is projecting ballooning budget gaps over the next three years, through 2027. The past three years have seen record spending on the part of the Governor and State Legislature supported in large measure through unbridled federal COVID assistance and other federal assistance and better than expected tax revenues.

Now that those record federal revenues are ending, tax revenues are crashing, and wealthy and not so wealthy New Yorkers are fleeing the State, we are seeing a 2024 budget gap where expenses will exceed revenues by \$9.1 billion in fiscal 2025. The gaps grow to more than \$13 billion in fiscal 2026 and 2027. The new gap calculation is the clearest evidence to date that Albany's three-year spending binge, which has seen both school aid and Medicaid costs explode and has been partially fueled by personal income and business tax hikes, can't be sustained.

The legislative session also saw over 900 bills that passed both houses and will be considered for signature by the Governor.

To date the Governor has signed 140 bills and has a lot more to consider in the coming months. The quality of bills enacted also continues a trend in legislating headlines and aspirations rather than good policy. Legislation also continues to follow reactions to federal policy changes in climate change and in court decisions pushing back on federal overreach, e.g., wetlands and streams legislation.

ESFPA also remains very engaged in the implementation of the **"2022 Climate Scoping Plan"**. We have testified in two major climate hearings this spring, worked to advance, and stop some climate policy advanced in the State Budget and post budget legislative session. Over the summer we will also be engaged in drafting veto messages and seeking Chapter Amendments on some bills that passed both houses.

This summer we also hope to engage legislators in some tours of our member facilities and properties to help educate them on our sector. We are also looking forward to attending the 76th Woodsmen's Field Days in Boonville. Please stop by our booth and catch up on your logging records and certifications as well as to discuss issues that are impacting you. At Boonville we will also kick off the **2023 Log-a-Load for Kids** campaign. Let's make this another banner year for kids.

Finally, thank you to all our new and returning ESFPA members! Thank you for your engagement in our advocacy and Forestry Awareness Day, and comments on policy and programs we share with you. You are what makes our sector great, and your continued support enables us to serve you in Albany and Washington D.C.. It is our honor to serve you and represent you in our efforts. Be safe out there this summer and we look forward to seeing you in the coming months.

John Bartow

The Empire Envoy

Empire State Forest Products Association
 47 Van Alstyne Drive, Rensselaer NY 12144-8465
 tel: 518.463.1297 • fax: 518.426.9502
 www.esfpa.org

ESFPA Board of Directors

Chairperson – Jennifer DeFrancesco

B & B Forest Products – Cairo, NY

Treasurer – Michael W. Hanlon

Cotton-Hanlon, Inc. – Cayuta, NY

Secretary – Christopher Truso

Farm Credit East – Greenwich, NY

Immediate Past Chair – Michael J. McLarty

Finch Paper, LLC – Glens Falls, NY

Sarah R. Bogdanovitch

Natural Resources Consultant – Paul Smiths, NY

Sarah Boggess

ReEnergy Holdings, LLC – Latham, NY

Pat Buff

B&B Lumber Co. – Jamesville, NY

Jeff Denkenberger

Molpus Woodlands Group, LLC – Saranac Lake, NY

Dr. René Germain

SUNY ESF – Syracuse, NY

Thomas E. Gerow, CF

Wagner Lumber Co. – Owego, NY

Doug Handy

A&H Forest Management, Inc. – Sharon Springs, NY

Damon Hartman

Prentiss & Carlisle – Saranac Lake, NY

Craig Jochum

Craig Jochum Logging – Apalachin, NY

Susan Keister

Keister Consulting, Inc. – Wayland, NY

Elizabeth Lesnikoski

Burlington Electric Department – Burlington, VT

Larry Richards

Richards Logging, LLC – Tupper Lake, NY

Sean Ross

Lyme Timber Co. – Saranac Lake, NY

Jack Santamour

LandVest, Inc. – Lowville, NY

Tim Stocker

Sylvamo – Ticonderoga, NY

Tony Woods

Lignetics Group – Potsdam, NY

Kevin Brown

W.J. Cox Associates, Inc. – Clarence, NY

John Zemanick

Gutchess Lumber Co. – Cortland, NY

Counsel Dennis J. Phillips, Esq.

McPhillips, Fitzgerald & Cullum

ESFPA STAFF

Executive Director

John Bartow

jbartow@esfpa.org

Communication & Member Services Director

Gabriella Ferrera

gabriella@esfpa.org

Office Manager

Dorian Johnson

dorian@esfpa.org

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.

A MESSAGE FROM THE CHAIRPERSON

Jennifer DeFrancesco, ESFPA Chairperson of the Board



do not think that there is any other quality so essential to success of any kind as the quality of perseverance. It overcomes almost everything, even nature.”– John D Rockefeller

It doesn't happen often, but occasionally I find myself at a loss for words – so this issue I drew inspiration from some of the most successful businesses owners in history.

This summer is going to be a tough one for our businesses. Markets are down, costs are still up, labor is scarce, and our government is constantly hitting us with one proposed regulation after another. I am not telling you anything that you don't already know. It is getting harder and harder to persevere, but we must. For many of us this is all that we have ever wanted to do, and I am confident that we are better off having lived in this industry.

Currently our legislature is in recess. We came out of this session with more wins than losses, mostly in the form of stalled legislation that will likely rear its head again in 2024, but we will cross that bridge when we get to it. For now, we can call it an OK 2023 session. You can read more detailed information in the rest of this issue.

