

THE VOICE OF THE TIMBER INDUSTRY

TIMBER BULLETIN

DULUTH, MINNESOTA

MARCH/APRIL 2013

VOLUME 68



**Finding Walter Smith
Working Late -
Ray Smith Logging
Boise, Sappi Mill Updates**

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TIMBER BULLETIN

Volume 68
March/April 2013
Duluth, Minnesota

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ON THE COVER

This issue's featured member Ray Smith found this photo of his father Walter in an unlikely spot. For more on Ray Smith Logging, and where Ray found the picture, please turn to page 8.

The Timber Bulletin is published six times annually, in February, April, June, August, October and December by the Minnesota Timber Producers Association, located at 903 Medical Arts Bldg., 324 W. Superior St., Duluth, Minn. Minnesota Timber Producers Association members receive the Timber Bulletin at an annual subscription rate of \$25 which is included in their membership dues. Periodicals postage paid in Duluth, Minnesota. Advertising rates and data on request. The views expressed in the Timber Bulletin do not necessarily reflect the views or opinions of the Minnesota Timber Producers Association.

Postmaster: Please send address corrections to **TIMBER BULLETIN**, Minnesota Timber Producers Association, 903 Medical Arts Bldg., 324 W. Superior St., Duluth, Minnesota 55802, Phone 218-722-5013.
Issn: 10973532 – USPS: 016208

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Winter was really hanging on this year. When I wrote the last column I wished for another week of winter, not another eight. (Note to self: be careful what you wish for.)

Like most loggers this time of year we are working on equipment, fixing up things that were put off during the busy winter season and getting trucks and trailers tuned up for hauling

President's Column



stockpiled wood. It seems like the profit margin gets

thinner every year with our dollar not going as far as it used to. I hope our state and federal governments

realize how tight things are and work with us to strengthen our industry and economy.

Wayne Brandt has been very busy in St. Paul. A lot of bad proposals have come and gone. It's a little like throwing mud at the wall and some of it sticks. Wayne seems to enjoy scrubbing that wall. I hope he doesn't run out of soap or wear out his brush. Hopefully common sense and good judgment will prevail and what comes out of the legislature will be friendly to our industry.

"Government is not reason; it is not eloquent; it is force. Like fire, it is a dangerous servant and a fearful master."

George Washington

I hope the spring season treats you well.

Kit Hasbargen

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Boise Expects Little Effect on Wood Usage



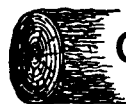
Officials at Boise Paper in International Falls say they expect to purchase roughly the same amount of wood from loggers in the future as the company has in the past. That's despite the company's announcement that it is idling two of its four paper machines and laying off 265 workers at the mill by the fourth quarter of this year.

The reason is the mill purchased market pulp to operate the two machines that will be idled. The company will still need harvested timber in roughly the same amount to operate the remaining machines, including the largest, the I1 paper machine.

"The grades of paper produced on the idled machines add complexity to the mill and require that we purchase market pulp from the outside," said Boise Woodlands Manager Dan Toivonen. "This

contributes to high cost and is not sustainable in the long term. We will match our wood consumption to our internal pulp capacity and have communicated this to the logging community. We expect our future wood consumption needs to be only slightly reduced."

In a statement to shareholders, Boise said the decision to close the two paper machines, as well as an off-machine coater in International Falls, was a difficult one. The statement said the moves will reduce the company's annual uncoated freesheet capacity by approximately 115,000 tons, or 9%. The company says the moves will allow Boise to focus on key products and machines that drive profitability, improve cash flow, and enhance the overall competitiveness of the International Falls mill and its paper business.



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Congratulations to TPA member John Rolle who was named "Logger of the Year" by Minnesota Sustainable Forestry Initiative State Implementation Committee. John and his crew do an outstanding job in the woods and are a credit to our industry.



OK. I'm sick of winter and I know you are too. Most folks have shut down in the woods even though conditions have allowed us run later than in many years. A number of our members have told me that they and their crews had just had enough and they didn't want to cut into the

Executive Vice President's Column



contract and stumpage that they have for the summer. Hopefully by the time you read this the snow will be gone and the sun will have warmed us up.



One interesting note about the long winter is that the imposition of spring road restrictions was the second latest in the last 25 years.



Mark your calendars and get your reservations in for the TPA Annual Meeting June 5 and 6 at Ruttger's Sugar Lake Lodge in Grand Rapids. We're going Wednesday/Thursday this year due to a scheduling conflict at the resort. A great program is in the works!



DNR Forestry Budget. Timber sale policies. Forest land taxation. Energy. These may not be the issues that you see in the headlines but they are the issues occupying us at the State Capitol this year. We're there for you every day and will be until the legislature and governor finish their work.



Energy costs have become a much bigger issue for our industry the last few years. I don't have to explain the impact of diesel

fuel prices on the bottom line for logging operations. What some may not know is the impact of energy costs, particularly electricity, on the industry overall. Energy is 25 percent of the cost of producing a ton of paper on average. This is equivalent to the cost of wood and labor in producing paper. Ten years ago Minnesota had a significant advantage over our competitors in electrical costs. This advantage has eroded due to policy decisions by the state and rate decisions by the Public Utilities Commission (PUC). Industrial electrical rates in Minnesota have increased 55 percent in the last 10 years – amongst the highest increases in the nation. The PUC has also built a system that has industrial customers (primarily the forest products and mining industries) subsidizing residential rates for every customer. Helping the needy is one thing but subsidizing rates for everyone while we make the mills that take our wood and provide the economic

engine to our region jeopardizes jobs throughout our economy.



From everything I've heard we had a pretty safe winter season. Thank you and congratulations! Safety is always our priority. We never regret the injuries we prevent by doing our work the safe way.

Wayne E. Brant

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State Patrol and FMCSA Issue Enforcement Advisories

The Minnesota State Patrol is tightening enforcement on two scenarios affecting logging operations in Minnesota and across the U.S.

The scenarios pertain to hauling tree-length timber, and to the CDL requirement for those who haul timber or equipment used in the logging business.

