



March 2024 • Vol. 120 | No. 1

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

## 2024 LEGISLATIVE SESSION

*By John K. Bartow, Jr.*

On January 3rd the New York State Senate and Assembly reconvened the 206th Session of the Legislature. This is the second year of the two-year legislative cycle, so we hit the ground running strong. Governor Hochul delivered her State of the State message on January 9th and her Executive Budget for Fiscal Year 2024-25 on January 16th. See our summary on page 3.

On March 5th we had Forestry Awareness Day which was a huge success! Thank you to all our members who participated and affiliate organizations who had informational booths. With over 50 legislative office meetings, it was a long but productive day. This kind of turnout and personal engagement from our members is extremely important in our advocacy and we appreciate the time taken by all who took part.

As we continue to work on the Budget in Albany, we will be encouraging members to advocate for the funding we are supporting and some policy measures in the budget. Once the Budget is done, it will be a mad dash to June 3rd as the Legislature looks to adjourn and get on their campaign trail for November elections.

You will find our key legislative priorities on page 5. We will be reaching out through our One-Click advocacy

campaigns on key legislative proposals so please keep an eye open for those.

We are also wrapping up our 2024 membership drive and we appreciate all those members who have re-upped their memberships and the new members we have for 2024. If you have not yet considered your membership for ESFPA, please do so. It is through membership support that we are able to succeed in keeping bad policies from happening and bringing good policies to the forefront.

Throughout this spring, we will also be on the road to some affiliate association meetings and some member visits where we hope to engage one-on-one with members and hear from you about concerns or ideas on how we can better serve your business. If there is a particular event you think would be of importance for us to be at, please let us know and we will do our best to be there.

As spring arrives we hope you all enjoy this rebirth that nature brings to us each year. Be safe out there and don't hesitate to reach out with your questions and concerns, either to the ESFPA staff or members of your Board. Working together we can make a difference.

*John Bartow*

**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.

**A MESSAGE FROM THE CHAIRPERSON**

*Jennifer DeFrancesco, ESFPA Chairperson of the Board*



Every year I look forward to spring as a time to slow down a bit after the busy season of winter. We use “mud season” to get things done that we put off when we had too much else to do. The reality this year is that most of us have had a winter/spring hybrid for the last few months, not really getting a true winter anywhere in NY.

It is enough to discourage even the most steadfast in this industry. But as I reflect on the last few months at

ESFPA, there is so much to feel hopeful about.

On March 5th we held our first “in person” Forestry Awareness Day in 5 years. Twenty ESFPA members along with some members of NYFOA met with about 50 legislators. I am thrilled to say that we also had more than a dozen students from Paul Smith’s College join us for our meetings. In a time where a lack of workforce development is a real concern, it was heartwarming to see these young people so engaged in getting to know our industry.

At the March board meeting we also welcomed 5 new board members to the table. Ty Bowgren, Michael Haycook, Tom Gilman, Adam Bowman, and Pat Sadler all joined us for their first meeting. Being on the board is a commitment and I thank them for stepping up to the task. I look forward to working with them and hearing whatever new ideas they might bring.

As we welcomed new members, we also wished Chris Truso a happy retirement. Chris retired as of March 1st, but he joined us for one last board meeting. He was a valuable part of the team for 17 years. We wish him a long and happy retirement full of maple syrup making, travelling, and as he put it “doing whatever I want to.”

*Jennifer DeFrancesco*

**ESFPA Sustaining Members**



## CALL TO ACTION

Everyone reading this letter is already a member of ESFPA and I thank you for that. For every one of us that is involved, there are many more people that are reaping the benefits of what we do but are not members.

We need your help reaching those people. I am asking you to contact anyone that you know who might be interested and tell them about the great things that ESFPA does.

You can find our online membership directory on the ESFPA website. You can also contact the office to ask if someone you have in mind is a member or not before you call them.

Additionally, you can find us on Facebook and Instagram.

Please “like” our posts and share them to your own pages. That is the easiest way that you can help us to increase our outreach.

We have big ideas for ways to support the industry, but we need your help to accomplish those goals. Everyone in this industry in NY has benefitted from our work and now we need to ask them to please support us.

You can contact the office or me personally at [BBFP.Jen@outlook.com](mailto:BBFP.Jen@outlook.com) if you would like to help with our membership drive. Together we can ensure that our voices continue to be heard and that the industry that we all love can thrive for many years to come.

*Jennifer DeFrancesco*

# STATE CORNER

## 2024 STATE OF THE STATE

On January 9th Governor Hochul delivered her State of the State message for 2024 before a joint session of the New York State Legislature in what can be summarized as a “ho-hum” message titled “Our New York, Our Future”. The Governor shared her agenda as she focused on affordability, crime, education and a host of ideas outside of concerns affecting New York’s business and manufacturing community and the environmental sector in general.

