



Testimony of

DANA A. DORAN
Executive Director

Professional Logging Contractors of the Northeast

**Before the Senate Committee on Agriculture regarding H.614, An Act Relating to
Land Improvement Fraud and Timber Trespass
Wednesday, April 3, 2024**

Senator Starr, Senator Collamore and members of the Senate Committee on Agriculture, my name is Dana Doran, and I am the Executive Director of the Professional Logging Contractors of the Northeast (PLC). The PLC is a trade association that represents logging and associated trucking contractors throughout the Northeast, including here in the state of Vermont.

As background, the PLC is a trade association that was created in 1995 to represent logging and associated trucking contractors throughout the state of Maine. In May 2023, the membership voted to expand its presence to become a regional trade organization and begin representing contractors in the region, including the state of Vermont. The PLC now has three Board Members from Vermont, Sam Lincoln, Lincoln Farm Timber Harvesting, Randolph Center; Jack Bell, Longview Forest, Inc., Hartland; and Gabe Russo, Southwind Forestry, LLC, Pawlet and has also accepted 15 new contractor members from the state of Vermont since early October. The PLC is excited to represent VT harvesters and haulers during the 2024 legislative session.

I appear before you today on behalf of the membership of the PLC from Vermont to testify in support of H.614, An Act Relating to Land Improvement Fraud and Timber Trespass. Timber harvesters are not generally in favor of more government regulation; however, we believe that the legislation before you is an important step forward to professionalize the industry in Vermont, protect landowners and ensure that this industry moves forward without a black eye that has festered here for decades. I would also like to thank Representative Mihaly, the House Agriculture, Food Resiliency and Forestry Committee, as well as the House Judiciary Committee for supporting this legislation and working closely with our organization, to ensure it has been written correctly and has broad support.

Timber trespass and timber theft are crimes that have plagued this industry for decades throughout the northeast and especially here in Vermont. Timber thieves, not reputable professional logging contractors, have operated in this state for far too long because they have not had the weight of law, nor enforcement, to ensure that their activities are eliminated. There are well established examples of timber thievery that go back decades and it has left a black eye on the industry that will take decades more to overcome. While this bill is not perfect and there is still the longstanding issue of enforcement that must be focused upon, it is our belief that it

will go a long way to eliminate illegal timber harvesting by habitual offenders and improve the public's trust for logging contractors that operate responsibly and ethically.

For background, the PLC began working with Representative Mihaly back in early December to ensure the legislation would be something that we could support. While not opposed to the premise and reason for the bill, we did not want this bill to be a one size fits all approach that could ultimately harm contractors that did something by accident or unknowingly. This was by far the biggest issue that our membership in Vermont felt strongly about was that accidents happen and contractors who admit fault and/or pay their debt, should not be held liable nor be subject to the stipulations in this bill. Thus, it is our belief that the language before you does indeed protect those who do things by accident and are willing to own up to their mistakes. It has enough failsafe protection in it that those who do make mistakes and pay their debts will not be swept up with those who don't.

We also believe that the legislation before you today is not inconsistent with that which exists in other states. As an example, I have attached the statute and rules created in Maine which deal with this issue. In 2013, the Maine Legislature provided the Maine Forest Service with statutory authority to create rules that would require a habitual offender, previously convicted of timber theft and/or timber trespass on two prior occasions in the last five years, to receive written approval from the Maine Forest Service to operate, to post a private bond in the amount of \$500,000 and to be subject to work stoppage if requirements of the law were not being met. Maine has a Forest Practices Act with civil and criminal penalties for timber trespass and timber theft under the authority of the Maine Forest Service and the Attorney General, but for the purposes of comparison, the authority provided by the bill before you today would be very similar to Maine. I have attached a copy of the law and rules from Maine to my testimony for your review.

While we don't want the perfect to be the enemy of the good, we do believe that there is an elephant in the room that must be dealt with if this legislation goes forward. That issue is enforcement.

In discussions with Representative Mihaly and the House Ag. Committee, we asked that the bill be amended to include a study, due back to the House Ag. Committee, on or before January 15, 2025, which would focus on four primary pieces: 1) current issues pertaining to enforcement of timber theft and trespass law; 2) a summary of what is being done in other states to effectively enforce timber theft statutes; and 3) recommendations for staffing and budget implications to improve such enforcement and prevention to ensure consumer protection; and 4) a recommendation of whether and how property used to commit fraud or trespass could be subject to seizure. The Attorney General would lead the study and consult with the Department of Forests, Parks and Recreation, the Department of Public Safety, the Professional Logging Contractors Northeast, the Vermont Forest Products Association and other interested parties regarding the above issues. We are pleased to see that the House Ag. Committee has included this study language in the bill and not only is there a rigorous mechanism recommended for criminalizing timber theft, but there is a path forward to determine what is needed for efficient enforcement in the future.