“These aren’t new laws,” says Lt. Chip Lemon of the State Patrol’s Commercial Vehicle Enforcement Division. “We now have updated interpretations of existing federal statute and we want everyone in the logging community to be aware of these interpretations.”

Hauling Tree Length Timber

Federal Statute indicates the rear of a tree-length load of timber that exceeds the length of the trailer by more than four feet not only needs a red lamp on the rear of the load that shines both left and right, when lights are required to indicate the load’s length, but also lamps shining to the rear on each side to indicate maximum width. Where lights are required flags are always required.

“This is in response to a nighttime accident in the Grand Rapids area involving two commercial motor vehicles in which a driver hit an over-length load because they weren’t aware of how long the load was,” Lt. Lemon says. “The statute has always been on the books. It’s something we’ll look for in order to help everyone stay safe.”

CDLs for Truckers in Logging

An opinion rendered by the Federal Motor Carrier Safety Administration (FMCSA) indicates that a trucker hauling harvested timber or equipment used in timber harvesting does not meet the definition in federal statutes of a farmer for the purposes of the agricultural exemptions. As a result, a trucker in these instances would need a commercial drivers’ license (CDL) and need to follow applicable rules for drug and alcohol testing, having a medical examiner’s certificate, more commonly known as a health card, etc.

The FMCSA office in Washington



issued the interpretation earlier this year based on a question from law enforcement in the state of Tennessee. In discussions with the Minnesota Division Office of the FMCSA, the interpretation wasn’t issued based on anything that happened in Minnesota. The statute has been on the books for several years.

According to the interpretation issued by FMCSA, trees are not agricultural commodities as defined

in federal statute, and therefore don’t qualify for the agricultural exemption.

Officials in Minnesota law enforcement say they don’t expect the updated interpretation to effect a lot of people, indicating very few loggers without CDLs are encountered.

For more information, call the St. Paul office of the FMCSA at 651-291-6150.



Member Feature...



Ray and Kirk Smith of Ray Smith Logging.

Working Late

Ray and Kirk Smith of Ray Smith Logging take advantage of Minnesota's late spring break-up, and find ways to make their business thrive.

by Ray Higgins

It's late March, just south of Badoura in Hubbard County. In most years, warming spring temperatures would have resulted in muddy conditions in Minnesota's forests by this time, effectively shutting down logging – or at least curtailing it – around the state.

But not this year. Frigid temperatures have lingered longer than usual, meaning the ground remains frozen and firm enough

to support logging equipment. As a result of this late "break-up," loggers like Ray Smith and his son Kirk are still working in the woods, harvesting red pine and jack pine in this plantation on 52 acres of Hubbard County forest land.

"We're taking every third row of the red pine," Kirk says, "and cutting every jack pine we see."

Today's temperatures are warm, reaching into the 30s. A few more days like this will thaw the ground enough that they won't be able to get trucks in here to haul the

wood to the mill. But the Smiths figure they'll at least still be able to harvest the timber and haul it come summer.

"The ground here is mostly sand," Ray says. "It's low ground where the water table is high, but it's still sand, so I'm thinking we'll at least be able to stack up wood."

Ray and Kirk form a two-man crew, Kirk operating a Timberjack 1279D cut-to-length harvester, while Ray runs a Bell forwarder. Ray's father Walt was a logger, and while this business isn't a direct

descendant of Walt's, its roots certainly come from there.

Walt Smith was born in 1911 and grew to be a logger, working in Minnesota's and Montana's logging camps of the 1930s and 40s. So when Ray came along in 195X, he was born into a logging family, living in Schoolcraft Township, which sits midway between Bemidji and Park Rapids.

"As soon as I was old enough to run the measuring poll," Ray says, "I was out there all summer vacations. I bet I started when I was about seven."

That was simply the way things were in those days, in that area of the state.

So when Ray graduated from Laporte High School in 1971, he headed for the woods to work with his father.

"We really didn't know there was much else out there," he says.

Soon, Ray married his sweetheart Darla and started piece cutting for Park Rapids logging legend Harris Walsh. Then after I got married, I started piece cutting for Harris Walsh. When business got tough and Walsh had to downsize, Ray



Kirk Smith operates a Timberjack 1270D cut-to-length harvester in a pine plantation.

told him he was going to buy a tractor and dray and start his own business in the woods.

"Harris said, 'well you're not going to get rich.' I said well I can make a living can't I? And he said, 'yeah, you can make a living.' I actually thought he was wrong. I actually thought I could get rich."

But Harris was right. Business was tough. His brother Joey bought

a skidder and they partnered for a few years, but it didn't last. Ray and Darla eventually started spending the winter months in the Phoenix area, painting barracks at the Luke and Williams Air Force bases. That's where Kirk was born, in 1978. In the summer time, Ray painted back in Minnesota, too.

In the early 1980s, the timber industry rebounded. Mills began opening and/or expanding again. Ray bought a cable skidder, started Ray Smith logging, and headed back to the woods.

Initially, the company developed into a conventional operation. Ray's brothers Allen and Joey worked for the business at times, as did other family members. And when Kirk was old enough, he started helping out in the same way his father had helped his grandfather, running the measuring pole on the landing.

"We used to always have a five-man crew," Ray says. "We used to have a Hahn feller buncher, a slasher, a skidder. That's the way it was for many years."

Kirk graduated from Park Rapids High in 1996, initially heading to tech school in Staples, first for



Ray Smith piles harvested Norway pine with a Bell forwarder. Bell is a South African manufacturer that at one time had a dealership in Wisconsin. Smith says parts are still available and the machine works well.

graphic design and ultimately winding up with a degree in media maintenance, being able to maintain and repair photo equipment, developers, and the like. For a while, Kirk and his wife Cassy had a business making fishing lures, but they hadn't developed enough of a market for it to be full-time work, so we went to work for Ray. Thirteen years later, he's still here.

"He's just plain good on all the machinery," Ray says of Kirk. "When I had the conventional stuff, the only thing I taught him to run was the skidder, the simplest thing. But one time I had to run for parts, and Kirk said, 'well I might as well stay here and learn how to run the Hahn Harvester.' And I'm thinking, he'll never learn how

to run the Hahn. He said, 'well there's a bunch of skinny little birch out there, can I skid that in and run it through the Hahn?' That's the worst stuff to learn on, skinny crooked little birch. I came back, he had the wood all done, and I think he was out scouting for antlers. That's the same for all the other machines. He just jumped on and started running them."