Her comments on climate were much less than last year and those of her predecessor in the past, and thoughts on addressing New York’s exodus of population over the past few years and potential loss of Congressional Districts continues to take heat.

The State of the State was also short on policy measures (legislative proposals) which may translate into Article VII bill in Here 2024-25 Executive Budget proposal, but that will have to be seen.

A couple of highlights that ESFPA will be monitoring as we see the Governor’s Executive Budget release next week include the following:

- **Climate Change:**
  - “Affordable Gas Transition Act” eliminates the 100’ free gas hookup rule and customer impact of “unwarranted” fossil fuel infrastructure investments.
  - “RAPID ACT” extending Office of Renewable Energy Siting jurisdiction to major transmission projects (i.e., over 10 miles) and usurping local jurisdiction.
  - Expand Energy Assistance Programs to cap residential utility costs at 6% of household income.
  - Public Service Commission “Grid of the Future” promoting Smart Grid Technology.
  - Multiple climate change resiliency programs.
- **Make New York Greener**
  - Plant and maintain 1.7 million acres of new forest by 2040. To make this vision a reality and jumpstart creation

of our forests of the future start with a goal of planting 25 million trees by 2033.

- Generating the supply of trees necessary to meet the climate goals requires a major reinvestment to modernize the Saratoga tree nursery.
- NYSERDA and DEC will launch a study to analyze the benefits of a Clean Transportation Standard in New York State. The study will focus on how such a standard can help drive the state toward a zero-emission transportation sector by 2050.
- **Grow New York’s Bioeconomy**
  - Set a progressive bioeconomy development agenda that will leverage existing opportunities to develop bioproduction within the agriculture and forestry sectors.
  - Advance the use of wood products and high-value mass timber design in state-funded construction and infrastructure projects and expand the use of mass timber in new construction across New York State with the upcoming Uniform Code update.
  - Provide capital funding to promote commercialization of biobased products, such as those produced with industrial hemp.
  - Investments will create new market opportunities for New York products and protect the sustainable growth and management of biomass to be used for products and materials in the bioeconomy.

It is encouraging to hear the Governor calling for a goal of holding the line on taxes in the upcoming year and proposing an agenda focused on affordability. Any efforts to make New York more affordable, however, did not include addressing the challenges facing businesses throughout New York State, including mandated leave policies, unaddressed Unemployment Insurance debt, and rising workers’ compensation policies. We will continue to work on these and other issues facing New York businesses while also supporting those measures the Governor has proposed that advance our agenda.

## SFY 2024-25 EXECUTIVE BUDGET & ONE-HOUSE BILLS

Late on Monday March 11th the Senate and Assembly began passing their “one house bills” which lay the groundwork for the balance of the SFY 2024-25 budget negotiations. From here on out the parties (i.e. three persons in a room) negotiate those items where they do not have three-way agreement on.

The following summarizes where the SFY 2024-25 Appropriations and Article VII Bill stand on those that matter most to us.

### Appropriations

#### Environmental Protection Fund

Continued **\$400 million** level of funding for the Environmental Protection Fund (EPF) including funding for:

- Wood Products Development Council – \$200,000
- Regenerate NY cost share program \$500,000
- Hemlock Wholly Adelgid \$500,000
- Climate & Applied Forestry Research Initiative (CAFRI) \$1 million. **Senate & Assembly \$1.5 million**
- Community Forests \$500,000
- Forest Management on Farms **Senate \$500,000**
- Easements for Land Trusts \$1.5 million

#### DEC Capital Budget

The Governor and both the Senate and Assembly support **25 million Trees by 2033 and 1.7 million acres of Forest by 2040**. Competitive Grant program for tree planting in support of resilient reforestation and urban forests through municipalities and Non-Governmental Organizations –**\$15 million**

The Governor and Both the Senate and Assembly support the **Federal Forest Legacy** with a state contribution of **\$1 million**

#### Agriculture & Markets Capital Budget

The Governor and the Senate and Assembly support **\$5 million for the Cornell Industrial Hemp Program for innovation and biomaterial processing**.

#### Article VII Budget Bills for 2024

**Renewable Action Through Project Interconnection and Deployment (RAPID) Act** S.8308/A.8808, TED Part O

Amends the Executive Law and Public Service Law and moves the Office of Renewable Energy Siting (ORES) from the Department of State to the Public Service Commission. It also adds the siting of major transmission lines (more than 10 miles) to the jurisdiction of ORES where it formally was under Article VII of the Public Service Law. This would effectively pre-empt all local land use and regulatory authority over major transmission facilities and consolidates most all state jurisdiction into ORES. Expedites transmission reviews with a goal of approval in 6 to 12 months.