In closing, we believe that that this is a well thought out solution to a decades long problem and thank the committee for providing the opportunity to present the opinion of our membership today and I would be happy to answer any questions you may have.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

—
S.P. 26 - L.D. 59

An Act Relating to the Unlawful Cutting of Trees

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §8869-A is enacted to read:

§8869-A. Prior division approval for harvesting trees and authority to issue stop-work orders

The division shall establish a prior approval process for harvesting trees by a person that has committed 2 violations of unlawful cutting of trees pursuant to Title 17, section 2510, subsection 1. The process must include at a minimum the following:

1. Written approval. Requiring written approval from the division for the person to harvest trees on any land in the State; and

2. Bonding. Requiring the person to post a private bond in an amount not less than \$500,000 before commencing tree harvesting.

The division shall issue a stop-work order if the requirements of this section are not met at the time harvesting is occurring.

For the purposes of this section, "person" means an individual, corporation, partnership, association or any other legal entity.

The Commissioner of Agriculture, Conservation and Forestry shall adopt rules to carry out the provisions of this section. Rules adopted pursuant to this section are major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

**AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF
Forest Policy and Management - Division of 0240**

Initiative: Provides one-time funding for rule-making costs.

GENERAL FUND	2013-14	2014-15
All Other	\$3,700	\$0
GENERAL FUND TOTAL	<u>\$3,700</u>	<u>\$0</u>

01-669
Maine Forest Service
Chapter 30
Prior Approval Process and Stop Work Orders

DEPARTMENT OF AGRICULTURE,
CONSERVATION, AND FORESTRY
MAINE FOREST SERVICE

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01 DEPARTMENT OF AGRICULTURE, CONSERVATION, AND FORESTRY**669 BUREAU OF FORESTRY****Chapter 30: PRIOR APPROVAL PROCESS AND STOP WORK ORDERS**

AUTHORITY: 12 M.R.S. c. 805, sub-c. 3-A

Summary: This rule establishes standards for Maine Forest Service approval of timber harvesting activities by any person who has been convicted of two or more violations of Title 17, section 2510, subsection 1 (unlawful cutting of trees) during the five years prior to conducting any new timber harvesting activities.

SECTION 1. SCOPE AND APPLICABILITY**A. Scope**

This rule governs all forest lands within Maine, including those owned by state and local governmental units, nonprofit organizations, and private forest lands. It does not govern federal forest lands.

B. Applicability

1. This rule applies to any timber harvesting activities conducted by any person who has been convicted of two or more violations of Title 17, section 2510, subsection 1 (unlawful cutting of trees) during the five years prior to conducting any new timber harvesting activities.
2. All timber harvesting activities must comply with other applicable laws, rules, and standards, including but not limited to: *The Forest Practices Act* [12 M.R.S. §§ 8866 to 8870], the *Natural Resource Protection Act* [38 M.R.S. §§ 480 A to 480-Z], the *Shoreland Zoning Act* [38 M.R.S. §§ 435 to 449], and *Maine Land Use Planning Commission Law* [12 M.R.S. §§ 681 to 689].

SECTION 2. DEFINITIONS

A. For the purpose of 12 M.R.S., Chapter 805, sub-chapter 3-A and this rule, the following terms are defined as follows. Unless otherwise provided herein, this rule incorporates by reference the definitions contained in MFS Rule Chapter 20 (Forest Regeneration and Clearcutting Standards).

1. **Bureau** means the Bureau of Forestry, Department of Agriculture, Conservation, and Forestry.
2. **Designated Agent** means a person, company or other entity that is authorized by the landowner to act on the landowner's behalf for timber harvesting and related activities on the landowner's property.

3. **Contractor** means a person, company, or other entity that contracts with a landowner or designated agent to conduct timber harvesting activities, regardless of whether that person is the actual person who cuts or fells any tree or removes any forest product.
4. **Director** means the Director of the Bureau of Forestry.
5. **Forest Land** means land primarily covered with trees, and where commercial timber harvesting is not precluded by legal requirement.
6. **Forest Products** means logs, pulpwood, veneer, boltwood, wood chips, stud wood, poles, pilings, biomass fuel wood, fuel wood or other products commonly known as forest products. It does not include Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, bough material, cones or other seed crops.
7. **Landowner** means a person, company, or other legal entity which holds title to land, including as a joint ownership or as tenants in common. Where the ownership of the timber located on the land is different than the fee ownership of the land itself, the owners of the timber are deemed a landowner and are jointly and severally responsible with the fee landowner to comply with this rule. Where a corporate landowner is a wholly owned subsidiary of another corporation, both parent and subsidiary are deemed the same landowner.
8. **Parcel** means a contiguous tract or plot of forest land owned by a landowner. Multiple contiguous tracts, plots or parcels of forest land owned by the same landowner are considered a single parcel. Contiguous tracts completely separated by a public road or roadway are considered to be separate parcels under these rules. Tracts of land joined only at a single point are not contiguous.
9. **Person** means an individual, corporation, partnership, association, or any other legal entity.
10. **Public Road or Roadway** means any roadway that is owned or leased by a governmental unit or public entity.
11. **Purchaser** means a person that harvests or contracts to conduct timber harvesting activities.
12. **Seller** means a landowner or designated agent that contracts to have timber activities conducted.
13. **Stop work order** means a written order issued by the bureau requiring a person conducting timber harvesting activities to immediately cease part or all timber harvesting activities.
14. **Timber harvesting** means the cutting or removing of timber for the primary purpose of selling or processing forest products.