Eventually, the industry started to change. Stumpage prices skyrocketed, and the Smiths found that maintaining a five-person crew was difficult. Kirk suggested trading in the conventional logging equipment for a cut-to-length system, which is less labor intensive. Eight years ago, they made the switch.

"We tossed it around for about a year, and then finally we made the move," Kirk says. "We bought a used track machine, liked it, and it works out well for two people."

The Bell forwarder was the first one the Smiths purchased. The Timberjack harvester is their second, previously owned by Pittack Logging and then Sawyer Timber.

"It's an awesome machine," Kirk says. "It really makes a difference who took care of it before you buy it. The Pittacks and Sawyers really did a good job taking care of it."

The Smiths' timing turned out to be pretty good. They made the move to downsize their operation before the industry downturn of 2006. And the transition from conventional to cut-to-length

Finding Walter Smith

When Ray Smith receives each issue of *The Timber Bulletin*, he's reminded of his father Walter and the time Ray found his picture as part of one of Buzz Ryan's famous stories that appear in each issue.

"It must have been two years before my dad died," Ray says. "He said, 'you ever see a picture of me in the logging magazine?' I said no not yet. He says 'well, they were out taking pictures of us all the time at dinnertime. I remember one nice day I'm standing there holding my tin coffee cup. Boy I miss that coffee cup. Keep looking. Some day you're going to find my picture.'"

About two years later, Walt Smith passed away. And Ray kept looking in the *Bulletin* for a photo. Finally when the June/July 1994 issue landed in his mailbox, Ray opened it up and found the photo, in a Buzz Ryan story about how meals were prepared in logging camps of days gone by.

"I'm guessing the picture was taken around 1941 or so and he was in his 30s," Ray says. "He's holding the coffee cup, just exactly the way dad described it."



Ray Smith points to the photo he found of his father Walt Smith he found in a 1994 issue of *The Timber Bulletin*.



Ray Smith's father Walt (back row, 5th from left, holding coffee cup) pictured in a 1940s era logging camp, as seen in a 1994 issue of *The Timber Bulletin*.

machinery was made easier by Kirk's ability to adapt quickly.

"It takes the right kind of person to run a machine like that," Ray says. "I never taught Kirk because I had never run one before. He has 'artist abilities,' so he has patience, he's good with his hands, and that's what it takes to run one of those machines."

The business had to make other changes, too: they harvested mostly aspen with conventional equipment, but that changed with the cut-to-length equipment, as did the mills where they marketed their wood.

"When we got the first processor," Ray says. "it was a track machine and it was smaller than this one, so we tried to stay away from the bigger timber, the older stuff, and we still do. I mean, this one will do up to 28-inch trees, but a steady diet is not real healthy for it."

"Our bread and butter in the winter was balsam," Kirk says. "That's what we stayed in all winter. It worked really well with



Freshly harvested Norway pine waits on the landing to be hauled to the mill.

the balsam and the spruce. But then Sartell burned down."

The explosion and fire at the Verso Paper mill in Sartell last May ultimately forced the mill to close permanently, and it put a stranglehold on balsam markets for a lot of Minnesota loggers, including the Smiths. They had sent roughly 25% of their timber there. The mill's closure forced them to change their business

plan again. For one thing, they're looking for more pine plantations to harvest, and as a result, doing more thinnings.

"The last year we tried to stay in nothing but thinnings," Kirk says. "We picked some up here and there, but we didn't like them at first. I'm like, let's get back to a clear cut. It's not an easy move to get used to plantations after doing clear cuts.

You have to get used to working in tight places, watch your scarring, and all that. It's something you have to get used to, that's for sure. But now that we've been doing them, it's working out well."

The Smiths have also found the cut-to-length system works well in blowdown and they've benefitted from those opportunities over the past year.

"That went real well with this machine," Ray says of their work on a Hubbard County blowdown sale, "because you have good reach and good visibility."

"With the blowdown laying on the ground," Kirk says, "the cut-to-length works well because you can tilt the head down and then cut it right off at the stump, even with the roots hanging



on. And you can control the saw pretty well so you're not running into the ground."

The ability to work in blowdown significantly helped the Smiths' bottom line. In fact, at a time when a variety of factors are making it difficult for loggers to prosper, including Verso's closure in Sartell, the Smiths say 2012 was among their best ever. They chalk it up to prayer – the Smiths are Christians.

The cut-to-length equipment will allow the Smiths to stay in the woods despite spring break-up. With the changeover to mostly thinnings in pine plantations, their main markets are Potlatch, Cass Forest Products, Northwood Panel Board and Pine Products in Bemidji. They work mostly on state or county land, with maybe a private job or two per year.

The Smiths contract out the hauling end of the business. For years, long-time family friend Russell Kahlstorf handled the trucking, but he's not driving as much these days. So Aaron Fenstermaker from Backus now takes care of the deliveries.

Ray and Kirk also have something else needed to run a logging business: an entrepreneurial spirit. And they're not the only ones. Ray's other son Eric is starting a taxidermy business in the Park Rapids area called Trophy Smith and can be reached through Ray Smith Logging.

If the last few years are any indication, the Smiths will have to make more adjustments to their business model as they go along. But Ray says one thing is certain: they plan to stay in the logging business for the long haul.

"We made a decision to stick in it for the long run," says Ray, now 59-years-old. "I think of what my friend Lyle Hodgden said. He said you have to keep the faith, so I think of that every day. It takes a lot of faith to log. There are a lot of people thinking about quitting right now, and like I told Lyle the other day, I think it takes just as much faith to quit logging and do something else as it does to stay in it."

"I'm blessed to be logging this long with my dad," says Kirk, now 35, "being home every night, and

just being out in the woods. I love the outdoors. Even when I ran the pole back when I was 8-10 years old, we'd quit and have lunch in the cutting shack and I would be out scouting."

