

MEMORANDUM

TO: Forest Practices Advisory Board

FROM: Adam Moore, Chairman, Ad Hoc Committee on Forest Practice Regulations

DATE: August 15, 2007

RE: Ad Hoc Committee on Forest Practice Regulations

The Ad Hoc Committee on Forest Practice Regulations has met on roughly a monthly basis since November of 2006. Our work and deliberations over the year have led to the completion of a standard form entitled "Notification of Timber Harvest," a guide to the use of the form, and two recommendations regarding the use of this form, best management practices and the authority of the DEP Division of Forestry. The form is attached to this memo, and the guide will be completed this fall. This memo presents the recommendations of the Committee and explains them, and also presents information on the subject of tree marking.

The Ad Hoc Committee will need at least one further meeting to review comments to the form, revise the draft guide, discuss the testing of certified practitioners, and to discuss the Division of Forestry's enforcement authority with towns. Following that meeting, I think it makes sense to have the Ad Hoc Committee remain in existence for at least some time. In particular, I would like the Committee to assist DEP as it drafts the regulations that make our recommendations take effect (assuming, of course that DEP accepts our recommendations).

Our recommendations to the Forest Practices Advisory Board follow.

At its meeting of July 18, 2007, the Committee reached conclusions on two important issues, and failed to reach consensus on another important issue.

Recommendation One

The Committee voted unanimously that, once the guidelines for the form for the Notification of Timber Harvest are completed, that the form be submitted prior to the start of any commercial forest practice operation in the state. The form is to be completed by the landowner and/or certified practitioner and sent to the local Inlands Wetlands Agency and the DEP Division of Forestry. The DEP Division of Forestry should review the form and acknowledge receipt.

This notification form will go to both the local inland wetlands agency and to the Division of Forestry. The draft form has been provided to the DEP Inland Wetlands Division and the Division of Forestry for comment. When the form goes into practice, it is critical that the Division receive a copy of the form and review and acknowledge each one. First, this procedure ensures that a licensed individual at the Division of Forestry is reviewing all the forest practices being undertaken in our state. Second, the volume information presented on the form will inform the Division of Forestry as to whether the thresholds triggering the Forest Practice Act have been crossed. Once

comments from DEP have been received, the Committee will make final revisions to the form and issue it to the Advisory Board and DEP.

Recommendation Two

The Committee voted unanimously that one, the Division of Forestry should review the Best Management Practices manual at least once every five years and update the manual as warranted, two, that the Division of Forestry should have the authority to monitor forest practices for compliance with BMPs and issue cease and desist orders to those operations out of compliance with BMPs, and three, to print sufficient copies of the BMP manual to provide each inland wetlands agency and each certified practitioner with a copy.

Thus, the Ad Hoc Committee recommends that the Division of Forestry have the authority to enter onto and inspect forest practice operations for BMP compliance, and to shut down those operations that are out of compliance.

Together, these recommendations would give the Division of Forestry the information and authority it needs to monitor forest practices in Connecticut and enforce the Forest Practices Act as it pertains to BMPs.

Tree Marking

The Committee found unanimity regarding the two issues noted above. On tree marking, however, the Committee found neither unanimity nor consensus. We discussed the fact that both certified foresters and certified supervising forest products harvesters are allowed to mark trees for harvest, and debated whether this ought to be the case. Certain members of the Committee believe that tree marking clearly falls under "planning and design of forest practices," a role ascribed by statute only to the certified forester. The Committee did recognize, however, that supervising forest products harvesters have nevertheless been allowed to mark trees, the result of a compromise made before or during the passage of the Forest Practices Act. I relayed the results of some conversations that I have had on this matter with people both involved in the drafting of the Forest Practices Act and people concerned at the present time.

The Committee discussed a number of means of addressing this situation, most of which were noted in a July 11, 2007 memo written by Bill Bentley, with the section on tree marking written by Steve Broderick. Ultimately, the discussion led to two motions and votes of the Committee. First, a motion was made to grandfather currently licensed supervising forest products harvesters, and to thereafter allow only licensed foresters to mark trees. Discussion occurred, and the motion failed with four in favor, five opposed, and one abstention. A motion was then made to require that an expanded, dual level CEU education program be developed for foresters and supervising forest products harvesters to improve understanding of forest ecology and silviculture. This motion failed as well, with three in favor, six opposed and one abstention. Essentially, these results leave in place the status quo.

A motion next was made to inform the State Forester of this discussion and to include the excerpt on tree marking from the July 11 memo. This excerpt was written by Steve Broderick, and it well captures the points regarding tree marking that were debated by the Ad Hoc Committee.

The question of who has legal authority to mark trees for harvest under the FPA was extensively debated by the committee and not resolved. Section 23-65h states that "Forester certification shall be required for commercial forest practitioners who supervise or engage in the planning and design of forest practices, including but not limited to commercial forest product harvest operations". Several members feel that marking trees for harvest is obviously an act of planning and designing a commercial forest practice, and the legal opinion the committee requested concurred. Nonetheless SFPH's have been allowed to mark timber for many years now.

The committee discussed several options for dealing with this issue:¹

◆ *The Status Quo.* Several committee members support this option, believing strongly that revoking the ability of SFPH's to mark harvests would jeopardize the livelihoods of many honest and legitimate operators who form an essential backbone of the forest products industry. Others believe the status quo upholds neither the intent nor the letter of the law and has rendered good forestry increasingly irrelevant in Connecticut, to the detriment of the forest resource and the greater public interest.

◆ *Only Certified Foresters can mark trees for harvest, as the law seems to require.*

◆ *SFPH's mark trees, but publicly employed Certified Foresters are required to sign off.* Depending on the situation the CF might be employed by DEP or be a forester the town is required to retain for the purpose. This has been the situation in Massachusetts and elsewhere for many years and some members feel it would bring us closer to actually enforcing the law. Further, while the forester might not have the authority to reject a proposed high-grade, he/she would be in a position to eliminate the possibility of a lay landowner being hoodwinked into thinking good forestry was being practiced where it is not.

◆ *Existing SFPH's are grandfathered and continue to mark trees for harvest, but newly certified SFPH's after some date certain may not.*

◆ *SFPH's mark trees, and existing logger education programs are significantly upgraded to include extensive training in forest ecology and silviculture.* The nationwide and successful Logger Education to Advance Professionalism (LEAP) program, which began in 1991 in Vermont as the "Silviculture Education for Loggers Project", serves as a model. SFPH's who mark trees could be required to include some of this training in their annual CEU tally.

This list obviously is not exhaustive, and combinations of the above as well as other options could be explored.

We do believe it is instructive for the Forest Practices Advisory Board to know that there are strong feelings and deeply held beliefs within the forestry community on the subject of tree marking. We also believe that you should know that we were unable to reach consensus on an approach to this issue.

The Committee decided to table the discussion of amending the P.A. 490 statutes to require that management plans accompany applications for the classification of land as forest land.

I look forward to presenting our recommendations to the Advisory Board in person on September 5.

¹ My thanks to Steve Broderick who drafted Point 4 and laid out the 5 bulleted alternative viewpoints.