15. **Timber harvesting activities** means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting, the mining of gravel used for the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

SECTION 3. WRITTEN APPROVAL REQUIRED TO HARVEST TREES

Prior to harvesting timber, any person who has been convicted of two or more violations of Title 17, section 2510, sub-section 1 (unlawful cutting of trees) during the five years prior to conducting any new timber harvesting activities must:

- A. Ensure that a landowner or the landowner's designated agent has filed a Forest Operations Notification with the bureau at least thirty days prior to the start date of the timber harvesting activities as shown on the notification. The notification must be accepted by the bureau as complete before timber harvesting activities can begin;
- B. Submit a copy of a written contract executed between the person conducting the timber harvesting activities and the landowner or the designated agent.
 1. The contract must be submitted with the forest operations notification;
 2. The contract must state clearly that any violations which occur as a result of timber harvesting activities are the responsibility of the contractor; and,
 3. The contract must not waive any requirements of law, including, but not limited to Title 17, section 2512, subsection 2.
- C. Obtain written approval from the bureau before commencing timber harvesting activities. The bureau will notify in writing the person conducting the timber harvesting activities within 30 days of receiving a complete Forest Operations Notification and a copy of the written contract whether the timber harvest may proceed. The person conducting the timber harvesting activities must maintain the bureau's written approval on site at all times during the timber activities.

SECTION 4. PRIVATE BOND REQUIRED

- A. Prior to conducting timber harvesting activities, any person who has been adjudicated two or more times for violations of Title 17, section 2510, subsection 1 (unlawful cutting of trees) during the five years prior to conducting any new timber harvesting activities shall deposit cash, a surety bond, a certified check, or other form acceptable to the seller in the amount of \$500,000 or the value of the standing timber on the parcel, whichever is greater, as a bond to assure proper performance.
- B. The performance bond is to be held by the seller until the purchaser has completed or complied with all contract conditions.
- C. Upon breach of any condition of the contract between the seller and the purchaser, the performance bond shall be applied to actual damages incurred by the seller. Damages must be determined by the bureau.

- D. The performance bond (or any balance after damages are deducted) shall be returned to the purchaser within sixty days of the completion of the timber harvesting activities consistent with the contract, if the purchaser notifies the seller in writing that the harvest is finished.

SECTION 5. STOP WORK ORDER

- A. A forest ranger of the bureau's Forest Protection Division may issue a stop-work order if the forest ranger has probable cause to believe that a person subject to this rule is violating any provision of 17 M.R.S. §2510, §2511, or §2512, or 17-A M.R.S., Chapter 15, or has failed to comply with the contract conditions.
- B. The issuance of a stop-work order must be approved by the bureau director or the bureau director's designee.
- C. The stop work order shall contain at a minimum the following information:
1. The name and address of the person responsible for conducting the timber harvest;
 2. The name and address of the landowner;
 3. The Forest Operations Notification number;
 4. The location of the timber harvesting activity;
 5. A description of the violation of this rule; and
 6. The actions that must be taken to resolve the violation .
- D. The stop work order will be hand delivered to the person responsible for conducting the timber harvest and the landowner on the harvest site or their last known addresses, if they are in the state. If they are out of state, it will be sent by certified mail, return receipt requested.
- E. The stop work order must require that the person responsible for conducting the timber harvest cease the timber harvesting activities immediately. All harvested wood and other forest products, whether on the parcel or in the yard, any wood and other forest products loaded onto a vehicle within the yard must remain on the parcel or in the yard and must not be transported until the stop work order is released.
- F. A stop work order issued pursuant to this section remains in effect until the bureau director or the bureau director's designee issues an order releasing the stop work order upon finding that the person responsible for conducting the timber harvest has come into compliance with the requirements of this subsection and has paid any penalty assessed under any rule enforced by the bureau.

- G. A stop work order issued pursuant to this subsection against a person responsible for conducting a timber harvest applies to any successor firm, corporation or partnership of the person to whom the stop work order was issued.
- H. The issuance of a stop-work order constitutes final agency action.

SECTION 6. VIOLATIONS

- A. Any person who orders, contracts for, or conducts any activity in violation of this rule commits a civil violation, and shall be penalized in accordance with 12 M.R.S., chapter 809.

SECTION 7. EFFECTIVE DATE

- A. **EFFECTIVE DATE:** The effective date of these rules shall be 15 July 2016.

Timber harvesting activities for which notification has been filed and timber harvesting has begun prior to the effective date are not subject to these rules, but are subject to the rules currently in place.

STATUTORY AUTHORITY: 12 M.R.S. c. 805, sub-c. 3-A

EFFECTIVE DATE:

July 15, 2016 – filing 2016-103 (Final adoption, major substantive)