



Memo

To: Arthur J. Rocque, Jr., Commissioner
From: Brian J. Emerick, Supervising Environmental Analyst
Telephone: Ext. 2639
Date: February 3, 2000
Re: Hearing Officer's Report - Forest Practices Regulations

Don Smith recently informed me that David Leff has decided to commit these proposed regulations to a complete redrafting effort and a subsequent public hearing. Given this decision, I am writing this report to summarize the results of a public hearing on the subject regulations and to give closure to that process. Also, I hope this report will be helpful in the redrafting of these regulations.

The proposed regulations are actually two separate regulations under the general banner of forest practices regulations. One regulation, under RCSA section 23-65j-1, is entitled "Forest Practices." This regulation establishes various best management practices for forest harvesting and a registration process for the harvest of commercial forest products, which is statutorily defined as "wood products harvested from a tract or forest in excess of fifty cords or one hundred fifty tons or twenty-five thousand board feet." The other regulation is codified in RCSA section 23-65h-2 and is entitled "Conduct of Forest Practices." Various business practice standards for certified forest practitioners are defined by this regulation.

A hearing on the proposed regulations was held in the Phoenix Auditorium on May 3, 1999. Approximately one hundred people attended the hearing, and there were 33 speakers that presented their opinions. The majority of the speakers (29) expressed opposition to the Forest Practices regulation and four individuals supported the concept of the regulations but had many questions about specific aspects of the proposal. There were no speakers that supported this regulation, as proposed. Only one speaker addressed the Conduct of Forest Practices regulation, and he supported it with minor changes.

Overwhelmingly, those individuals that opposed the Forest Practices regulation did not base their opinion on specific features of the regulations, but rather the principle of further regulating the harvesting of forest products. Many of these individuals felt that there was no need for the regulations because the recently implemented certification process had elevated forest harvest practices and it should be allowed to mature before further regulating the industry. It was further emphasized that the development of the regulations was not required

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by statute and, thus, was elective and should be supported by a strong documentation of need. Also, a significant portion of the opposition felt that the regulation was an infringement upon personal property rights and contrary to the "agriculture as a right" policy defined by statutes. Additionally, several commenters felt that the regulation would be "the straw that broke the camel's back" in terms of accelerating the conversion of forest land, which would be contrary to state open space objectives.

In terms of specific aspects of the regulations, many speakers felt that the registration decision timeline (30 days) was too long. Several commercial operators were especially concerned that the timeline would increase operating costs due to added capital requirements for timber contract sales and timing uncertainties. A 10-15 day decision requirement was suggested as being more appropriate. The regulations proposed a registration fee schedule that ranged from \$75 - \$300⁺, which many speakers thought was excessive. A \$25 - \$35 registration fee was felt to be more appropriate. Also, many speakers thought that some of the buffer area and abutting landowner notification requirements were unnecessary and not based on forest management objectives.

The lack of preemption of municipal involvement in forest harvesting, either through direct regulation of the activity or indirectly through wetland regulation, was a disappointment and frustration that a few speakers expressed. There was an apparent expectation that the regulations would create a one-stop, statewide authorization process for forest harvests. While interest in such a system is understandable, the establishment of preemptive regulations would have to be authorized through statutes, and the lack of this legislative action can not be cured through these regulations. Also, the desire to have the regulations be preemptive would generally work against the notion of inexpensive and rapid registration decisions.

Several comments were received regarding an apparent contradiction between the forest practitioner certification process and the proposed regulations. By statute, "the planning and design of forest practices..." is an activity that is reserved for a certified forester. The information that is required to support a registration in the proposed Forest Practices regulations, while not identified as a plan, certainly contains the elements of a plan and must be signed by either a supervising forest products harvester or a certified forester. It would appear that the regulations establish a planning function for supervising forest products harvesters that is reserved for certified foresters.

There were 76 written comments on the regulations that were made part of the hearing record. Several of the written statements reinforce the remarks that their authors offered at the public hearing. The technical suggestions and opposition that was expressed at the public hearing are essentially paralleled, with four exceptions, in the written comments that were received.

