

Appendix 2

Forest Practice Acts – an overview in time and place

Connecticut-historical review

By John E. Hibbard, Retired

The program of this meeting quoted Aldo Leopold "*The first rule of intelligent tinkering is to not throw away any of the pieces,*"

I have not attempted to throw out any of the pieces however I may have omitted some.

The colonists found Connecticut 95% forested. Historians refer to white pine and hemlock and a supply of wood for fuel, building of homes, ships, masts and boards. By 1800 one third of the land had been cleared of timber a process which continued until about 1860 when two thirds of the forest had been cleared for agricultural use. From 1860 to the turn of the Century increased demand for various wood products resulted in additional land clearing to supply the needs of industry.

The onset of the decline of agriculture resulted in land reverting to forest. Concern about the condition of the forest, forest fires gave birth to the conservation movement in the United States and Connecticut. The founding of the Connecticut Forestry Association in 1895, forestry activities at the Connecticut Agricultural Experiment Station, birth of the Yale School of Forestry, establishment of the office of State Forester are examples of efforts to improve the conditions of the forest and forest practices in general.

The tree legs of the forestry milking stool were:

1. Purchase land for state forests.
2. Protect the forest from fire.
3. Encourage good forest practices by example on state and private lands.

These objectives were to be advanced by the Forestry Department, Extension Service, advocacy groups such as the Connecticut Forestry Association and others. The Ag Station conducted research and for a brief period of time the State Forester and the Connecticut Forestry Association were located at the Station.

Other factors which influenced the condition of the forest in the 20th Century were the chestnut blight, gypsy moth, the Great Hurricane of 1938 and World War II.

Foresters banded together in the early days to form the Association of Eastern Foresters. They later melded their activities within the Society of American Foresters.

The Great Depression gave birth to the Civilian Conservation Corps which was built on a Connecticut prototype developed by the late Austin Hawes who sold the idea to President Franklin D. Roosevelt. The CCC had a positive impact on Connecticut forests through improvements on state lands.

Private forestry efforts were promoted by Service Foresters of the Division of Forestry, Extension Foresters, leadership by water utilities, and private land owners James L. Goodwin, Edward C. Childs and others, and organizations such as the White Memorial Foundation. The Connecticut Forest and Park Association gave birth to Connwood Incorporated, now Connwood Foresters to provide management service to landowners as well as develop markets for forest products. In addition a small band of private foresters carried the banner of *Good Forestry* into the 1950s.

Connecticut joined the "TREE FARM" program in 1955 and some of the original TREE FARMS are still under management.

Federal forest resource conservation programs conducted under the auspices of the USDA Agricultural Conservation and Stabilization Service which provided cost sharing for a variety of conservation practices conducted by the landowners by foresters operating as consultants individually or through organizations such as Connwood.

While public concern about shade trees led to the licensing of Arborists at an early date there was little if any interest in licensing or certification for foresters for several decades.

There were however, debates about the conduct of specific forest practices conducted under the ASCS cost sharing programs. These were debated from time to time and at times mediated or mitigated through meetings of private, State, Extension and others through the organization commonly known as SPUFAF (Society for the Prevention of Undue Friction Among Foresters).

These efforts were conducted under the efforts of the State Forester and consisted of afternoon sessions held at various locations. Former State Foresters who had varying degrees of involvement in these efforts included "Gus" Schreeder, Harry McKusick, "Bob" Garrepy, Ed Vandermillen, and "Pete" Babcock. Ed Vandermillen was on loan from the U.S. Forest Service for a brief period in the 1970's shortly after the establishment of the Department of Environmental Protection in 1971. He later was head of the Pinchot Institute of the Forest Service at Grey Towers in Milford PA.

1970'S -2006

By the 1970's a number of factors placed additional focus on the activities of foresters, landowners, and others related to natural resource conservation and environmental protection.