Ray feels the same way about his life in the woods.

"It probably saved my life," Ray says. "It's nice and peaceful out there. When life gets too tough, if you can run out to the woods and spend some time in prayer, and then get on your machine and make some money for your family, that's a good thing."

Being in the woods also allows Ray to put to good use lessons learned from his father. Walt died in 1992 of prostate cancer, but not before teaching his son about logging, and about life.

"I learned everything from him," Ray says. "Honesty. That's the main thing. Dad was known throughout this country for trimming his wood good, sorting the pulp out good. Do a good job, and when things are tight you'll still be able to sell wood. And he was right."

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Krepps Retires as SLC Land Commissioner

Bob Krepps, who served as St. Louis County Land and Minerals director for seven years, retired at the end of April.



Krepps, who started with St. Louis County in 2006, spent a total of 47 years in forestry.

Among his other positions were as Missouri State Forester and with the U.S. Forest Service.

While a search is conducted to find Krepps' replacement, Mark Weber has been named interim director of Land and Minerals. Weber has been with the department for 27 years, most recently serving as resource management supervisor.

Timber Talk

Logging Deck Safety Video Available

The North Carolina Forestry Association, the National Timber Harvesting and Transportation Safety Foundation (THATS), and a large number of supporting organizations have produced *Be Seen, Be Safe, Be Alive*, a 12-minute video addressing safety exposures for ground workers on logging decks, with accident-prevention guidelines. This instructional DVD, available from the Forest Resources Association, is suitable for group instruction or one-on-one orientation for logging workers.

The video stresses maintaining safe distances between equipment and ground workers, maintaining communication, and ensuring workers wear bright-colored clothing.

THATS Chairman JJ Lemire stressed that accident exposure on the logging deck, or landing, has emerged as a growing concern in woodland operations: "It's easy to underestimate dangers at the landing. Ground workers are in a vulnerable position, and both they and the equipment operators need to be aware of each other, make themselves seen by all, and maintain safe distances."

FRA members may order *Be Seen, Be Safe, Be Alive* (DVD format) at \$40 apiece, or \$80 apiece for non-members. A discounted price of \$20 per video (\$40 for non-members) is available for orders of 10 or more. Please enclose payment with order, checks payable to "FRA." Charge orders may be faxed to 301-838-9481.

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Years Ago in the Bulletin

A sampling of stories and topics from over 75 years of the Timber Bulletin

40 years ago

The Department of Natural Resources is in the process of reorganizing and decentralizing its operations. There will be six regional directors who will be responsible for managing all resources within their regions. Presently the DNR divides the resources under their jurisdiction into separate division for the purpose of management. Management decisions that benefit one specific resource inevitably have repercussions on the other resources. This new organization structure should correct these problems

DNR Division of Forestry appointed Robert E. Pajala District Forester at Birchdale.

Robert Herbst, commissioner of the Minnesota DNR was noon luncheon speaker at TPA's Annual Meeting. "One of the current controversies which I am sure you are aware of is clear-cutting. ... Clear-cutting is one of several scientific tree harvesting methods used to manage forests on a continuously renewable basis."

50 Years Ago

Serious Fire at Rajala Mill: At 5:15 a.m. on Friday Feb. 27, flames were detected shooting out of

every corner of the sawmill building and within two hours the entire building and contents were a pile of charred timber and twisted steel. The fire department was able to preserve the accompanying machine shop, yet the loss will be in excess of \$250,000. The Rajala Mill at Bigfork was built ten years ago and employed approximately 50 people.

John V. Hoene, executive secretary, is leaving TPA to become executive vice president of the Minnesota Bituminous Pavement Association.



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Rolle Named Minnesota Logger of the Year

John Rolle has been named "Logger of the Year" by the Minnesota Sustainable Forestry Initiative® Implementation Committee (SIC).

The award was presented to the Chisholm-based logger at the MLEP Loggers Conference April 9, in Tower. The Logger of the Year Award recognizes outstanding independent logging contractor performance.

"John and his crew are one of the best in the area," according to Minnesota DNR Jeff Sirjord. "John goes the 'extra mile,' not only for his timber sales, but for the benefit and safety of his crew and fellow loggers."

Rolle and his employees are known for their willingness to not only take suggestions, but to implement ideas and make adjustments to their harvesting and forest management operations that improve efficiencies whenever possible.

"The John Rolle Logging operations not only 'talk the talk,' but 'walk



Jim Marshall, chair of the Minnesota Sustainable Forestry Initiative® Implementation Committee, presents timber harvester John Rolle the "Logger of the Year" award.

the walk' of the standards set forth by Minnesota's logging profession and the SIC," said Tim O'Hara, coordinator of the Duluth-based Minnesota organization. "The utilization of wood on John's sales is continually above Minnesota's

harvesting guidelines."

Rolle's operations including equipment, timber sale areas, log landings, and all vehicles are noted for their cleanliness and organization. Rolle's commitment to exemplary forestry practices extends to the landowners he meets, according to his award nomination. His efforts to assist forest landowners with reforestation and/or referrals to area foresters for assistance when needed, exemplify Rolle's commitment to the resource.

MLEP Executive Director Dave Chura lauded Rolle, noting that "Rolle's professionalism and outstanding logging performances exemplify the professional independent logging contractors within Minnesota's forestry community."

The Logger of the Year Award was presented to Rolle by Jim Marshall, UPM-Blandin forest resources manager and chair of the Minnesota SIC.

As Minnesota's 2013 Logger of the Year award winner, Rolle will now be considered for Lake States Regional Logger of the Year by the Forest Resources Association later this year.

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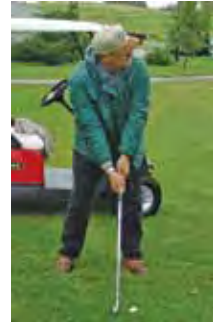


Annual Meeting & Banquet

**Wednesday, June 5 &
Thursday, June 6
at**

Ruttger's Sugar Lake Lodge

This Year's Banquet Speaker



Lt. Col. Eric Chandler

A fighter pilot with the Duluth-based 148th Fighter Wing of the Air National Guard, Lt. Col. Chandler will talk about his career defending our nation, and the importance of planning and execution in his career.