“Next to doing the right thing, the most important thing is to let people know you are doing the right thing.”– John D Rockefeller

This summer the ESFPA staff plans on hitting the road to spread our agenda. We had several lawmakers request follow-up tours during our Forestry Awareness Day meetings. We have also signed on to a do a teachers education event in Putnam County. There we hope to spread the word about job potential in our industry.

As always you will also see their smiling faces at Woodsmen's Field Days in Boonville. Make sure to stop by the booth and say hi.

(See "Message" continued on page 3)

ESFPA Sustaining Members



A MESSAGE FROM THE CHAIRPERSON *(continued from page 2)*

I hate to make the summer fly by, but we have begun to work on our regional meeting schedule for Fall. We have a new and improved format for the meetings, so if you haven't been to one in a while, you will want to check them out this year. You will start to receive information later in the summer, so please be on the lookout for that.

"Coming together is a beginning, staying together is progress, and working together is success."— Henry Ford

On behalf of our Board of Directors and staff, I thank you for your continued support. We look forward to seeing you at the regional meetings. Those meetings are the best chance for us to listen to you. Let us know how you think we are doing and what you would like to see done differently.

This is your association and I encourage you to be as active and vocal as possible.

Jennifer DeFrancesco

STATE CORNER

2022 LEGISLATIVE WRAP UP

Climate Leadership and Community Protection Act – SUPPORT – A. 6039 (Barrett/ S. 6030 (Parker)

In the Budget negotiations ESFPA was engaged in discussions and drafting of language to amend the Climate Leadership and Community Protection Act (CLCPA) to align the emissions monitoring and reporting with the Intergovernmental Panel on Climate Change (IPCC), other states (CA, OR, WA). The CLCPA accounting system is fundamentally incompatible with the accounting system of the IPCC and other states and, more recently, with the accounting system of the Inflation Reduction Act (IRA). These differences arise in three areas:

1. The first principle is that of lifecycle GHG emission accounting (also known as lifecycle assessment, or LCA). This requires that the emissions associated with the production and use of a fuel or product be accounted for along its entire supply chain. CLCPA does not account for upstream emissions of biogenic fuels imported into NY.
2. The second principle is that direct biogenic CO₂ emissions do not count toward a clean fuel's lifecycle carbon intensity (CI) score when that fuel is derived from sustainable biomass. CLCPA treats biogenic CO₂ emissions the same as fossil fuel emissions.
3. The third principle is that the global warming potential of GHG emissions should be measured based on their impacts over 100 years (GWP100). CLCPA uses a 20-year GWP.

Failure to fix these puts New York in a competitive disadvantage, increases the costs of achieving GHG emission targets of 40% by 2030 and 85% by 2050, and could make New York ineligible for billions of dollars and tax incentives included in the IRA.

This proposal hit a major kerfuffle and sent the ENGO community on a social media blitz. Governor Hochul pulled it from the legislative negotiations and indicated she may bring it up again post Budget.

Remain in their respective En Con Committees and not likely to see action before session ends. The kerfuffle on this during the budget negotiations is going to make doing this hard.

Clean Fuel Standard – SUPPORT – A. 964 (Woerner)/S. 1292 (Parker)

These bills would establish a Clean Fuel Standard (CFS) to reduce

greenhouse gas emissions in the transportation sector. ESFPA will be discussing for the heavy-duty transportation sector consisting of vehicles that presently do not have electrification alternatives. These heavy-duty sources account for as much as 1/3 of New York's transportation emissions. ESFPA will be discussing how a CFS can achieve emission reductions while supporting our agricultural and forest-based economy, localizing sources of fuel within New York, and helping to use our agricultural and forest landscape as a solution to climate change.

6/8/23 S. 1292 Passed Senate and sent to the Assembly where it sits in En Con Committee.

Birds & Bees Act – No Position at this Time – A. 7640(Glick)/S. 1856-A (Hoylman-Sigal)

Would prohibit the use of neonicotinoids in most cases. There is language that would allow the Commissioner of DEC to allow the use of neonicotinoids for treating invasive species, following an emergency declaration. We worked out language and presently are working on bill language with The Nature Conservancy and the Natural Resources Defense Council (NRDC) to include an exemption for "woody plants". This will be a blanket exemption to allow the of neonics to manage forest invasive pests.

6/9/23 S. 1856-A Passed Both Houses. ESFPA did get a "woody plant" exemption which addresses our concerns.

Streams Legislation – OPPOSE – A. 4601-A (Glick)/S. 1725-A (Harckham)

Would add all class C waterways to the list of additional protections for streams under the Protection of Waters Regulatory Program within the New York State Department of Environmental Conservation (DEC). This statutory change could impose permit windows which could be devastating to forest management in New York. Forests are the largest terrestrial land cover in the state and provide tremendous protection to rivers, streams and lakes. This legislation would serve to discourage sustainable forest management rather than encourage it.

4/25/23 S.1725-A Passed Senate. 6/6/23 S. 1725-A was debated in the Assembly and passed following debate. S. 1725-A will be sent to the Governor for her consideration. ESFPA will join with others opposed to this legislation and seek a Veto or Chapter Amendment.

(See "Wrap-Up" continued on page 4)

2022 LEGISLATIVE WRAP UP *(continued from page 3)*

Packaging Reduction and Recycling Infrastructure – OPPOSE – A. 5322-A (Glick)/S. 4246-A (Harckham)

Enacts the “Packaging Reduction and Recycling Infrastructure Act” to require companies selling, offering for sale, or distributing covered packaging materials and products to reduce consumer packaging, improve recycling and recycling infrastructure (including supporting reusable and refill infrastructure), financially support municipal recycling programs, reduce toxins in packaging and require producers of products to bear the onus for end-of-life solutions to product packaging.