The Senate modifies by adding language on negative impacts on agricultural lands and to include stand-alone commercial scale battery storage.

The Assembly accepts the Executive Proposal.

**Affordable Gas Transition Act** S.8308/A.8808, TED Part P

Amends the Public Service Law to include achievement of “climate justice and emission reduction mandates” of the CLCPA.

Includes multiple provisions on continuing natural gas service to residential customers but with a goal of eventual reduction of natural gas. Excludes natural gas from “shall provide” provisions for new natural gas service to be provided “as authorized by” the Public Service Commission (PSC). PSC may order curtailment or discontinuance of natural gas use where “reasonably required” to implement state energy policy. Unclear as to how this will impact existing natural gas in industrial and manufacturing processes. PSC to review utility capital plans to consider feasible alternatives consistent with the CLCPA. New natural gas service into unserved areas generally prohibited after 12/31/25.

The Senate rejects and replaces it with the NY Home Energy Affordable Transition Act (NY HEAT Act) (S. 2016-B).

The Assembly intentionally omitted.

**Environmental Violation Penalties** S. 8308-A Part AAA

The Senate advances language to direct revenue from penalties for environmental violations currently deposited in the general fund to a new environmental enforcement account, and to increase penalties for environmental violations by 50 percent, resulting in increased revenue for the Environmental Protection Fund and for enforcement of environmental laws, similar to S.7086.

**Require Paid Breaks for Breast Milk Expression in the Workplace** S.8306/A.8806 ELFA Part J

An employer shall provide paid break time for up to twenty minutes and permit an employee to use existing paid break time or mealtime for time in excess of twenty minutes, to allow an employee to express breastmilk for her nursing child each time such employee has reasonable need to express breastmilk for up to three years following childbirth.

The Senate modified increasing the break time from twenty to thirty minutes.

The Assembly intentionally omitted.

**Limit Liquidated Damages in Certain Frequency of Pay Violations** S.8306/A.8806 ELFA Part K

Liquidated damages shall not be applicable to violations of paragraph (a) of subdivision one of Labor Law §191 where the employee was paid in accordance with the agreed terms of employment, but not less frequently than semimonthly (2 weeks).

The Senate rejected it but is open to further discussions.

The Assembly intentionally omitted.

**Sunset the State’s COVID-19 Sick Leave Law** S.8306/A.8806 ELFA Part M

Would repeal the NYS COVID paid sick leave benefit effective July 31, 2024.

The Senate modified to continue the benefit for hospitals, nursing homes and residential health care facilities as defined under Public Health Law Article 28.

The Assembly intentionally omitted.

*(See “One-House Bills” continued on page 5)*

**SFY 2024-25 EXECUTIVE BUDGET & ONE-HOUSE BILLS** *(continued from page 4)***Unemployment Insurance S. 8306-A ELFA Part Y**

The Senate advances language to reduce the waiting period for striking workers from two weeks to one week. The Senate is also advancing language to increase the Corporate Franchise Tax for companies with a net business income of \$5 million or above to 9% to provide relief to the state's Unemployment Insurance Fund.

**Establish First-in-Nation Paid Prenatal Leave S.8305/A.8805 PPGG Part M**

Would allow up to 40 additional hours of paid family leave to be used during pregnancy for health care related to pregnancy.

The Senate modified to change the leave from paid family leave to personal leave.

The Assembly modified to change the leave from paid family leave to sick leave.

**Increase Short-Term Disability Leave Benefits S.8305/A.8805 PPGG Part N**

Would increase NYS short term disability benefits from current maximum of \$170 per week.

The Senate modified significantly.

The Assembly accepts the Executive Proposal.

**Workers Compensation S. 8305-A PPGG Part III**

The Senate proposal would expand workers compensation coverage for work-related post-traumatic stress disorder.

**Personal Income Tax S. 8309-A/A. 8809-A Revenue**

The Senate and Assembly both propose to raise the Personal Income Tax (PIT) on higher income earners in New York. The proposals would raise the PIT on wages of \$5 million to \$25 million from 10.3% to 10.8% and over \$25 million from 10.9% to 11.4%.

**Corporate Franchise Tax S. 8309-A/A. 8809-A Revenue**

The Senate and Assembly both raise the Corporate Franchise Tax on corporations earning over \$5 million/year from 7.25% to 9%. Each commit to using the increased revenues to offset rising unemployment benefit costs.