**It's a fun and informative event for all TPA members,
as well as vendors and other related organizations**

Look for information and complete details to be mailed soon to all members

We look forward to seeing you there!

United States Supreme Court Rejects Logging Road Stormwater Permit Requirement

Michael R. Campbell
Andrew P. Moratzka
Stoel Rives LLP

Editor's Note: This article on this important ruling was written for The Timber Bulletin by two attorneys from the Stoel Rives Law Firm, which was involved in the litigation before the U.S. Supreme Court.

On March 20, 2013, the U.S. Supreme Court reversed a decision from the U.S. Court of Appeals for the Ninth Circuit that would have required Clean Water Act (CWA) permits for stormwater running off logging roads. Had the Ninth Circuit's decision not been reversed, landowners and local governments would have been burdened with enormous compliance and permitting costs. Stoel Rives represented the timber industry defendants and the Oregon Forest Industries Council throughout the district court and Ninth Circuit proceedings, and jointly represented our clients alongside co-counsel throughout the Supreme Court process. This article is a high-level overview of the applicable law and the Supreme Court's decision.

Background

The case before the Supreme Court centered around the Environmental Protection Agency's (EPA) regulations interpreting the CWA. The CWA prohibits the "discharge of any pollutant" unless the discharge is authorized by a National Pollutant Discharge Elimination System (NPDES) or other CWA permit. "Discharge of a pollutant" is broadly defined to include "any addition of any pollutant to navigable waters from any point source." The terms "pollutant," "navigable waters," and "point source" all have broad definitions, such that any stormwater runoff containing sediment that reaches almost any stream or other



surface waterbody through ditches, culverts, etc., could be deemed a point source discharge of a pollutant into a navigable water requiring an NPDES permit. To avoid this result, EPA adopted rules in the 1970s that exempted some point source discharges from the permit requirement. A federal court invalidated these regulations on the ground that Congress had not authorized the exemption of any point source from the permit requirement. EPA then responded by adopting regulations that excluded discharges from the permit requirement by defining them as nonpoint source discharges. One such regulation is the so-called "silvicultural rule," which limits silvicultural point sources to "any discernable, confined and discrete conveyance related to rock crushing, gravel washing, log sorting or log storage facilities which are operated in conjunction with silvicultural activities and from which pollutants are discharged into waters of the United States." Although the provision is not devoid of ambiguity, EPA always intended it as an NPDES permit exemption for stormwater

runoff from all other silvicultural activities, including runoff from logging roads, regardless of whether the runoff is channeled through conveyances such as ditches, pipes, and culverts.

In 1987, Congress exempted stormwater discharges from the NPDES permit requirement unless they fell within several exceptions, including a discharge associated with an industrial activity. These exceptions, which require an NPDES permit if they are a point source, are known as "Phase I" sources. In addition, Congress directed EPA to study the exempt stormwater discharges and to establish a program to regulate any such discharges that the study deemed necessary to protect water quality (although such a program need not include a permit requirement). Sources regulated under this provision are known as "Phase II" sources. Congress did not, however, define stormwater associated with an industrial activity, so EPA addressed the issue through regulation. In so doing, it included logging as an industrial activity (apparently inadvertently)

but specifically excluded discharges from facilities or activities that are defined as nonpoint sources under the silvicultural rule.

NEDC Lawsuit

In 2006, the Northwest Environmental Defense Center (NEDC) brought a CWA citizen suit in the U.S. District Court for Oregon against several entities logging Oregon's Tillamook State Forest, as well as against the State of Oregon and local governments. The suit alleged the defendants were violating the CWA by channeling stormwater runoff from roads used by the logging operations into two rivers without an NPDES permit. The fight largely centered on the interplay between the silvicultural rule and the definition of stormwater associated with industrial activity.

The district court dismissed NEDC's case on the ground that the silvicultural rule defined stormwater discharges from logging roads as nonpoint sources, which do not require an NPDES permit. The Court of Appeals for the Ninth Circuit disagreed. The court found the silvicultural rule to be ambiguous but construed it not to exempt any point source from the permit requirement, including channelized runoff from logging roads. In the court's view, EPA had no authority to exclude a point source from the permit requirement by defining it as a nonpoint source. In addition, the court held that the EPA's definition of stormwater associated with industrial activity unambiguously defined logging as an industrial activity, thereby subjecting stormwater runoff from logging roads to the NPDES permit requirement. The U.S. Supreme Court reversed the court of appeals by a vote of 7-1. The Court disagreed with the argument that stormwater associated with industrial activity unambiguously includes channeled stormwater from logging roads. The Court stated:

[NEDC's] view ... overlooks multiple definitions of the terms "industrial" and "industry." These words can refer to business activity in general, yet so too can they be limited to "economic activity concerned with the processing of raw materials and manufacture of goods in factories." ... [T]he latter definition does not necessarily encompass outdoor

timber harvesting. The statute does not foreclose more specific definition by the agency, since it provides no further detail of its intended scope.

In accordance with Court precedent, the Court held that EPA has authority to exclude stormwater runoff from logging roads from the statutory term "storm water discharge associated with industrial activity" because that is a permissible construction of the CWA, which Congress authorized EPA to administer. The Court also applied a deferential standard of review to EPA's interpretation of its own regulatory definition, requiring only that the interpretation be rational: "Taken together, the regulation's reference to 'facilities,' 'establishments,' 'manufacturing,' 'processing,' and an 'industrial plant,' leave open the rational interpretation that the regulation extends only to traditional industrial buildings such as factories and associated sites, as well as other relatively fixed facilities," and not to logging roads.

Ramifications

Decker v. NEDC resolves whether an NPDES permit is needed for logging road stormwater discharges under the EPA regulations in effect when the citizen suit was filed. But environmental organizations are persistent and may look to assert similar arguments under different legal theories. EPA revised the definition of "storm water discharge associated with industrial activity" three days before oral argument in Decker, and NEDC has challenged that regulation in the Court of Appeals for the Ninth Circuit.