6/1/23 these bills were amended as Same As and referred to Senate Finance where it sits. ESFPA was pleased that in the amended version non-packaging paper was removed and the bill is now a packaging proposal. On 6/5/23 ESFPA filed a Memorandum to Oppose due to other provisions in the proposal that still impacts paper and other covered products.

Deforestation-free Procurement Act – OPPOSE – A. 5682-A (Zebrowski)/S. 4859-A (Krueger)

This bill would prevent state agencies from procuring products made from wood and fiber from Tropical forests. ESFPA, AF&PA, SFI Inc. and the Canadian Forest Products Association have worked to convince sponsors on the poor merits of this legislation as it would have included Boreal forests. In reintroducing this bill in 2023, Boreal forests were removed. The bill did, however, include a new section amending the Economic Development Law requiring ESDC to establish a Supply Chain Assistance Transparency Program for small and medium businesses. These supply chain provisions would apply to any “raw material” (not just Tropical woods) and have definitions that are problematic.

4/25/23 S. 4859-A Passed Senate and was debated and passed in the Assembly on 6/21/23. S. 4859-A will be forwarded to the Governor for her consideration. ESFPA will join with others opposed to this legislation and seek a Veto or Chapter Amendment.

PFAS Monitoring and Disclosure – OPPOSE – A. 3296-A (Kelles)/ S. 227-B (May)

This legislation would require all existing and new water discharge permits to monitor their discharges for one year and to report any level of PFAS documented. This legislation was amended on May 31st to include general permits for multi-purpose stormwater permits.

ESFPA was surprised by this stormwater provision and filed a MoO on 6/6/23. S. 227-B Passed the Senate but sits in the Assembly En Con Committee.

Forest Management for Certain Lands and Clear Cut Jurisdiction in the Adirondack Park – OPPOSE – A. 3841 (Glick)/S. 2831 (Breslin)

This legislation would require forest management plans, subject to the approval of the Department of Environmental Conservation, for certain lands subject to a conservation easement purchased by the state and forbids clearcutting on such lands without a forest management plan; increases the jurisdiction (25 acres down to 5 acres) of the Adirondack Park Agency over clearcutting.

Remain in their respective En Con Committees and not likely to move in 2023.

Adirondack Conservation Design Bill – No Position at this Time – A. 4608 (Glick)

This bill would require Adirondack Park residential subdivisions that meet specific lot size thresholds to comply with certain conservation subdivision design criteria including:

- development of an ecological site analysis and project concept plan;
- authorization for density bonuses based on the amount of open space preserved; and,
- parameters for designated open space.

Remain in Assembly En Con Committees and not likely to move in 2023. Has not found a Senate sponsor.

ReEnergy Black River at Fort Drum – No Position at this Time – A. 4585 (Barrett)/S. 4566 (Parker)

The overlying intent of this act is to allow for the continued operation of New York’s last remaining utility-scale biomass facility, which is located at U.S. Army’s installation, Fort Drum, through the extension of the existing REC contract until November 30, 2034, or until other compensation for the attributes associated with electricity generation via biomass is available. ReEnergy Holdings converted a former coal fired power plant to biomass in 2004 when New York recognized biomass as a renewable energy resource. Changes to the Public Service Law in 2019 removed biomass as a renewable energy resource thereby threatening the Renewable Energy Credits to this generator. ReEnergy supports all the power needs of Fort Drum under a contract that runs until 2034. If we are successful in amending the CLCPA (above) this legislation will not be necessary. It is doubtful, however, that either of these remedies will be timely enough to hold off the closure of ReEnergy Black River.

Remain in their respective Energy Committees and moot legislation at this time as ReEnergy Black River/Fort Drum closed on 3/31/23.

STATE BUDGET – A MONTH LATE AND DOLLAR BLOATED.

The SFY 2023-24 Budget was nearly a month late and had a record level of spending. We fared well in the Budget. We saw some good funding in the Environmental Protection Fund (EPF) for our forests and wood products sector. We also saw some ok measures for workforce and small business assistance. We avoided some policy measures such as Extended Producer Responsibility (EPR). We did get hit, however, with a rising minimum wage which will impact every employer in New York.

We also saw two major climate initiatives enacted in the budget with All Electric Buildings and a Cap & Invest Program. The All-Electric Buildings Act so far only applies to new construction and provides an explicit exemption for existing and new industrial and commercial processes and manufacturing. Cap & Invest authorized broad expenditures once the program is up and running. See our article on Cap & Invest on page 7.

BUDGET HIGHLIGHTS

Environmental Protection Fund in Enacted Budget
 The 2023-24 enacted budget included several forest and wood products funding within the Environmental Protection Fund (EPF). As adopted the EPF was funded at \$400 million, up one hundred million dollars from SFY 2022-23 funding. Forests and wood products fared well but substantially short of what is needed if we are to maximize benefits of our forests and wood products. Here is a breakdown of this year's EPF for forests and wood products.

Land Trust Conservation Easements – Open Space Account - **\$1.5 million**. This allocation continues to fund the next generation of Forest Conservation Easements through land trusts working with private family forest owners. In the coming year we will also see funds for easements coming from the Environmental Bond Act.

Community Forests – Greenhouse Gas Emissions outside the Power Sector - **\$1 million**. This allocation continues the Community Forest program through municipalities and land trusts and increases funding to \$1 million from 2022-23 at \$500,000.


