

## **STANDARDS OF FORESTRY PRACTICE QUESTIONS AND ANSWERS**

### **1. Why are Standards of Forestry Practice being developed?**

Standard of Forestry Practice (Standards) are being developed as the next logical step in the evolution of the forestry profession in Pennsylvania in response to increasing public demands placed upon the profession.

Practice standards will help:

- communicate to the public the level of professional practice that can be reasonably expected from foresters;
- reduce confusion over what constitutes the practice of forestry;
- raise public confidence in the forestry profession; and
- assure consumers that they are the focus of the forest management process.

Similarly, standards will help practitioners focus on what to provide as part of the forest management process and base services on what clients need.

### **2. How are professional forestry standards of practice being developed?**

In 1999, the Pennsylvania Council of Professionals Foresters, Inc. (PCPF) established a committee, comprised of five practicing consultant foresters, one forester/attorney, one DCNR District Forester and one member of the Penn State School of Forestry, to oversee the development of professional forestry practice standards. This group of practitioners is collectively responsible for the initial draft and its presentation. Many others have been involved in discussion and review of the Standards.

### **3. Who has the authority to develop standards of professional forestry practice?**

At this time in Pennsylvania, no one person, private or government entity has specified authority to develop binding standards of professional forestry practice. However, the lack of written standards of forestry practice makes that forestry that is commonly practiced the standard of forestry practice.

Many professional foresters who practice in Pennsylvania believe that “that which is commonly practiced” is much too low of a standard. PCPF has taken the initiative to thoroughly research, investigate, discuss and present Standards of Forestry Practice for Pennsylvania Foresters. While the Society of American Foresters (SAF) Certified Forester Program has required standards that SAF Certified Foresters agree to abide by, thorough research by PCPF has not revealed the existence of any other written Standards of Forestry Practice.

Pennsylvania Foresters have the opportunity to adopt written Standards of Forestry Practice through a process of consensus. The PCPF Board of Directors approved the release of the developed Standards to the PCPF membership for adoption.

Following adoption by the PCPF membership the Standards will be released to the Pennsylvania Division, Allegheny Society of American Foresters (PA SAF) for consideration by PA SAF members and to the Pennsylvania Chapter, Association of Consulting Foresters. It is believed that this process will provide consensus on the Standards of Forestry Practice. Consensus on this issue will provide a legal basis for the Standards in civil law.

#### **4. Who will have the authority?**

PCPF is pursuing legislation to license Pennsylvania foresters on a mandate by ballot of the membership of the PA SAF approving a forester licensing initiative for Pennsylvania Foresters. The members of the PA SAF Licensing and Registration (L&R) Committee founded PCPF. The PA SAF L&R committee members are Charter Members of PCPF.

Proposed forester licensing legislation will be submitted to the legislature as the "Landowner Protection Act" to amend the Engineer, Land Surveyor and Geologist Registration Law (actually a licensing law) to include foresters. When legislation is adopted that licenses foresters, the Board of Registration that is empowered to license foresters will have the power to enact Rules and Regulations through established legislative procedures. It is expected that the Standards of Forestry Practice developed by consensus would be codified in the Rules and Regulations through this procedure. The Standards would then be enforceable through the licensing legislation.

Adoption of the Standards of Forestry Practice by consensus answers the question often asked by those unsure of the effect of licensing, "What comes after licensing?" The answer, enforceable Standards of Forestry Practice previously adopted through consensus of Pennsylvania foresters.

#### **5. What is the status of the standards at present?**

The PCPF board approved the release of the Standards of Forestry Practice to the PCPF membership for their consideration. Upon the approval of the PCPF membership the Standards will be released to other Professional Forestry Organizations in Pennsylvania for their consideration.

#### **6. How many standards will there be?**

The exact number of practice standards in the draft at present is 22. They are grouped under three main steps in the forest management process: Planning, Implementation and Evaluation.

#### **7. Can the Standards be modified after they are adopted?**

The Standards are the result of a great deal of thorough research, investigation and discussion and they will receive more review, discussion and perhaps revision before final consensus is attained. They are however, being drafted to stand the test of time and should not, therefore, be expected to be significantly

modified once adopted unless practice norms change. Once codified as Rules and Regulations of an Act licensing foresters they could only be changed through the procedures of the legislature.

**8. When will I be required to follow the professional standards once they are adopted?**

The Standards of Forestry Practice will apply to foresters when they are providing professional forestry service to a client. The proposed Standards will not apply in a situation where a professional forester is providing services not deemed to be professional forestry services, such as the personal use of equipment to perform timber stand improvement thinning.

**9. Will practice standards increase my liability?**

Due to the nature of a professional forester-client relationship, services and management recommendations provided by forest management practitioners already carry a certain level of liability exposure; it is inherent to the profession. The Standards, however, should assist the forester in managing that risk, moreover, they should empower the forester as follows:

- (1) If forestry practitioners follow the Standards, client expectations will be better defined and communications enhanced helping to prevent potential disputes between foresters and their clients.
- (2) If foresters follow Standards established by consensus of their fellow foresters, they will be better equipped to support their own recommendations if questioned by clients or the courts.
- (3) The Standards will give the courts benchmarks, developed by foresters, against which to measure a forester's practice when or if cases are brought to court. If foresters do not develop and communicate norms of practice themselves, judges, juries and politicians are likely to do so as they have done in the past.