Environmental organizations have also argued that EPA should use its Phase II authority to require NPDES permits for all logging road stormwater discharges. While some of these attempts may have a limited likelihood of success, particularly the challenge to EPA's revised rule, we expect environmental organizations to continue fighting their cause. Should you have any questions regarding these issues, please contact one of the authors of this article.

Stoel Rives LLP is a U.S. business law firm with more than 100 years of service and dedication to timber and forest products industries. Clients include privately held integrated forest products companies, stand-alone mills, REITs, family-owned timberland operations and industry trade organizations. Campbell and Moratzka are partners at Stoel Rives. Campbell practices in the Portland office and can be reached at 503-294-9676 or mrcampbell@stoel.com. Moratzka practices in the Minneapolis office and can be reached at 612-373-8822 or apmoratzka@stoel.com. Learn more about our practice at www.stoel.com/forestproducts.

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Annual Meeting Returns to Grand Rapids

Meeting Again Combined With Board Meeting, and Golf and Fishing Event

Mark your calendars for June 5 and 6 for the 2013 TPA Annual Meeting, Board of Directors Meeting, and Golf and Fishing Event at Ruttger's Sugar Lake Lodge just south of Grand Rapids.

It's an opportunity for TPA members to attend three major events in just two days. Both days will not only feature information to help members run their businesses, but also with the opportunity to socialize with fellow loggers and vendors.

Highlighting this year's annual banquet will be our guest speaker, Lt. Col. Eric Chandler of the Duluth-based 148th Fighter Wing of the Air National Guard. A fighter pilot who has defended our country during three tours of duty in the Middle East, Lt. Col. Chandler will talk about his career in the Air Guard, and about the importance of planning and execution, not only in flying fighter jets, but also in business.

Ruttger's Sugar Lake Lodge features a beautiful golf course and clear, blue Sugar Lake. We've again chosen this location not only because of the success of last year's events, but also because it is centrally located just south of Grand Rapids.

Registration forms for the 2013 Annual Meeting, Board of Directors Meeting and Golf and Fishing Event are being mailed. Watch your mailbox and join us for these great events!

Schedule

Thursday June 5th
Morning – Annual Meeting
Afternoon – Golf and
Fishing Event
Evening – Social Hour and
Banquet

Friday June 6th
Morning – Board of
Directors Meeting



Jerry Demenge and Joe Brown head out onto Sugar Lake in search of walleyes during the 2012 TPA Fishing Outing.



(L-R): Craig Ferguson, Brian Gulseth, Ross Korpela, Chris Martland, Damon Polus, and Katie Vivant posted the lowest score during last year's TPA golf Outing.

Minnesota Sees Latest Spring Load Restrictions Ever

This year's "Break-up" of the Minnesota Logging season was the latest since the institution of the state's Spring Load Restriction policy in 1986.

The March 29 imposition of Spring Load Restrictions (SLR) – which coincides with the end of the ten percent Winter Load Increase – in the North Frost Zone is the latest date ever, matched only in 1989 when SLR also went into effect on March 29.

This late break-up allowed many logging businesses to complete more logging jobs, close more permits, and deliver more wood to the mill. The late break-up was possible due to unseasonably later cold temperatures – sub-zero at times in some regions – allowing the ground under Minnesota's roads to remain frozen. This enables those roads to handle more weight, including the additional ten percent loggers are allowed to carry in the



winter months.

The March 29 break-up is significantly later than recent years. SLR went into effect on March 13 in 2012, March 18 in 2011, and March 9 in 2009, nearly three weeks earlier than this year.

The Spring Load Restrictions will remain in effect for a maximum of eight weeks, but can be removed by MnDOT earlier than that if conditions allow. In 2012, SLR lasted only a month or less in each of Minnesota's five frost zones.



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TPA Board Members Meet with MnDOT Commissioner

Transportation funding, road improvements, and interstate truck weights were among the topics three TPA board members discussed with newly-appointed Minnesota Department of Transportation Commissioner Charlie Zelle during a March meeting in Bemidji.

TPA board members Kurt Benson of Blackduck, Dan Lundberg of Solway, and Dave Goetz of Cass Lake were among the half-dozen key business leaders at the meeting, hosted by the Bemidji district office of MnDOT. Zelle, appointed to the post in December by Governor Mark Dayton, is holding similar meetings throughout the state.

Zelle told the group that funding for road projects is going to be a key issue over the next several years as the state's infrastructure ages. Whether that funding comes from existing revenues, from an increase in fuel taxes, or a change in the funding system to include a tax assessed on miles driven, remains to be seen.

"This is going to be an ongoing conversation," Zelle told the group.

The TPA members stressed that while our industry values good roads, any increase in taxes would be difficult for small businesses like those in the logging industry, where profitability is a challenge. Zelle was also asked



MnDOT Commissioner Charlie Zelle discusses transportation issues affecting the logging industry with TPA board members Dan Lundberg of Solway (L) and Kurt Benson of Blackduck (R).

not to forget about those outside the Twin Cities Metro area, which can seem to receive much of the focus – and funding – when it comes to road projects.

Zelle also discussed the potential of road improvement projects in the area, and answered questions about road maintenance in the region.

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Famous Dave's Comes to the North Star Expo

The North Star Expo will have a new visitor in 2013.

Famous Dave's Barbecue will cater the Friday night dinner at the 60th

Annual Expo, to once again be held at the Itasca County Fairgrounds in Grand Rapids. This year's dates are Friday and Saturday September 13 and 14.

"We're excited to have Famous Dave's at the Expo this year," said TPA Expo committee Joan Pomp. "The Friday night dinner is always a great chance to socialize with everyone in the industry, and having the great barbecue from Famous Dave's will make the evening even more special."

The North Star Expo is Minnesota's largest logging equipment show, featuring over 100 vendors from all over the Upper Midwest, with the latest and greatest in logging equipment and accessories on display.



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On the Markets

The *Timber Bulletin* publishes information regarding results of a sampling of recent timber sales and other market indicators, as well as other market-related news items.