Regenerate NY Grant Program – Climate Change Mitigation & Adaptation Account - **\$500,000**. This allocation allows the State to continue to cost share certain private forest stewardship projects aimed at ensuring the suite of ecosystem benefits derived from private forest lands. These projects will entice forest

landowners to seek professional and technical assistance which helps them meet their stewardship objectives while at the same time introducing them to continuous active stewardship and markets that can help them manage their forests long-term. This is woefully inadequate if we want to see impacts at the landscape level.

Wood Products Development Council – Climate Change Mitigation & Adaptation Account - **\$200,000**. This allocation continues to provide research and market development funding to the Wood Products Development Council to expand and develop wood markets benefiting private forest lands. Wood product markets are the single largest driver of sustainably managed forests, and this proposal would bolster New York's efforts to ensure markets support managed forestry and additional carbon sequestration.

Climate & Applied Forestry Research Institute (CAFRI) – Climate Change Mitigation & Adaptation Account - **\$1 million**. Funds climate modeling and research at SUNY College of Environmental Science and Forestry and Cornell College of Agriculture & Life Sciences and increases funding to \$1 million up from \$500,000 in 2022-23.


Maintain Forest and Woodlands on Farms - Climate Change Mitigation & Adaptation Account - **\$500,000**. Provide grants for the purpose of carbon sequestration and to promote sustainable and resilient agriculture and forestry on New York farms. This is a new line allocation supported by Senator Hinchey who originally had \$15.25 million in the Senate budget resolution.

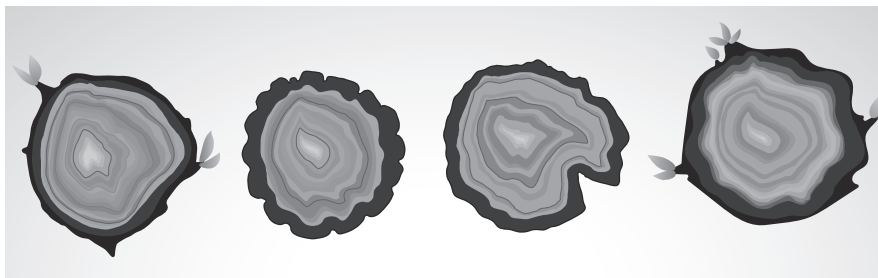


DID YOU KNOW?


You can PAY YOUR DUES with a Credit Card?

Just Call Us at 518-463-1297






Follow us on Instagram



EmpireStateForestProducts

Follow us on Twitter



**Empire State Forest Products Association
(@EmpireForests)**

REVISED NLEB GUIDANCE FROM DEC

The Department of Environmental Conservation (DEC) had issued Guidance on the Northern Long-eared Bat (NLEB) for sustainable forest management and timber harvesting on April 11th to reflect the U.S. Fish & Wildlife Service (USF&WS) change in designation from threatened to endangered effective April 1, 2023.

The USF&WS issued their interim guidance on March 6th and DEC issued their guidance on April 11th. Following the April 11th release of DEC's guidance there were some interpretations by DEC suggesting no timber harvests could be conducted from April 1 to October 31. Hearing of several harvests that were stopped, ESFPA reached out to DEC noting that these interpretations were not what either the USF&WS or DEC's guidance were supposed to be for sustainable forest management and harvests in the active season.

DEC has acknowledged the problem and released revised guidance on May 3rd. This revision makes it clear that while there is an "area of concern" within 5 miles of a known hibernacula or 1.5 miles of a known roost tree, sustainable forest management including timber harvests may occur during the "active season" subject to the following provisions:

For tree cutting to occur during the active season, the following are required to comply with the FWS interim guidance and avoid permits:

- No tree cutting occurs within 150 feet of known roost trees.
- No tree cutting occurs within 0.25 miles of a known hibernacula.
- Leave snag and cavity trees uncut unless their removal is necessary for protection of human life and property.

- If any bats are observed flying from a tree, or on a tree that has been cut, tree management activities in the area should be suspended and DEC Wildlife staff notified as soon as possible. A permit may be required to continue work, or you may have to wait until November 1 to resume activities.

If all of the above are incorporated into the project, forest management may proceed during the active season without a likely take of NLEB and without a permit from either DEC or USF&WS.

ESFPA is recommending that in submissions for permits involving sustainable forest management or Notice of Commercial Cuts for 480-A harvests that applicants attest in writing to either:

1. The activity is not within 5 miles of a known hibernacula or 1.5 miles of a known roost tree. Or
2. If they are within 5 miles of a known hibernacula or 1.5 miles of a known roost tree during the active season (i.e., April 1 to October 31):
 - a. They will not cut trees within 150' of a known roost tree.
 - b. They will not cut within 0.25 mile of a known hibernacula (any time of year).
 - c. They will leave snag and cavity trees uncut unless their removal is necessary for the protection of human life and property.
 - d. They will look for bats.

Hopefully this eliminates any confusion or misinterpretation of the DEC guidance. Please advise us if you incur anything else.

DEC ANNOUNCES "REGENERATE NY" FORESTRY COST SHARE GRANTS

The New York State Department of Conservation (DEC) has announced that \$850,000 in funding is now available for the third round of the "Regenerate NY" Forestry Cost Share grant program. The purpose of this grant program is to assist private landowners to support the regeneration of forests so they may continue to deliver vital services such as providing wildlife habitat, mitigating climate change, protecting air and water quality, and supporting the economy.