**PRIORITY STATE LEGISLATION FOR 2024**

There are over 17,000 bills introduced in the Senate and Assembly so far in the 206th New York State Legislative Session which started on January 3, 2024, and will continue until December 31, 2024. This is the second session in the two-year Legislative term for this cycle, so bills roll over from 2023 unless they were vetoed.

On January 9th Governor Hochul presented her State of the State message which we summarized separately. On January 16th, the Governor presented her SFY 2024-25 Executive Budget which also included her Article VII legislative agenda for the session.

ESFPA is following over 250 bills as follows:

- 14 Bills we have filed Memorandum of Support
- 10 Bills we have filed Memorandum of Objection
- 124 bills we have No Position at this Time (NPAT)
- 117 Bills we are Monitoring.

The following summarizes the bills we have prioritized for 2024 and where they stand as we enter into the 2024 Legislative Session

**Clean Fuel Standard – SUPPORT A. 964-A (Woerner)**

This bill 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.

*1/30/24 ESFPA participated in the Clean Fuels Standard Lobby Day. Senator Parker has carried a companion bill but it has not*

*been amended yet. Governor Hochul called for a study of a Clean Transportation Fuel Program in her State of the State address (same as a CFS) and ESFPA among others called her out on that saying enough has been studied. ESFPA is supporting this as part of FAD.*

**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 river, streams and lakes. This legislation would serve to discourage sustainable forest management rather than encourage it.

*On 11/17/23 Governor Hochul vetoed (Veto #70) this legislation citing undue burdens and added costs. This legislation would need to be reintroduced to advance in 2024.*

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

*(See "Priorities" continued on page 6)*

## PRIORITY STATE LEGISLATION FOR 2024 *(continued from page 5)*

ESFPA was pleased that in the amended versions non-packaging paper has been 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. On 10/24/23 ESFPA testified at a Joint Legislative hearing on EPR. On 2/9/24 these bills were amended with relatively minor technical changes and non-packaging paper remains out of the bills. A business coalition has been trying to introduce an EPR packaging proposal in contrast to the Glick/Harckham bill but to date has not been able to find a sponsor.

**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.

On 12/22/23 Governor Hochul Vetoed (Veto Memo 135) this legislation citing burdensome obligations on vendors and complex certification requirements. The sponsors have vowed to reintroduce the legislation in 2024 but have not yet. ESFPA is working with our affiliate organizations at the state and national level on trying to stop re-introduction.

**Lumber Grading Standards for Recovered Building Lumber – NPAT** A. 9290 (Kelles)/S. 8614 (Kavanagh)

Establishes standards for the reuse of deconstructed building materials; requires the uniform building code to set standards for the use of solid-sawn lumber in construction and for the grading of used solid-sawn lumber; requires the secretary of state to develop a program for grading reclaimed wood for structural purposes.

*Introduced last week of February 2024.*

**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 for one year their discharges 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 in 2023. The bills remain in their respective Environmental Committees at this time.

**Prohibits Idling of Heavy Duty Vehicles – NPAT** A. 3719 (Epstein)/S. 5330-A (Harckham)

Prohibits the idling of all heavy duty (> 8,500 pounds) vehicles propelled by diesel or non-diesel fueled engines for more than 5

consecutive minutes. Exempts from the idling prohibition various circumstances including vehicles loading or unloading cargo or used in “lumbering” or “farming”.

*3/5/24 on Assembly Codes Committee agenda.*

**Bioheating Fuel Requirements – NPAT** A. 7114-C (Jones)/S. 5817-B (Parker)

Allows both B100 biodiesel and R100 renewable diesel to be used to blend with or replace fossil “heating oil” in order to create “bioheating oil”. Language “cellulosic biomass listed in table 1 of 40 C.F.R. § 80.1426” severely limits the wood feedstocks used in making bioheating oil. ESFPA will investigate amended language.

*2/28/24 Second Reading in Senate.*

**Forest Management for Certain Lands and Clear Cut Jurisdiction in the Adirondack Park – OPPOSE** A. 3841 (Glick)/S. 2831 (Breslin) 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 such 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 2024.*

**Adirondack Conservation Design Bill – NPAT** A. 4608 (Glick) No Same As

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 2024. Has not found a Senate sponsor.*

**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,

*(See “Priorities” continued on page 7)*

## PRIORITY STATE LEGISLATION FOR 2024 *(continued from page 6)*

- The second principle is that direct biogenic CO<sub>2</sub> emissions do not count toward a clean fuel's lifecycle carbon intensity (CI) score 7 when that fuel is derived from sustainable biomass. CLCPA treats biogenic CO<sub>2</sub> emissions the same as fossil fuel emissions.
- 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. The kerfuffle on this during the budget negotiations is going to make doing this hard. The Business Council of NY has started a campaign which may recommend amendments to the CLCPA.*

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## 2024 STATE REGULATORY REPORT

Each year pursuant to the State Administrative Procedures Act, the Department of Environmental Conservation (DEC) publishes in the State Register and on its web site the regulations it may propose to adopt or amend in the coming year. The following highlights those proposals that may impact on our sector in 2024. Some of these are already in the proposed stages and ESFPA is actively engaged in commenting on them. If you have any questions about any of these proposals please contact us.