Recent Timber Sales Average Prices, as reported by each agency

Agency Regular Intermediate

Cass County

February 28 – Sealed Bid

Aspen	\$26.00	\$28.86
Red Oak	\$23.28	\$16.13
Jack Pine	NA	\$19.26
Birch	\$16.98	\$10.05

Hubbard County

March 11 – Oral Auction

Aspen Mixed	\$28.43	NA
Aspen Pulp	\$25.41	NA
Birch Pulp	\$ 9.97	NA
Birch Mixed	\$10.41	NA
Norway Pine Mixed	\$41.79	NA
Jack Pine Mixed	\$33.52	NA

Crow Wing County

March 22 – Oral Auction

Aspen	\$19.39	NA
Oak	\$19.19	NA
Birch	\$12.97	NA
Red Pine	\$33.29	NA

14 of the 15 tracts offered on the sale were purchased.

Cass County

March 28 – Sealed Bid

Aspen	\$24.27	\$25.63
Red Oak	\$18.66	\$25.16
Birch	\$18.28	\$14.99
Jack Pine	\$21.35	\$15.09

6 of the 7 tracts offered on the regular and intermediate auctions were purchased.

Beltrami County

April 2 & 4 – Sealed Bid and Oral Auction

Aspen Pulpwood	\$31.82	NA
Birch/Maple Red & White Pine Pulp	\$15.39	NA
Hardwood pulpwood	\$20.41	NA
	\$ 9.70	NA

25 of the 26 tracts offered on the auctions were purchased. Results reported from the county are for the combined oral and sealed bid auctions.

Clearwater County

April 25 – Oral Auction

Aspen	\$26.35	NA
Jack Pine	\$ 9.29	NA
Birch	\$11.74	NA
Red Oak	\$23.04	NA

Cass County

April 25 – Oral Auction

Aspen	\$25.21	\$20.70
Red Oak	\$28.99	\$16.46
Birch	\$14.63	\$12.71

11 of the 12 tracts offered on the regular and intermediate auctions were purchased.

Koochiching County

May 1 – Oral Auction

Aspen Pulp/Bolts	\$28.22	\$31.95
Spruce Pulp/Bolts	\$27.39	\$29.48
Balsam Pulp/Bolts	\$ 7.32	\$ 7.29

30 of the 31 tracts offered during the regular and intermediate auctions were purchased.

Aitkin County

May 6 – Oral Auction

Aspen P/B	\$30.95	NA
Aspen Pulp	\$25.97	NA
Oak P/B	\$20.72	NA
P Birch P/B	\$14.44	NA
Maple P/B	\$13.69	NA

22 of 25 tracts offered for sale were purchased.

DNR – Warroad & Baudette Areas

May 7 – Oral Auction

Aspen Species (WC)	\$20.44	\$29.66
Trembling		

Aspen (WC)	\$31.97	\$22.10
Black Spruce (WC)	\$16.07	\$17.68
Jack Pine (WMP)	\$27.78	\$29.84
Norway Pine (WMP)	\$18.50	\$21.36

16 of the 17 tracts offered during the sale were purchased.

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PB= Pulp and Bolts
WMP= Woodsrun mixed Products
WC= Woodsrun cordwood
ST=Sawtimber
WST=Woodsrun Sawtimber
PW=Pulpwood

FIA Data Shows Increased Mortality in Minnesota

Tree mortality rates have increased ten percent since 2007. That's according to the latest data from the U.S. Forest Service.

Minnesota's mortality averaged 4.6 million cords per year for the period between 2007 and 2012, according to the Forest Inventory and Analysis data, compiled by the Forest Service's Northern Research Station. That mortality figure is 48 percent of the state's annual growth.

Figures show the state's total growth is 9.7 million cords annually. Yearly harvest over this time period averaged 2.7 million cords, a total growth/harvest ratio of 3.6.

In addition, forest land in the state continues to increase in acreage, up 4.2 percent from 2007.

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Sappi Conversion Nearly Complete

Officials at Sappi Fine Paper's Cloquet mill expect to begin producing specialized cellulose in early June.

The company began converting its pulp mill last year. The specialized cellulose is a replacement for cotton and will be used to manufacture thread for the textiles industry. Sappi is already the world's largest producer of the product, which the company says is a high-growth, high-margin business.

The company expects to produce 360,000 tons of specialized cellulose, as opposed to the 500,000 tons of pulp it has traditionally produced. However, company officials say they expect to purchase the same amount of roundwood from area loggers because the cellulose is more pure, so it takes the same amount of wood.

The species mix will change, however. Sappi doesn't expect to use any pine, ash, birch, balm, or basswood, species that impact the chemical purity of the specialized cellulose. Officials expect two-thirds of the wood it buys to be aspen, with maple to make up the remaining one-third.

Officials also say they will continue to test other species to see if they can be utilized in the new process.

The company says the conversion will make the mill competitive for years to come. Projections show growth in specialized cellulose usage in years to come, but if those projections prove incorrect, the mill will retain the capability to produce Kraft pulp.

The company expects to buy less biomass from area loggers because the new process will generate more waste material than before, roughly 140,000 tons.

The quality of the roundwood will be an issue. The company expects it will need wood with less rot than it has traditionally used. In addition, metals found in the bark like iron and magnesium affects the chemical reaction.

As part of the mill conversion to specialized cellulose, Sappi has completed a \$19 million investment in its coated papermaking operations, including a dry fiber handling system, as well as new refiners and former upgrade on the Number 4 Paper Machine.

The former rebuild implemented on Paper Machine #4 allows for all grades and weights to be manufactured with the technical capability of using dry fiber to produce the same base sheet formation and quality as slush fiber. Extensive trials have been conducted for both sheet and web products to guarantee the quality and repeatability of product made with dry fiber, and that it meets the standards of the company's customers.

"We remain deeply committed to the coated paper market as well as to surpassing the expectations of our customers," said Rick Dwyer, managing director, Cloquet, Sappi Fine Paper North America in a news release. "Our investments in the production of high-end paper will allow Sappi to serve this market into the foreseeable future and enable more agility and efficiency within our papermaking process. We are making this strong commitment on the paper side of the business to ensure that quality paper continues to prove its value in publishing and advertising, especially when used strategically with digital counterparts."