Regenerate NY is funded by New York State's Environmental Protection Fund (EPF) and managed by DEC's Division of Lands and Forests. Private landowners planning to restore or establish five or more acres of forest land in New York State may apply for grant awards ranging from a minimum of \$10,000 to a maximum of \$100,000, with a required 25 percent match. Regenerate NY

is a cost share reimbursement program, so applicants would pay the costs upfront and be reimbursed 75% of the costs. **Eligible projects include tree planting, soil scarification, removing competing vegetation that would interfere with seed-ling establishment and growth, and installation of deer fence.** Applicants must work with a forester or a qualified natural resource professional to develop their project. Up to two applications may be submitted per applicant, provided the applications are for separate properties.

Applications can be submitted through the NYS Grants Gateway and will be accepted until 5:00 p.m. on October 6, 2023, or until funds are depleted, whichever comes first. Grants will be awarded on a rolling basis.

INDUSTRIAL EFFICIENCY GRANTS AVAILABLE THROUGH NYSERDA

New York has launched a \$10 million **Commercial and Industrial Accelerated Efficiency Program** to provide incentives for large energy users to reduce emissions and electrify loads. Program awards will range from \$500,000 to \$5 million for projects that can be completed and operational by the end of 2025. Eligible measures include energy efficiency and process improvements, heat pumps, electrification of thermal loads, and energy management systems and controls.

The program will target companies "working to significantly cut energy and emissions on an accelerated timeline," according to the New York State Energy Research and Development Authority, known as NYSERDA. NYSERDA says the new program is designed to reduce emissions from operations in difficult-to-decarbonize and energy-intensive sectors, helping the state to meet its legislatively set climate goals.

(See "Grants" continued on page 6)

INDUSTRIAL EFFICIENCY GRANTS *(continued from page 5)*

The new efficiency program is open to a range of applicants in manufacturing industries and in commercial campus settings, including paper, petroleum, primary metals, minerals, chemicals, transportation, and other sectors.

NYSERDA said it will award incentives on a competitive basis. Proposals must identify an energy-saving target; selection will be based on ranked scores prioritizing thermal energy savings, emissions savings, cost effectiveness, peak electric load

reduction, and how quickly the measures can be installed. The total award request cannot exceed half of the project's cost. Ineligible projects include new construction and those focused on power quality, lighting and "projects that derive benefits from the decommissioning of equipment due to a reduction of work/production," NYSERDA said.

Proposals are due by August 31.

FEDERAL CORNER

SUPREME COURT ROLLS BACK WETLANDS JURISDICTION

On May 25, the U.S. Supreme Court (SCOTUS) issued a decision in the *Sackett v. EPA* case that narrowed the scope of a recent rule implemented by the Biden administration that defined Waters of the U.S. (WOTUS). Prior to the decision, ESFPA joined an amicus brief filed by a coalition that included AF&PA, FRA, NAFO, and several other state forestry associations. The SCOTUS rejection of the "significant nexus" test preserves protections for water resources while delivering much-needed clarity to determining federal jurisdiction over wetlands. The "significant nexus" test has created permit uncertainty related to potential development, such as facility expansions or road development.

Our friends at AF&PA have provided a summary of key takeaways from the SCOTUS decision that include:

- The case marks a very significant change in the application of the Clean Water Act (CWA), including a rejection of the "significant nexus" test for CWA jurisdiction. Although the decision considered whether a wetland constitutes a WOTUS, its implications extend to other types of waters lacking direct connections to traditional navigable waters.
- To assert jurisdiction over an adjacent wetland under the CWA, a party must establish "first, that the adjacent [body of water constitutes] . . . 'water[s] is of the United States' (i.e., a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it

difficult to determine where the 'water' ends and the 'wetland' begins."

- Thus, the majority rejected the Environmental Protection Agency (EPA) 's assertion, in this case and in the WOTUS rule published in January 2023, as well as in the Obama-era WOTUS rule that was withdrawn under Trump, that a wetland need only have a "significant nexus" to surface water that constitutes or is connected to a traditional navigable water (Justice Kennedy's test in the *Rapanos* decision).

- All nine Justices rejected the "significant nexus" test. Justice Kavanaugh wrote an opinion concurring in the judgment, in which Justices Kagan, Sotomayor, and Jackson joined, agreeing that the EPA's definition of WOTUS was over-inclusive but saying that a wetland lacking a direct surface connection to WOTUS could still be jurisdictional if it is adjacent to the other water body and just "separated from a covered water only by a man-made dike or barrier, natural river berm, beach dune, or the like." In his view, the majority improperly conflated "adjacent" and "adjoining," inconsistent with prior CWA implementation that had deemed such adjacent wetlands as WOTUS.

This decision is going to have significant jurisdiction changes over federal regulation of wetlands. It also is already fueling legislation in New York (e.g., the streams bill) where legislators are referencing the SCOTUS decision at the federal level.

NORTHERN LONG-EARED BAT

On January 25th, the U.S. Fish and Wildlife Service (USF&WS) extended the effective date of the final rule reclassifying the Northern Long-eared Bat (NLEB) from threatened to endangered. USF&WS had originally pinpointed the compliance date for January 30, 2023, and had pushed it back to March 31, 2023. The extra 60 days was intended to give industry and other stakeholders breathing room so that they can "preview" temporary guidance documents and management tools prior to the rule's effective date. As previously reported, the USF&WS formally up classed the NLEB to be endangered in final regulations issued in November 2022.

On March 6, 2023, the USF&WS issued "**Interim Voluntary Guidance for the Northern Long-eared Bat: Forest Habitat Modification**". The purpose of this voluntary guidance is to

assist stakeholders with non-federal actions involving forest habitat modification to address concerns about compliance with the federal Endangered Species Act and promote conservation of the Northern Long-eared Bat. This guidance is interim and runs for the period of March 31, 2023 – April 1, 2024. USF&WS will seek stakeholder input during this period with the intent to formalize final Guidance in April 2024.