### DEC Division of Air Resources

**DEP 23-1 – Permitting in Disadvantaged Communities** – This is a DEC Program Policy which outlines the requirements for analysis and mitigation required by applicants for new and renewed permits and other actions that are likely to affect disadvantaged communities. This is required under Section 7 (3) of the Climate Leadership & Community Protection Act (CLCPA) which requires all state agencies in considering and issuing permits, licenses and other approvals and decisions including but not limited to grants, loans, and contracts to prioritize the reduction of greenhouse gases and co-pollutants that may impact disadvantaged communities. This is DEC's policy for ensuring compliance to this provision of the CLCPA. *Comments were submitted by ESFPA on January 29, 2024.*

**6 NYCRR Part 218 – California's Advanced Clean Fleets (ACF) Regulation** This regulation was adopted by California in 2023 and includes medium and heavy-duty truck fleet purchase requirements for three fleet categories: drayage trucks, high priority & federal fleets, and state and local government fleets. The ACF regulation also includes a medium- and heavy-duty manufacturer **100% zero emission truck sales requirement beginning in 2036.** *No proposal to date.*

**6 NYCRR Part 252 – New York Cap & Invest (NYCI)** – DEC and NYSERDA continue their Stakeholder outreach and engagement on the NYCI Pre-proposal on the development of the State's economywide Cap-and-Invest Program to reduce the pollution driving climate change. The Cap-and-Invest 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. DEC and NYSERDA are developing the program to meet the greenhouse gas emission reduction and equity requirements under the 2019 Climate Leadership and Community Protection Act (Climate Act). *ESFPA*

*submitted comments on the NYCI Pre-proposal on March 1, 2024.*

**6 NYCRR Part 253 – Mandatory Greenhouse Gas Reporting Program** – To address the requirements of the Climate Leadership and Community Protection Act and ensure achievement of the Statewide greenhouse gas (GHG) emission limits, a new Part 253 will be adopted to collect greenhouse gas emissions in support of the economywide cap-and-invest program and the annual greenhouse gas emissions inventory. **Likely that all stationary sources with 10,000 tons per year GHG emissions will have mandatory reporting.** *ESFPA commented on this in the NYCI pre-proposal comments.*

### Division of Environmental Permits

**6 NYCRR Part 617 – State Environmental Quality Review Act (SEQRA)** – DEC proposes to amend the regulations that implement SEQRA to incorporate consideration of environmental justice in SEQRA reviews as required under Chapter 49 or the Laws of 2023. *No proposal to date.*

**6 NYCRR Part 621 – Uniform Procedures Act** – DEC proposes to amend the UPA required under Chapter 49 of the Laws of 2023 to include a detailed set of provisions incorporating analysis of environmental justice into certain UPA permits. *No proposal to date.*

### DEC Division of Fish & Wildlife

**Northern Long-Eared Bat Guidance** – The USF&WS issued their interim guidance on March 6, 2023. Following some fits and starts and DEC issued their guidance on **May 3, 2023.** This 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 USF&WS 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.

*(See "Report" continued on page 8)*

## 2024 STATE REGULATORY REPORT *(continued from page 7)*

- 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 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.

**USF&WS Interim Guidance expires on March 31, 2024, and we recently heard from DEC that we will not likely see new guidance by April 1st. See more in our FEDERAL CORNER below.**

**6 NYCRR Part 182 Endangered and Threatened Fish & Wildlife** – Reestablish a process for implementation of Incidental Take Permits as required under the 2022 Accelerated Renewable Energy and Community Smart Growth Act and amend the list of endangered, threatened, and special concern species. We

may also see regulatory changes to reflect the federal listing of Northern Long-eared Bat as endangered. The State listing changes automatically, but other regulatory changes may be necessary. At a minimum we expect guidance. *No proposal to date.*