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LOGGERS OF THE PAST . . .

"Days of Busy Tote Roads"

by J. C. Ryan

This story is reprinted from an earlier *Timber Bulletin*—one of the first of "Buzz" Ryan's ever-popular contributions to these pages. The *Bulletin* will continue to reprint selected stories from the memories he recorded for us.—*Editor*



Persons not familiar with the logging industry of the past often refer to the ice logging roads as tote roads and tell of some tote road running across some big swamp. But "tote roads" were the routes over which supplies were "toted" into the camps—and rather than running across swamps and low land, they wound around on the hills.

"Toting" is a little known part of the early logging industry, but a very important part. In a way, tote teamsters and horses were the most important part—because before a camp was constructed a way had to be found to bring in lumber, tarpaper and nails; and as soon as camp work began, supplies and food for the men and horses were needed regularly—including a good amount of "tobacco and snuff."

Whenever it was decided just what timber would be cut in the winter ahead,

the "walking boss" and "timber cruiser" would lay out the route for toting in supplies from the railroad, lake or river. Tote roads were laid out as much as possible on high land and often wound around and around on the hills to avoid swamps and wet areas.

Some lumber for new camps was usually hauled in on the snow the winter or spring before. Much of the toting was done in early fall before the ground froze or the first snow fell. Some swampy and wet places had to be corduroyed with timber cut from the sides of the road before horses could cross.

In heavy clay of Koochiching County the problem was how to get through the mud that always developed during the rainy season of the fall. I have seen the wheels of wagons ball up with clay so that they could not be hauled with six horses—and the empty wagons had to be

abandoned until the weather dried out. Some of the worst of these mud roads were in the area around Northome and Wirt.

The whole of St. Louis County had its rocky tote roads, with the Thompson Rapids tote road east of Shiels and the Britton Rapids tote road along the Cloquet River being the very worst.

"Tote wagons" were heavy wagons, built to carry heavy loads and to stand the bounding from rock to rock on northeastern Minnesota roads—and to survive the mud and sand of the western part of the state.

Usually four horses were used to haul these wagons, but it was not uncommon to see six horses hitched to a single wagon. In the fall when camps were just getting started, several six-horse teams were used—one following the other. Tote

Tote team and wagon depart camp, near Alden Lake Dam, early on a spring morning in 1918.



teams were different than the heavy sleigh horses—they had to be fast afoot and able to cross swampy areas if necessary.

Tote teamsters were also a special breed of lumberjack and got top pay in the industry. They were all great men in handling horses and usually had their pick of the best horses available, as the companies recognized how important it was to have supplies reach the camps on time.

These teamsters had to know how to get the teams and supplies over the bad roads. Bunk houses were filled with stories about which tote teamster was the best and which company had the best tote teams.

In my opinion, the greatest of all of these was Frank McMinn—a quiet Scotsman who drove for the Cloquet Northern Lumber Companies. His four horses—Baldy, Pete, Nig and Rowdy—were known by all the lumberjacks. And when the camp clerk told them that the camp supply of snuff and tobacco was running short or all gone until the tote team arrived, they would all feel relieved if they knew Frank McMinn and his trusty four horses were on the tote wagon.

In his later years, Frank worked on the Cloquet Fire Patrol for me and told me of his many days as a tote teamster. He lived to be over 80—a great tote teamster and gentleman—and was found frozen to death in his cabin on Pequaywam Lake.

Most all camps had from one to two trips a week for the tote team when

camps were in operation. Supplies were brought in by railroad to some siding where the tote teamster picked them up. Often the companies had a man stationed at the railroad siding to bring perishable supplies inside so they would not freeze while awaiting the arrival of the tote team. Weekly supplies were mostly food for the men and horses and plenty of snuff and tobacco. Hay, as a rule, was hauled in over the ice logging roads during the winter months—usually on Sundays when logs were not being moved. In the earlier months, hay came over the tote roads.

Most toting was usually from six to 12 miles, but there were places where toting was done up to 75 miles, and there were places where supplies had to be toted to a lake or river, loaded onto a boat and hauled across, and then loaded again onto a tote wagon for the trip into camp. This was true for some of the very early camps, such as those operating along the Littlefork River, where supplies came in from Tower across Lake Vermilion and were then toted to the camps to the west.

Considerable toting was done out of Duluth for the logging camps that operated within 25 miles of town, and at one time there were 10 tote teamsters working out of the old Palmer House Hotel on First Street.

Most tote teamsters worked the year around, making their two or three trips a week with supplies during the winter, supplying the wanigans during the drives, and hauling lumber and building supplies

to new camp locations during the summer.

They often left camp before daylight and returned after dark. On longer roads, they left camp before daylight, stayed the night at the railroad or source of supply, and returned to camp the next night.

Some tote roads were so long and so tough that they had to change teams half way to give the horses a chance to rest up. Toting was no doubt the hardest work for both men and horses that the logging industry had to contend with.

As a rule men were not allowed to ride on the tote wagons on their way to and from camp, but they could put their “turkey” or packsack on the wagon and walk behind. This was often easier than riding the wagon as it bounded from rock to rock to rock.

Many of the Forest Service roads of today follow the routes of the old logging camp tote roads. But most of these old tote roads are now grown over with alder brush in the low spots and have trees 18 inches in diameter growing in their centers where they cross the high lands. But on the crest of almost every ridge of high land, one can find evidence of where men and horses struggled in their efforts to keep supply wagons coming and timber rolling in the lumber camps of the 1890s and early 1900s.

When zooming down these forest trails on your snowmobile this winter, try to reflect on the hardships to man and beast as they worked over these tote roads in the early days of logging.

Heavy tote sleighs moved supplies into camps during wintertime.



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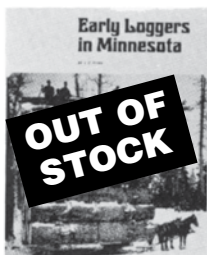
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by J. C. Ryan

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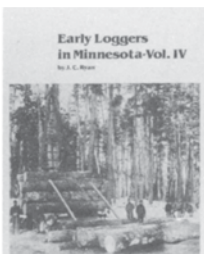
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