As noted in our State Regulatory Report, DEC has completed guidance on how the federal interim rule will operate in New York and under New York's Endangered Species Act.

ESFPA will be active in balance of 2023 working on what may happen with the federal guidance as the deadline of April 1, 2024 approaches.

FARM BILL

A package of federal legislation known as the Farm Bill — the most impactful piece of legislation related to agriculture — is proposed, debated, and passed by Congress and signed into law by the president. The current Farm Bill was enacted in December 2018 and expires in 2023. As leaders look ahead to the next version of the Farm Bill, here are some important things to know.

The original Farm Bill was enacted during the 1930s as part of the New Deal and had three main goals:

1. Keep food prices fair for farmers and consumers.
2. Ensure an adequate food supply.
3. Protect and sustain the country's vital natural resources.

At nearly 1,000 pages, the more recent Farm Bills intersect with a multitude of topics, such as agriculture, health care, forestry, poverty, climate change and school foods.

Because the Biden administration has made climate change a federal priority the new Farm Bill will focus on these efforts

as well. Climate Smart Agriculture and Forestry will have large roles in the 2023 Farm Bill. ESFPA is a member of the Forest in the Farm Bill coalition and we have been engaged in setting priorities for consideration in drafting of the Farm Bill.

On February 28th ESFPA signed-on to the Coalitions the Farm Bill Platform which outlines priorities for the major Farm Bill categories.

On April 14th ESFPA testified and a listening session on the Farm Bill hosted by House Ag. Committee Chair Representative G.T. Thompson and NY Congressional Representatives Marc Molinaro and Nick Langworthy.

On April 29th ESFPA testified at a listening session on the Farm Bill hosted by Congressman Paul Tonko in Milton, NY.

On May 9-10, ESFPA participated in a Federal Fly-in for the Land & Water Conservation Fund and the Farm Bill. ESFPA met with 12 NY Congressional Offices over 2 days.

U.S. DOL RULES UPDATES

The U.S. Department of Labor (DOL) is still planning to complete a final rule on independent contractors. The DOL missed the May target to publish a rule on independent contractor classification. The agency now intends to publish the final rule in August. This rule could negatively impact ESFPA members as nearly every sector in the wood supply chain depends on independent contractors to perform work. ESFPA joined the Forest Resource Association (FRA) in submitting comments opposing the proposed rule in December 2022.

The DOL additionally plans to publish a notice of proposed rulemaking that would make more workers eligible for overtime pay in August 2023. A rule that proposes to create a national "heat" standard to safeguard workers from working in intense heat has been pushed to a new target of March 2024. ESFPA is working with our national affiliates on comments and advocacy on these proposed rules.

CLIMATE NEWS

CAP & INVEST PROGRAM ADVANCING

The New York State Department of Environmental Conservation (DEC) and New York State Energy Research and Development Authority (NYSERDA) are advancing a Cap & Invest (C/I) Program as a major financial piece of the Climate Scoping Plan implementation. The C/I Program was recommended by the Climate Action Council's final Scoping Plan and was proposed in Governor Kathy Hochul's 2023 State of the State Address and Executive Budget. Legislation authorizing the program was enacted as part of this year's final budget and stipulates:

- Directs all proceeds from regulatory programs adopted pursuant to ECL §75-0107 and 75-0109 deposited in newly created New York climate action fund with: 30% to a consumer climate action account, 3% to a small business climate action account; and 67% to a climate investment account.
- Directs the state to study and make recommendations on best use of fund resources.
- Construction projects receiving \$100,000 or more from the investment account are subject to prevailing wage.
- Other projects receiving funding are subject to

requirements for pre-hire collective bargaining agreements, labor peace agreements, and apprenticeship agreements, with some exceptions.

- Any building service work on a covered climate risk-related and energy transition project is subject to prevailing wage.
- The Department of Labor is required to develop a plan for retraining workers impacted by job loss in the energy sector.
- Projects are subject to requirements for use of U.S. made iron and steel.

DEC and NYSERDA are developing regulations for the program to meet the greenhouse gas emission reduction and equity requirements under the 2019 Climate Leadership and Community Protection Act (Climate Act). DEC will promulgate regulation to implement C/I by December 31, 2023.

In June, a series of stakeholder information sessions on the development of the State's economywide Cap-and-Invest Program were conducted by DEC and NYSERDA. ESFPA participated in four of these sessions and provided written comments. As regulations are drafted we will continue to comment on behalf of our sector.

ESFPA PARTICIPATES IN NY CLIMATE IMPACTS ASSESSMENT

The New York State Energy Research & Development Authority (NYSERDA) is leading a comprehensive assessment of observed and projected impacts of climate change on New York State. The ***“New York State Climate Impacts Assessment: Understanding and Preparing for Our Changing Climate”*** will assess how climate change will affect New York’s communities, ecosystems, and economy, and may inform climate choices at all levels of decision-making in the State.

ESFPA was invited last fall to participate as a Sector Advisor to the Ecosystems Technical Working Group, one of eight working groups. Each Technical Workgroup is supported by a diverse group of Sector Advisors—representatives from communities and constituencies that are affected by the impacts of climate change or active in addressing these impacts. The Sector Advisors help ensure that the assessment captures the impacts that matter most, the process is driven by the needs of people who will actually use the information the assessment will produce, and the results are accessible and actionable.