**6 NYCRR Parts 663 and 664 – Freshwater Wetlands** – The Department intends to propose new regulations to implement enacted changes in the 2022 State Budget. New York's 2022-2023 budget included amendments to the state's Freshwater Wetlands Act, Article 24 of the Environmental Conservation Law ("ECL") that contained three fundamental changes. First, existing maps depicting freshwater wetlands will no longer be regulatory beginning on January 1, 2025. After that date, the New York State Department of Environmental Conservation ("DEC") will be relying primarily on available aerial imagery and available remote data to determine whether there are state-regulated freshwater wetlands on a parcel. Second, smaller wetlands of "unusual importance" will be regulated beginning on January 1, 2025, if they meet one, or more, of 11 newly established statutory criteria. Third, the default threshold for regulated wetlands will decrease from 12.4 acres to 7.4 acres in 2028. *On January 3, 2024, DEC published a pre-proposal of regulations relating to wetlands of "unusual importance" and jurisdictional determinations. ESFPA submitted comments on the pre-proposal on February 17, 2024.*

### DEC Division of Lands & Forests

**6 NYCRR Part 193 Trees and Plants** – Updating the lists of endangered, threatened, rare and exploitable vulnerable plants to reflect changes in population status since last updated in 2012. *No proposal to date.*

**6 NYCRR Part 199 Forest Tax Law** – Improving and sustainably managing New York's Forest resources and lessening the administrative burden on participants/DEC staff. *Proposed 7/13/22, October 4, 2023, Notice of expiration published in State Register. DEC intends to refile. No proposal to date.*

**6 NYCRR Part 575 Prohibited and Regulated Invasive Species** – Establish procedures to identify and classify invasive species and to establish a permit system to restrict sale, purchase, possession, propagation, introduction, importation, and transport of invasive species in New York. *No Proposal to date.*

## FEDERAL CORNER

### WATERS OF THE UNITED STATES AND FEDERAL WETLAND JURISDICTION

On May 25, 2023, the U.S. Supreme Court (SCOTUS) issued a decision in the Sackett v. EPA case that narrowed the scope of federal jurisdiction over wetlands under the Clean Water Act (CWA) that defined Waters of the U.S. (WOTUS). 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.

In the decision, the Court concluded that "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."

All nine Justices rejected the "significant nexus" test. Justice Kavanaugh wrote an opinion concurring in the judgment, in *(See "WOTUS" continued on page 9)*



## WATERS OF THE UNITED STATES *(continued from page 8)*

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." Thus, leaving some room for administrative interpretation in rulemaking. To date we await clear action by U.S. Environmental Protection (EPA) and the U.S. Army Corps of Engineers.

As reported in our December Federal Report, on Sept. 8, 2023, the EPA and Corps of Engineers published a final rule amending the

revised definition of the Waters of the United States (WOTUS) to allegedly conform with the SCOTUS May 25, 2023, decision.

On Feb. 26, 2024, the Attorneys General from twenty-four states filed a Motion for Summary Judgement with the US District Court from North Dakota against the EPA/Corps Sept. 8th WOTUS rule, asking the Court to vacate the rule "as unlawful and remanding it to the Agencies with instructions to try again – this time within the bounds of the Clean Water Act and the Supreme Court decision.

For now, we continue to wait for regulatory clarity on federal wetland jurisdiction!

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## 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.

Given the delay in adopting a federal budget and the deadline on adopting a new Farm Bill, on November 15th, Congress finally passed an extension on the expired bill through September 30, 2024. The one-year extension will guarantee funding for key hardwood initiatives such as the Market Access and Foreign Market Development programs. The bill effectively keeps in place current Farm Bill programs and authorizations and allows Congress one year to work out a new Farm Bill.

Continued haggling in Congress over federal funding is preventing attention on any major federal legislation and with a major Presidential election this fall and all attention on anything but legislating it is increasingly looking like getting a Farm Bill done in 2024 could also be difficult.

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## BIPARTISAN "JOBS IN THE WOODS ACT" MOVES IN CONGRESS

In a welcome example of bipartisanship on both sides of the Capitol, Senate and House lawmakers are moving legislation that will address the chronic worker shortage in the hardwood industry. "The Jobs in the Woods Act," championed by Reps. Chavez-Deremer (R-OR) and Gluesenkamp-Perez (D-WA) on the House side and Sens. King (I-ME) and Risch (R-ID), will provide education to promote jobs in the understaffed timber industry and U.S. Forest Service. The bill would:

- Create education programs by states, non-profits, and colleges through grants of \$500,000-\$2,000,000.
- Create programs in rural and low-income areas to spur economic development, bringing thousands of dollars of investments into our rural and underserved communities.
- Create a pool of talented, trained, and qualified applicants to fill timber industry job openings, helping American

obtain quality jobs working to serve and responsibly manage our forest and secure our wood industry supply chain.

- Partner with programs that have proven to help students achieve forestry industry jobs and programs that engage with their local communities.