The exceptions are expressions of support for the regulations, as proposed. Three certified foresters supported the regulations and one stated that abusive practices created a

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need for the regulations and that standardized guidelines would help protect state forest resources. Another letter submitted on behalf of the Eastern Connecticut Forest Landowners Association, Inc. (300+ members) supported the regulations as drafted but raised an administrative concern. They felt that for the registration process to be successful, at least two staff foresters would have to be assigned to this effort and that this commitment of staff should not be accomplished by reducing existing staff forester services to private landowners. Others also raised this issue regardless of their overall position on the regulations. While it is unlikely that a regulation can address this issue, the Department must be prepared to address this question and demonstrate a commitment to its resolution as a concurrent task in the redrafting of the regulations.

There were two written requests to include in the hearing record the minutes of the Forest Practices Advisory Board. These minutes are included in the record as Exhibit #82. Solely from the minutes, it is difficult to get a complete picture of how the Board participated in the development of the regulations, but there is one aspect of their involvement that is noteworthy. This matter is highlighted, because I believe the Board, which was statutorily established to provide advice to the Department on forestry policies and programs, is important to any effort to redraft the regulations.

During the early development of the regulations, the Board was provided with either outlines or summaries of the proposed regulations but not a complete draft. The draft regulations were withheld from the Board because they were considered internal documents that could not be provided in their entirety. The Board's frustration on the lack of complete sharing of information was evident when several Board members suggested that a Freedom of Information request to obtain the draft regulations might be appropriate. This situation was subsequently resolved in some manner because the Board eventually discussed a draft of the regulations. At least from a common sense perspective, I would hope that any redrafting effort would completely involve the Board that was created to provide the Department advice on forestry issues.

For your convenience and information, I have attached a list of hearing record exhibits. I will forward the complete record, including all exhibits, tapes and my notes, to Don Smith for his use in the planned redrafting effort. I hope this report is helpful and if you have any questions, please let me know. Thank you.

Brian J. Emerick

Attch.

cc: David Leff w/attch.

Don Smith w/attch. & hearing record

Doug Emmerthal w/attch.

Forest Practices Regulations
EXHIBITS

1. Authorization to hold hearing
2. Public Notice
3. Proposed Regulations Sec. 23-65j-1, Forest Practices
4. Proposed Regulations Sec. 23-65j-2, Conduct of Forest Practices
5. Linda Krause, Connecticut River Estuary RPA, April 12, 1999, letter
6. Bernard Sippin, Sippin Energy Products, April 20, 1999, letter
7. Edward R. Muallo, April 22, 1999, letter
8. John Parciak, April 23, 1999, letter
9. Michael & Loretta Taylor, April 28, 1999, letter
10. Alice M. Maynard, April 27, 1999, letter
11. Larry Massey, April 26, 1999, letter
12. Thomas J. Degman, Jr., Chair - Connecticut Chapter of the Society of American Foresters, April 28, 1999, letter
13. George P. Randall, April 28, 1999, letter
14. Gerald S. Jones, April 28, 1999, letter
15. Louise T. Randall, April 27, 1999, letter
16. Harold Liebman, The Liebman Poultry Farms, April 29, 1999, letter
17. Tony Guglielmo, State Senator, April 29, 1999, letter
18. Charles Zemko, A. Zemko & Sons, May 2, 1999, testimony
19. Petition
20. Randolph Blackmer, Jr., President, Connecticut Farm Bureau Association, Inc., testimony
21. John E. Hibbard & David M. Smith, Members, Forest Practices Advisory Board, testimony
22. Carol E. Youell, Director of Education & Natural Resource Programs, Connecticut Forest and Park Association, testimony
23. Stephen H. Broderick, Senior Extension Educator, Forestry, testimony
24. "A Practical Guide for Protecting Water Quality While Harvesting Forest Products," 1990
25. Joseph W. Voboril, Jr., testimony
26. Louise Scanlon, New London County Farm Bureau, testimony
27. Virginia R. Strenkowski, New London County Farm Bureau, Landowners Committee, testimony
28. E. McCall, testimony
29. Henry Grabber, testimony
30. Harold Morgan, May 1, 1999, letter
31. Oliver J. Manning, letter
32. Erich Siismets, April 30, 1999, letter