This assessment will update the 2014 New York State climate projections effort (ClimAID) by incorporating and reflecting the latest data, models, and scientific understanding of climate change. It will also incorporate input from more stakeholders and decision-makers so that its information is relevant, topical, and accessible to the full range of New York’s diverse communities and interests.

Using the latest science, the New York State Climate Impacts Assessment will provide a comprehensive analysis of how climate change is affecting New York State and how those impacts are likely to change in the decades ahead. The assessment will also look at strategies for adaptation and resilience, which will help prepare for those impacts.

In contrast to the Climate Action Council and the Climate Scoping Plan, this climate assessment is not developing or recommending policy, nor is it focused on how to reduce emissions. Rather, the focus is on the science of how the climate is changing (projections), how those changes will affect New York (impacts), and how we can prepare for some impacts that may be uncertain or unavoidable (adaptation and resilience). The goal of this assessment is to provide the science and information that will allow decision-makers at all levels to make informed choices about their future: whether that’s a local municipality, state agency, or individual business or landowner. Although the assessment timeline does not align with the faster-moving CAC, the resulting information may form the scientific foundation for future recommendations or iterations of the Climate Act.

We expect the final assessment to be available in late summer or early fall of this year.

ESFPA NEWS

MEMBER SPOTLIGHT: GREG FITZPATRICK OF FITZPATRICK & WELLER, INC.



Since its founding in 1895, Fitzpatrick & Weller, Inc. of Ellicottville NY has played an important role in the hardwood lumber and wood components industries. Now in its fourth generation, brothers Dan and Greg Fitzpatrick are running the business together as it continues to thrive and adapt to the times.

Fitzpatrick & Weller, Inc. originally specialized in manufacturing shoe lasts, which are a mechanical form shaped like a foot that were popularly used by shoemakers and cordwainers

in the manufacture and repair of shoes. In the 1960’s, Fitzpatrick & Weller Inc. was the largest manufacturer of shoe lasts in the country. However, following the sudden rise of plastics in shoe last production, they were quickly unable to keep up with competition. Although they attempted to also make the shift to plastics in their manufacturing, soon they instead got into the sawmill and wood components business where they again excelled.

Today, Fitzpatrick & Weller, Inc. is still known for their quality raw materials sourced from New York forests, master crafted production, and customer-oriented management. They provide state-of-the-art equipment, material knowledge, and manufacturing expertise that brings customers the best combination of aesthetic characteristics for optimal value. They ship lumber all over the world to places such as Europe, China, and Vietnam, while producing a variety of products including strips, edge-glue panels, glued up squares, mouldings and CNC parts for furniture, flooring, and musical instruments. They

currently employ 93 individuals and consider them to be their “most valuable asset” with a commitment to quality, training, safety, and delivery schedules that allows Fitzpatrick & Weller, Inc. to produce products that meet the most intricate specifications on a timely basis in container-load quantities.

After being asked why he chose to continue the family legacy, Greg Fitzpatrick stated that while his father always hoped that he would come back to the business, he also worked in the wood component factory during summer breaks from college and enjoyed working with wood as well as working with his family. After 6 years of working at Price Waterhouse utilizing his CPA, he was ready for a change. He officially started at F&W in 1988 and subsequently became President in 2005. Greg states that when he started in 1988, he “could never have imagined how much this industry and manufacturing in general would change over the next 35 years. Fortunately, we were able to change with the times.” A fitting mantra from their website states “whatever your hardwood needs, we work hard to exceed your expectations.”

Fitzpatrick & Weller Inc. has also been a valued ESFPA member for many years, with a history on our Board of Directors. They maintain a close relationship with us as we continue to advocate for businesses like theirs in the forest products industry. Greg describes ESFPA as a “critical” piece of the industry in our political efforts in NY’s capital, especially noting that he “appreciates the work ESFPA did to keep the industry essential during the COVID-19 pandemic.” We would like to extend our appreciation for them as well and thank them for their continued support and for the work they do as a constant pillar of New York’s forest products industry.

LOG-A-LOAD 2023



Log-A-Load for Kids of New York had our best year ever in 2022, raising over \$154,255 for Children’s Miracle Network Hospitals. That was approximately five times our yearly average for the last decade. We are in awe, and so grateful. Every dollar raised helps children and their families receive the care they need to live happy, healthy lives, which means that amount of money has a vast reaching positive effect on a lot of lives.

While we continue to celebrate this awesome achievement, we recognize that not every year can be like this.

Wait, do we? Why can’t it? If we all chip in, is there a reason why last year’s unbelievable accomplishment can’t become Log-A-Load’s new normal? We believe it’s possible because we believe in you. We believe in your generosity, your dedication, your ingenuity, and your ability to get the job done. It’s what shapes our industry and it is what has driven this organization for the last 26 years.

So what’s the plan? Several years ago we started collaborating with the Children’s Miracle Network hospital in Utica, NY to feature a Miracle Child at the Woodsmen’s Field Days. Meeting these children, hearing their stories, and putting faces to our mission has been a powerful, rewarding, and motivating

experience. This year, we are excited to be featuring twins as the faces of our campaign! You know what that means—double the cause!

That’s right, we challenge you to double your donation this year. Your normal donation... but for each of the twins. That’s right, we’re doubling down for 2023. **Will your organization rise to the challenge?**

We know this won’t be feasible for everyone, and that’s ok. For some of us, it looks like harder times might be ahead. We greatly appreciate every donation and recognize how deep many of you reach to contribute each year. But whether it’s a few more dollars, an extra day spent volunteering, or a bonus item for us to raffle off in Boonville, we encourage you to explore how you can give a little bit more in 2023.