There is an effort among our national affiliates to get the Jobs in the Woods Act integrated into the Farm Bill. ESFPA continues to work with our affiliates and our own elected representatives to see if we can bring attention to this legislation. Recently we reached out to Senator Kirsten Gillibrand in her position on the Senate Agriculture Committee and her staff and expressed that labor is one of our biggest issues in our forest economy and that we feel the provisions of the Jobs in the Woods Act would benefit our efforts to attract, recruit and retain workers in the woods and in the mills that support our forest-based economy.

## GOT SOCIAL MEDIA CONTENT?

ESFPA is looking for social media content that highlights the diverse experiences of our members. If you have any photos, videos, or information you'd like us to share with audiences across New York's wood products industry, please send them over to [gabriella@esfa.org](mailto:gabriella@esfa.org).

## FOREIGN OWNERSHIP OF AGRICULTURE AND FOREST LANDS

For the past year we have been working with the National Alliance of Forest Owners on the issue of foreign ownership of agricultural and forest lands. There are growing national security concerns of foreign investments in agricultural and forest lands in and around military bases and investment is threatening food security. As this policy is unfolding it is threatening long standing foreign investment in forest lands which does not pose national security but does pose significant threats to investment potential.

Most recently we have been working on language being proposed in the Agriculture Foreign Investment Disclosure Act (AFIDA). The complexity of investments and the nature of the language being used puts at risk historic investment models that have been used in real estate and forest investment deals

for decades. Last month we were able to share with Senator Chuck Schumer's staff direct examples of foreign investments in New York that secured longstanding working forest deals and facilitated recent transactions involving foreign investors from "friendly countries." We demonstrated how these investments were stabilizing working forest lands, supporting thousands of jobs, and leveraging thousands of acres of conservation that otherwise would not be happening. Immediately we saw a halt to amendments that were moving in the legislation and new negotiations starting.

We are now watching to see how foreign ownership discussions will creep into the Farm Bill.

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## EUROPEAN UNION DEFORESTATION REGULATIONS

ESFPA has been working with the American Forest & Paper Association, Hardwood Federation, American Hardwood Export Council, and the Sustainable Forestry Initiative over the several months to blunt the impacts of the European Union's now final deforestation rules to require geo-location of timber and fiber included in the manufacture of wood products. Our national affiliates have met with Administration officials, including meetings

with the U.S. Trade Representative, to urge a work-around that will minimize additional red tape for hardwood exporters to EU markets. HF and AHEC have established a working group of forest industry allies, including the AF&PA, to share information related to the rule's implementation. We have also used these national efforts to advocate for New York's Deforestation Free legislation.

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## THE LATEST ON FEDERAL BAT RULES!

### Northern Long-eared Bat

On January 25, 2023, 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. USFWS had originally pinpointed the compliance date for January 30, 2023, and has 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..

### Tri-Colored Bat

On September 13, 2023, the U.S. Fish and Wildlife Service (USF&WS) announced a proposal to list the tricolored bat as endangered

under the federal Endangered Species Act (ESA). The species faces extinction due primarily to the range-wide impacts of white-nose syndrome, a deadly disease affecting cave-dwelling bats across the continent. As with NLEB, White-nose syndrome decimates hibernating bat species of the tricolored bat at unprecedented rates. Bats play such an important role in ensuring a healthy ecosystem.

The tricolored bat is found east of the Rocky Mountains in 39 U.S. states and the District of Columbia; in four Canadian provinces from the Atlantic Coast west to the Great Lakes; and in portions of eastern Mexico, Guatemala, Honduras, Belize, and Nicaragua. New York is on the periphery of the tri-colored bat range.

In early March we learned that USF&WS was not going to be issuing new guidance for NLEB by April 1st. We are unfortunately on track to see a repeat of the delays and extensions that we saw with the change in status from threatened to endangered status for NLEB a year ago. Good news is the interim guidance is likely to be extended through the coming active season, with the bad news obviously being the USF&WS is not providing any certainty on that as we go to print.

In our discussions with DEC, we should approach the April 1st date with confidence that the operational guidance that is in existence now will remain in existence until we something definitive from USF&WS. We will remain in contact with DEC as the date approaches and goes by and keep members abreast of any changes.

# ESFPA NEWS

## FORESTRY AWARENESS DAY 2024



On Tuesday, March 5th, ESFPA held our annual Forestry Awareness Day at the Legislative Office Building in Albany. We heard some great introductory speeches from Assemblymember Lupardo, Senator Harckham, Assemblymember Glick, Commissioner Ball, and Commissioner Seggos.

Our members attended a total of 50 legislative meetings where we discussed our 2024 budget & legislative priorities. We had a total of 30 meeting participants as well as 14 shadowing Paul Smith’s students. Since the event, we have already received multiple follow-up requests for tours and further meetings from interested legislators.