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33. Jane R. Marsh, General Counsel, Connecticut Farm Bureau Association, April 30, 1999, letter
34. Beatrix Morgan, letter
35. Karen & Warren Sidle, May 3, 1999, letter
36. Ernest R. Norman, Vice President, Connecticut Farm Bureau Association, May 1, 1999, letter
37. Cyril H. Moore, Jr., Chairman, Kent Planning & Zoning Commission, May 4, 1999, letter
38. Michael Cannata, President, Middlesex County Farm Bureau, May 2, 1999, letter
39. Richard Peloquin, President, Eastern Connecticut Forest Landowners Association, Inc., letter
40. Diane McCall, May 3, 1999, letter
41. John J. Tiffany II, Tiffany Farms, May 4, 1999, letter
42. Philetus Watson, May 5, 1999, letter
43. Charles E. Zemko, A. Zemko & Sons, May 6, 1999, letter
44. Laurence Scanlon, Jr., May 4, 1999, letter
45. Joseph W. Voboril, Jr., May 5, 1999, letter
46. William B. Hull, President, Hull Forest Products, Inc., May 4, 1999, letter
47. David Beers, May 5, 1999, letter
48. Christopher Fritz, May 4, 1999, letter
49. Daniel F. Donahue, Natural Resource Consultants, May 4, 1999, letter
50. Michael J. Bartlett, Forest Resources Manager, Hull Forest Products, Inc., May 5, 1999, letter
51. Joseph W. Voboril, Jr., May 7, 1999, two letters
52. Norman R. Gessay, May 5, 1999, letter
53. Louise B. Scanlon, May 6, 1999, letter
54. Timothy A. Beattie, Beattie Bros. Logging & Firewood, letter
55. Jane Morrone, May 5, 1999, letter
56. Paul LoPresti, May 1, 1999, letter
57. Milton Pendleton, April 28, 1999, letter
58. Petition
59. James E. Gillespie, May 7, 1999, letter
60. Thomas J. Degman Jr., May 8, 1999, letter
61. Lawrence M. Davis, Vice Chairman, New London County Soil and Water Conservation District, Inc., May 7, 1999, letter
62. Harvey Polinsky, Polinsky Farms, May 7, 1999, letter
63. William E. Hochholzer, Jr., May 10, 1999, letter
64. Gary Ocain, May 6, 1999, letter
65. John P. Entwistle, letter
66. Lynn C. Larsen, May 7, 1999, letter
67. Elbert & Alice Morgan, May 6, 1999, letter
68. Joan Nichols, Nichols Forestry and Logging, LLC, May 6, 1999, letter

69. Joan Nichols, Nichols Forestry and Logging, LLC, May 2, 1999, testimony
 70. Michael P. Budney, May 7, 1999, letter
 71. Andrew J. Schreiner, May 6, 1999, letter
 72. John B. Ayer, May 7, 1999, letter
 73. Thomas Walicki, Ferrucci & Walicki, LLC, May 8, 1999, letter
 74. Wayne Budney, Four Winds Farm, May 7, 1999, letter
 75. Dave Hiralidi, May 6, 1999, letter

 76. John Good, May 6, 1999, letter
 77. Thomas W. Hatfield, May 8, 1999, letter
 78. Louise Lillibridge, May 7, 1999, letter
 79. E. G. Anderson, Jr., May 6, 1999, letter
 80. Thomas L. Andersen, Berkshire Hardwoods, Inc., May 10, 1999, letter
 81. Stuart & Judith Gadbois, Maegog Farms, May 8, 1999, letter
 82. Forest Practice Advisory Board Minutes
 83. Public Hearing Speakers List
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