We also want to take this opportunity to say thank you. Whether you’re a donor, volunteer, or advocate, we appreciate you helping us make miracles for children and their families throughout New York State. Over the years, we have come to know many of you, either professionally or as familiar faces donating and buying raffle tickets year after year. You drive Log-A-Load’s success—none of this would be possible without your support.

New York State Log-A-Load for Kids is part of a nationwide program to support Children’s Miracle Network Hospitals. Serving nine hospitals across New York State, we have witnessed first hand how the money we raise can change the lives of children and their families.

Thank you for your support and generosity!

ESFPA MEETS IN WESTERN NY

On June 14th and 15th the ESFPA Board of Directors met in Ellicottville NY. On Wednesday the 14th, the Board toured the Fitzpatrick & Weller mill in downtown Ellicottville (our thanks to Greg Fitzpatrick and Joe Snyder for an informative tour) followed by a dinner with members at Holiday Valley. We



had 25 members join the Board for dinner and heard from New York State Senator George Borello on how the 2023 Legislative Session ended last week. Following dinner, we had an update on “the State of the Hardwood Sector” from Baillie Lumber President and CEO Jeff Meyer. Lots of great networking which was a welcome change post-COVID.

The Board met the morning of the 15th at Holiday Valley and caught up on how ESFPA fared in the Legislative Session and started to set priorities and actions for the balance of 2023. The Board also set the framework for our 2023 Regional Meetings which will be held in September and October in Saranac Lake, Owego, Cortland, and Lake George. Stay tuned for more details. The Board also agreed that we will hold our Fall Forestry Roundtable in Early November at the Adirondack Community College in Queensbury.

The Board concluded their Western New York swing with a tour of the Gutches Lumber, Freedom NY hardwood mill. The Tour was led by Board member and Gutches Lumber Vice President of Natural Resources, John Zemanick and Freedom Plant Manager, Ryan Marrs. It was a wonderful tour and there have been some really fantastic automation updates at the mill in the past couple of years.

In all, it was a quick but informative visit to western NY and a lot of good business and networking with ESFPA members from the region.

BAILLIE LUMBER CELEBRATES 100 YEARS

Baillie Lumber is just one of the entities that goes to market under the umbrella of the Baillie Group. The group is a unified team of hardwood producers, representing many of the industry's leading hardwood lumber brands, working together to serve the needs of the hardwood industry. Collectively, their breadth of lumber availability, industry expertise and passion to serve is unmatched by any other hardwood manufacturer. This year, Baillie Lumber Co. celebrates their 100-year anniversary!

Headquartered in Hamburg, New York, Baillie Lumber is one of North America's largest hardwood lumber manufacturers. They are a provider of hardwood logs, hardwood lumber and proprietary grade hardwood lumber products. Founded in

1923 by James A. Baillie, they have grown from a regional supplier of domestic hardwoods to an international hardwood manufacturer that ships lumber to any region of the world.

Baillie's hardwood manufacturing facilities are spread north to south throughout the eastern part of the United States. In New York, their operations include locations in Boonville and Smyrna, New York and others operating under the names of Wagner Lumber, Potter Lumber and Greene Lumber. "We have to thank the employees, their families and the communities surrounding all our locations throughout New York for helping us to successfully serve our customers and suppliers for our first 100 years!" said Jeff Meyer, President/CEO Baillie Lumber.

JOIN US AT THIS YEAR'S WOODSMEN'S FIELD DAYS

2023 dates for the 76th Annual NYS Woodsmen's Field Days are **August 18, 19, & 20** at the Fairgrounds in Boonville, New

York. Hope to see you there!

LOGGER OF THE YEAR CONTEST AND RAFFLE

Stop by the ESFPA booth during the Woodmen's Field Days to nominate who you think should be named NYLT/ESFPA Logger of the Year, which will be presented at our fall Regional

Meetings. Once you've given us a nomination, **your name** will be entered into a raffle to win a FREE prize at the end of the Woodsmen's Field Days weekend. Thank you and good luck!



Join Us...

Friday, August 18, 2023
12:00 pm

Adirondack Senior High School
8181 Route 294
Boonville, NY 13309

Please use the main entrance of the High School. Class will be held in the library, which is straight ahead of the main entrance. Certification cards will be issued that day!

There is no fee to attend this class. However, donations are always accepted and appreciated.

Please contact Julie @315-206-7036 with any questions.

Hosted by:



FIRST AID, CPR & AED TRAINING

Join Us...

Friday, August 18, 2023
8:00 am

Adirondack Senior High School
8181 Route 294
Boonville, NY 13309

Please use the main entrance of the High School. Class will be held in the library, which is straight ahead of the main entrance. Certification cards will be issued that day!

Please make checks payable in the amount of \$75.00 to NOCA and mail payment to Rick Turk Tree Service, 8333 New Floyd Rd., Rome, NY 13440.

Please contact Julie @315-206-7036 with any questions.

Hosted by:





ESFPA
Empire State Forest Products Association
New York Forestry Resource Center
47 Van Alstyne Drive | Rensselaer, NY 12144-8465
518.463.1297 | www.esfpa.org

PRSRT STD
US POSTAGE PAID
RENSELAER, NY
PERMIT NO. 70

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



*Serving the forest products industry
for over 30 years!*



W.J. Cox
associates, inc.

9600 Main Street, Suite Three • Clarence, NY 14031-2093
716-759-9606 • 800-252-2502 • Fax: 716-759-9607
www.wjcox.com