Along with our legislative meetings, booths were set up in the Well by ESFPA affiliates for the purpose of education and outreach. These included the Northeastern Loggers Association, Paul Smith’s College, W.J. Cox Associates, Inc., New York State Department of Environmental Conservation, Rensselaer Plateau Alliance, the Nature Conservancy, New York Forest Owners Association, Adirondack Landowners Association, Northeast Center for Occupational Health and Injury, and a guest appearance from Smokey Bear. Thank you to everyone who attended and helped make the day so successful – hope to see you all again in 2025!

## NEW ESFPA BOARD MEMBERS

We are proud to announce the addition of five new Board members: Michael Haycook – Vice President & Regional Credit Leader for Farm Credit East, Ty Bowgren – Head of Procurement for Wagner Lumber, Tom Gilman – Regional Manager of F&W Forestry Services, Inc., Adam Bowman – Owner

of A.D. Bowman and Son Lumber Co., and Pat Sadler – Forester for WoodWise Forestry LLC.

We would like to welcome them aboard and look forward to working with them in ESFPA’s future endeavors.

## CHRIS TRUSO’S RETIREMENT

Longtime Board Member Chris Truso recently announced that he would be retiring from his position at Farm Credit East and from the ESFPA Board of Directors. At our March Board meeting, Board Chair Jennifer DeFrancesco presented him with a plaque commemorating his 17 years serving on the ESFPA Board of Directors.

We are grateful for all the work Chris Truso has done for ESFPA and wish him the best of luck in his retirement!



## WOMEN’S HISTORY MONTH 2024

Celebrated in the month of March, Women’s History Month is an annual observance to highlight the contributions of women to events in history and contemporary society.

ESFPA currently has 4 women serving on the Board of Directors:

- Jennifer DeFrancesco – Export Manager and Co-Owner of B&B Forest Products

- Sally Bogdanovitch – Professor at Paul Smith’s College and Natural Resources Consultant at Bay Pond Park
- Betsy Lesnikoski – Chief Forester at Burlington Electric Dept.
- Sue Keister – President of Keister Consulting, Inc.

ESFPA would like to take this opportunity to acknowledge these amazing women and every other hardworking woman who contributes to the forest and wood products industry.



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## **ESFPA MEMBER SPOTLIGHT**

### **GUTCHESS LUMBER – 120 YEARS IN THE HARDWOOD INDUSTRY**

Since 1904, Gutches Lumber Co., Inc. has produced quality northern hardwood lumber across New York and Pennsylvania. As a fifth-generation family and employee-owned organization, they continue to strive to meet and exceed their customer expectations.

George Gutches built the first mill on his farm in Leeper, NY, back in 1904 with a dream of being the areas go to hardwood supplier. This legacy was carried on by his son, Clair Gutches, who developed a loyal, dedicated and hardworking team of employees. Now in their fifth generation of Gutches family leadership, Matthew Gutches continues to push boundaries.

For over 12 decades Gutches Lumber has carried on as a premier hardwood lumber producer. Today, over 500 employees are on the job working diligently and proudly serving customers in New York, Pennsylvania and around the world. They operate 7 locations (4 of these locations are sawmills), produce over 100 million board feet of lumber annually, and have 5 million b/f of kilns!

Matt Gutches, President of Gutches Lumber remarks that "Gutches Lumber is not only a fifth-generation family-owned business, but we're also an ESOP. ESOP stands for Employee Stock Ownership Plan. As our employees retire, the company repurchases their shares and recycles those shares to new participants, which perpetuates the employee ownership. Our

employees are self-motivated employee owners."

John Zemanick, Vice President of Natural Resources for Gutches and current ESFPA Board member says, "as an employee owner of Gutches Lumber Co. Inc., a 5th generation family-owned business, I am extremely proud to work for a company that has been a leader in the hardwood products industry for 120 years. Throughout those 120 years, Gutches has accumulated and sustainably managed nearly 30,000 acres of premium northern hardwood timberland and has grown to 7 production locations across New York and Pennsylvania. Every employee owner of Gutches works together to manage, purchase, mill and sell a sustainable, high-quality product into the hardwood industry."

John Bartow, ESFPA Executive Director states that "Gutches has been a stalwart of hardwood production industry. For decades they have been a loyal ESFPA member with a presence on our Board. ESFPA also has an award in the name of Neil B. Gutches, who served as President of the Empire State Forest Products Association from 1974 to 1977. This award recognizes individuals and/or organizations who make outstanding contributions to the forests and wood products industry in New York State and beyond, just as Gutches Lumber has done."

On behalf of the ESFPA Board, staff and all our members we extend a hearty congratulations to Gutches Lumber and may many more years yet be in your future!