National concern over pesticide use followed the publication of "Silent Spring" by Rachel Carson. The Nation's first Earth Day of April 20, 1970 and the establishment of the Connecticut Department of Environmental Protection in 1971 were parts of the set for change in Forestry in Connecticut. The Connecticut Forest Industry was reborn. With it came the construction and expansion of sawmills and the need for additional wood to supply them.

"Bob" Garrepy succeeded Vandermillen as State Forester who had returned to the US Forest Service. Public foresters in the form of service Foresters were much less involved as the primary players in the classification of forest land under Section 12-107(d) CGS.

By 1972 the General Assembly passed Inland Wetlands Legislation and municipalities were adopting regulations under provisions of the act. While forestry was considered as a use by right under the provisions of Section 1-1(q) CGS as part of the definition of agriculture some municipalities were eager to regulate forest practices as a result of complaints concerning real or alleged damage to wetlands.

There were also attempts to limit the use of roads by log trucks in Northwestern Connecticut in particular as well a various attempts to regulate forest practices.

Persons involved in the application of pesticides were required to be licensed. This had some impact on forest practices and Christmas tree production in particular.

These factors made the SPUFAF model for resolution of conflicts obsolete. "Bob" Garrepy as State Forester sought to remedy the situation by publication a list of private foresters that included a listing of foresters and services that they were willing to provide. The concept was accepted by the forest community initially as well as organizations such as the Wood Producers Association of Connecticut (WOODPAC) and the Connecticut Forest and Park Association (CFPA). The system worked as long as there was a consensus that it was

acceptable however, the house of cards came falling down when the State Forester felt that some on the list were not doing acceptable work and removed their name from the list. Those removed from the list chose to litigate the matter and a period of litigation followed during which the State Forester had to defend his actions at his own expense. The Court concluded that the State Forester lacked authority by statute to publish such a list and ordered that all copies of the list be destroyed. The net result was that the issue remained unresolved for an extended period of time.

The energy crisis of the 1970's also had an impact on forest practices. Increased demand for wood for fuel from state and private lands resulted in a bubble in the firewood business. Public foresters spent much of their time in administration of the wood permit program on state lands. In addition more timber was being harvested from public and private lands. Wood to energy projects were proposed in eastern and western Connecticut. These proposals were met with enthusiasm in forestry circles as a way of marketing low grade material from the forest, improving the condition of the forest and providing a portion of needed electrical energy. The proposals also were met with opposition from various sectors of the public as having a potential negative effect on the forest resource, water resources and the quality of life.

Proponents of the development of these facilities reacted by proposing that harvesting of forest products would be conducted in a manner which would sustain the forest resource, utilizing Best Management Practices developed under the guidance of a professional forester.

The General Assembly approved a study to be conducted by the Department of Environmental Protection with a report to the by the 1991 Session. The report was completed in a timely manner and recommended that forest practitioners be certified and that forest practice regulations be adopted at the state level preempting additional regulation at the municipal level.

It should be noted that the untimely death of "Bob" Garrepy in 1986 left "Pete" Babcock with the responsibility of sorting out various competing issues relating to forest practices. In addition he was responsible for completion of the report to the General Assembly with much of the background work being done by Don Smith who was Staff Forester for the Forestry Division at the time.

The Connecticut Forest Practices Act was passed in 1991 and was recognized as the Outstanding Forestry Legislation by the National Woodland Owners Association. A Forest Practices Advisory Board was established chaired by the State Forester. The board has provided advice to the State Forester and the Department of Environmental Protection on implementation of the legislation. Babcock and Smith took steps to implement the provisions relating to the Certification of Forest Practitioners. Regulations were finally approved by the Regulation Review Committee and the subsequent holding of examinations resulted in the Certification of Forester, Supervision Forest Products Harvester, and Forest Products Harvester. Education programs were established for continuing education.