**10. Do the professional forestry standards require me to do more comprehensive planning or documentation of my work?**

No, the Standards do not require foresters to provide comprehensive forestry services for clients, nor will this be a requirement in the future. The Standards recognize that a variety of approaches are used to provide forestry services. The Standards do require that the professional be prepared to explain reasons for courses of action taken.

**11. Do the professional forestry standards require every forester to practice forestry the same way?**

No. The Standards describe the process a client should reasonably expect a forester to use in establishing, defining and implementing forestry work. The

Standards will describe the process forestry professionals should follow when delivering forestry services to clients, but will not prescribe a particular method of delivery or the level and extent to which any work should be done.

## **12. How will compliance with practice standards be handled?**

Compliance with Standards is currently voluntary. After licensing legislation is enacted, standard would be enforceable by the Board of Registration through the adoption of Rules and Regulations. Licensing legislation would provide that clients and others with contractual arrangements with a licensed professional forester could submit formal complaints to the Registration Board. Complaints are handled through due process provided for any alleged violation, which includes fact-finding and inquiry and a hearing if necessary. Sanctions can range from censure, fine, suspension or revocation of license or other penalty provided for in the licensing legislation.

## CASES HISTORY INVOLVING STANDARDS OF CARE FOR FORESTERS

"Professional foresters" have a duty to provide their services in a manner consistent with the "standard of care" of the profession. A good working definition of the standard of care of a professional is: That level or quality of service ordinarily provided by other normally competent practitioners of good standing in that field, contemporaneously providing similar services in the same locality and under the same circumstances (Paxton v. County of Alameda (1953) 119C. A. 2d. 393, 398, 259 p. 2d. 934). A forester's service need not be perfect. Since the forester, when providing professional services is using judgement gained from experience and learning, and is usually providing these services in situations where a certain amount of unknown or uncontrollable factors are common, some level of error in these services is allowed (City of Moons View v. Walijarvi 263 N. W. 2d 420, 424 (Minn. 1978). When you hire a forester you "purchase service not insurance", so you are not justified in expecting perfection or infallibility, only "reasonable care and competence" (Gagne v. Bertra (1934) 43. C. 2d. 481, 275 p. 2d. 15).

The fact that a forester makes a mistake that causes injury or damage is not sufficient to lead to professional liability on the part of the forester. In order for there to be professional liability, it must be proven that the services were professionally negligent, that is, that they fell beneath the standard of care of the profession. When one hires a forester, one accepts the risk, and the liability, of that professional making a mistake similar to mistakes other normally competent foresters make, using reasonable diligence and their best judgement.

The standard of care is not what a forester should have done in a particular instance, it is not what others say the forester would do, or what others say they themselves would have done, rather, it is what competent foresters actually did in similar circumstances.

### **ERRORS:**

Error is a fact of life: "to err is human". Some error comes from variability and uncertainty in what the forester is dealing with: real trees, biotic and abiotic systems, and humans and their organizations. Error can cause injury, and result in damages. A forester is not liable, or responsible for damages from every error. Society has decided, through case law, that when you hire a forester, you buy the forester's normal errors. However, if the error is shown to be worse than a certain level of error, the forester is liable. That level, the line between non-negligent and negligent error, is the "standard of care".

### **STANDARD OF CARE:**

A trier of fact, a judge or jury, has to determine what the standard of care is and whether a forester has failed to achieve that level of performance. They do so by hearing expert testimony. People who are qualified as experts express opinions as to the standard of care and as to the defendant forester's performance relative to that standard. The trier

of facts weighs the testimony from all sides and decides in each case what the standard of care was and whether the defendant met it.

Jury instructions have been standardized. A bench approved Jury Instruction (BAJI, 1986) reads:

"In performing professional services for a client, a (forester) has the duty to have that degree of learning and skill ordinarily possessed by reputable (foresters), practicing in the same or similar locality and under similar circumstances. It is the (forester's) further duty to use the care and skill ordinarily used in like cases by reputable member's of the (forestry) profession practicing in the same or similar locality under similar circumstances, and to use reasonable diligence and (the forester's) best judgement in the exercise of professional skill and in the application of learning, in an effort to accomplish the purpose for which (the forester) was employed." "A failure to fulfill any such duty is negligence."

Four key items in the instructions bear repeating:

- ...have learning and skill ordinarily possessed by reputable (foresters) practicing in the same or similar locality and under similar circumstances
- ...use care and skill ordinarily possessed by reputable foresters practicing in the same or similar locality and under similar circumstances
- ...use reasonable diligence and best judgement
- ...to accomplish the purpose for which the forester was employed

If any one of these conditions is not met, the forester has failed to meet the standard of care, and is professionally negligent.

The standard of care of foresters varies with time, locals, and circumstances, and depends upon the specific practice being examined. There is no standard way of determining negligence or non-negligence.