The Resource Conservation and Development (RC&D) Forestry Committee through Carol Youell RC&D Forester conducted an extensive study of actual and proposed forest practice regulations by Connecticut municipalities. This study proved to be of value during the process of consideration of legislation. In addition the Connecticut Forest and Park Association sponsored an all day seminar at the Mercy Center in Madison which included participation by experts in the Northeast on the issue. During the same period of time forest practices came into question throughout the Nation.

A portion of the forest Practices Act concerned the conduct of Forest Practitioners commonly known as "ethics". Two hearings on proposed regulations in this area were held in 2002 and in July of 2006. The report of the hearing officer is in the process of preparation and it is anticipated that regulations will be forwarded to the Regulation Review Committee for approval in the near future.

A public hearing in the initial Forest Practice Regulations which would add Section 23-65j-1 to the Regulations of State Agencies (DEP) was held on May 3, 1999. The hearing officer issued his memo on the public hearing in February of 2,000 which indicated that the DEP had decided to commit the proposed regulations to a complete redraft. Such a redraft has not been completed.

The Connecticut Farm Bureau Association formed a "Forestry Advisory Committee" to review the general subject of forest practice regulations. Several persons served on the committee and a detailed report was issued. Persons who participated directly and indirectly in its work can provide details of its work.

Since 1991 the Forestry Division has continued work on the Certification of Forest Practitioners, investigated various issues relative to improper conduct of forest practices some of which have been litigated and have resulted in prosecution. In some instances adjoining states have benefited by these actions.

During the interim period of time members and former members of the Forest Practices Act Advisory Board and others expressed frustration on the lack of progress on proceeding with a redraft and implementation of Forest Practice Regulations.

In 2006 the Office of Legislative Research of the General Assembly was asked for a review of Municipal Regulation of Forest Practices. The OLR Research Report of March 21, 2006 (2006-R-0242) by Kevin E. McCarthy, Principal Analyst provides an up to date review of information known to several.

He notes that in regulation of Inland Wetlands under the provisions of CGS 22a-38 the towns of Canterbury, Killingly, Rocky Hill, Stonington, Vernon, West Hartford, Windsor and Woodbury specifically regulate clear cutting in wetlands and that the statute allows municipalities to go beyond DEP regulations as long as they are consistent with state regulations.

The OLR report reviews the provisions of the subdivision statute CGS 8-25 relating to the protection of trees; the site plan review statute CGS 8-3(g) under zoning relating to Coastal Area Management; special permits CGS 8-21(a); viewsheds under the Coastal Management Act CGS 22a-93(15), and Ridgeline Protection CGS 8-1aa and 8-2.

PREEMPTION OF LOCAL FOREST PRACTICES REGULATION-CGS23-65F ET SEQ

The OLR report underlines the fact that the law specifically preempts municipalities from regulating certain forest practices; defined forest practices and commercial forest products.

It notes that preemption does not apply if the harvest is undertaken to convert forest land to other uses and the conversion has been approved by the planning or zoning commission and in certain situations by the inland wetlands agency.

The report underlines the fact that 20 towns: Berlin, Brookfield, Chester, Deep River, East Haddam, Essex, Glastonbury, Granby, Haddam, Kent, Lyme, Newtown, Old Lyme, Old Saybrook, Redding, Stafford, Somers, Warren, Washington and Willington are not preempted if the Department of Environmental Protection approves their forest practices regulations.

ASHFORD

In the early months of 2006 it came to the attention of several in the forestry community that the town of Ashford was considering the adoption of forest practice regulations based in a large part on regulations in effect in the town of Willington one of the 20 towns to which preemption does not apply as noted in the OLR report and elsewhere.

A public hearing was held on Ashford's proposed regulations Section 4.10 Commercial Logging -Special Permit Required on March 13, 2006. I submitted testimony for inclusion in the record of the public hearing indicating my opinion that the town of Ashford does not have the statutory authority to adopt the proposed regulations and urged that they be rejected. Other testimony was submitted in opposition to the regulation and testimony was offered in support.