

October 13, 1998

James Yates  
Administrator, Gloucester CADB  
Gloucester Co. Planning Board  
1200 Delsea Drive  
Clayton, NJ 08312

Re: Right to Farm Conflict Resolution

Dear Mr. Yates:

Enclosed is a copy of the State Agriculture Development Committee's, (SADC's) final report issued for the agricultural operation or practice concerning the Insu Chon farm, Dutch Mill Road, Franklin Township, Gloucester County.

Pursuant to the Right to Farm Act, as amended, N.J.S.A. 4:1C-10.1, the Gloucester County Agriculture Development Board is required to hold a public hearing within 60 days of receipt of the SADC's final report.

If you have any questions, please contact me.

Sincerely,

Gregory Romano

c: Timothy Chell, Esquire  
Insu Chon

## **Final Report (As Amended on 10/19/98)**

### **State Agriculture Development Committee Right to Farm Conflict Resolution**

**Re: Insu Chon**  
**Application of Poultry Manure**  
**Dutch Mill Road**  
**Franklin Township, Gloucester County**  
**Block 5602, Lot 2**  
**Acreage: 9.8**

**Legal Authority:** Pursuant to the Right to Farm Act, any person aggrieved by the operation of a commercial farm shall file a complaint with the applicable CADB or the SADC in counties where no county board exists prior to filing an action in court. In the event the dispute concerns activities that are not addressed by an agricultural management practice recommended by the committee and adopted pursuant to the provisions of the Administrative Procedure Act (APA), the county board shall forward the complaint to the SADC for a determination of whether the disputed agricultural operation constitutes a generally accepted agricultural operation or practice. Upon receipt of the complaint, the SADC shall hold a public hearing and issue its findings and recommendations within 60 days of its decision.

**Issue:** This matter concerns the poultry manure application practices employed by Insu Chon, owner and operator of Chon and Son Oriental Produce on his oriental vegetable farm in Franklin Township, Gloucester County. The SADC has been requested by the Gloucester CADB to review the management practice of Insu Chon and provide recommendations to the board.

**Background:** According to Sgt. Olsen's police report, on Thursday, July 16, 1998 Sgt. Olsen went to Insu Chon's farm on Dutch Mill Road in Franklin Township to investigate numerous complaints from families on that road in reference to a foul odor and flies emanating from a pile of poultry manure located on the farm. After performing his investigation, Sgt. Olsen informed Insu Chon about the neighbors' complaints and advised him that the Gloucester County Health Department conducted a site investigation the previous day and would be issuing a summons to Mr. Chon alleging a violation of the Air Pollution Code and the New Jersey Public Health Nuisance Code. Sgt. Olsen informed Mr. Chon that he would be monitoring Mr. Chon's compliance and

that if the situation was not properly addressed within five days, Mr. Chon could face criminal charges. On July 21, 1998 Sgt. Olsen went to the farm and found that the manure piles had been spread on the field and the field appeared to be cultivated. Approximately 75% of the manure appeared to have been tilled into the soil, with 25% still lying above the ground. The staging area was not tilled. On Thursday, July 23, 1998 Mr. Chon was issued a criminal violation of Franklin Township Municipal Code 2C:33-12 Maintaining a Nuisance.

According to Mr. Chon, on July 28, 1998 he was photographed and fingerprinted by Franklinville Police and ordered to appear in municipal court on August 13, 1998. At that time, according to Jerry Frecon, the municipal prosecutor represented that the matter would be referred to the CADB and SADC for conflict resolution.

**Analysis:** The SADC adopted an Agricultural Management Practice (AMP) for Poultry Manure Application and Use in Crop Production on September 24, 1987. However, since this AMP has not been adopted pursuant to the Administrative Procedure Act (APA) the validity of the practice is required to be heard by the SADC and not the CADB. The guidelines of the AMP state that manure will not be stockpiled in the field unless specific provisions are made to keep the manure dry and prevent runoff or leaching or effluent from the stockpile. Manure with less than 60% moisture and spread on land which will be tilled must be incorporated within 48 hours by: a) moldboard plowing, b) chisel plowing followed by discing or c) other methods which at least achieve the results equal to a or b. Manure containing 60% or more moisture shall only be spread on cropland to be tilled and must be soil incorporated the same day by: a) moldboard plowing, b) chisel plowing followed by discing or c) other methods which at least achieve the results equal to a or b.

Jerry Frecon, Agricultural Agent for Gloucester County, has been receiving complaints from Mr. Chon's neighbors since at least September of 1997. Mr. Frecon forwarded a copy of the Poultry Manure Application AMP to Mr. Chon.

Gary Lee, NRCS District Conservationist, stated that Mr. Chon does not have a conservation plan for this farm.

**Summary of Testimony:** At the SADC's regular meeting of September 17, 1998, Mr. Chon, Sgt. Olsen and Sgt. Keener (as neighbor to Insu Chon's farm on Dutch Mill Road) provided testimony.

The following is a general summary of the comments provided at the hearing.

Mr. Romano explained that under the amended Right to Farm Act, any person aggrieved by the operation of a commercial farm shall first file a complaint with the applicable CADB or the SADC in counties where no county board exists prior to filing an action in court. In the event the dispute concerns activities that are not addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, the county board shall

forward the complaint to the Committee for a determination of whether the disputed agricultural operation constitutes a generally accepted agricultural operation or practice. Upon receipt of the complaint, the Committee shall hold a public hearing and issue its findings and recommendations within 60 days of the Committee's decision. He stated that this matter concerns the poultry manure application practices employed by Insu Chon on his oriental vegetable farm in Franklin Township, Gloucester County. The Committee has been requested by the Gloucester CADB to review the management practice of Insu Chon and provide recommendations to the CADB. The Gloucester CADB will then make recommendations concerning how to resolve this matter. It is not the SADC's responsibility to do this now under the regulations.

Sherry Dudas, Right to Farm Program Specialist, restated the background of the issue as reflected in this report.

Mr. Borisuk questioned if the issue should have come to the SADC before going to the CADB. Mr. Romano responded that it would have gone to the CADB first if there were an agricultural management practice adopted by the SADC pursuant to the Administrative Procedure Act (APA). Since the SADC's poultry manure agricultural management practice was not adopted pursuant to the APA, the SADC must decide whether Mr. Chon's application is a generally accepted agricultural practice.

Mr. Chon addressed the Committee stating that he had received information from Jerry Frecon, Agricultural Extension Agent for Gloucester County regarding the agricultural management practice for the application of poultry manure. He then stated that before he could spread the poultry manure, he received a letter from the Gloucester County Health Department notifying him that he had 5 days in which to spread the manure. Mr. Chon stated that he has been farming at the present location since 1990 and another location since 1975. He also noted that since 1990 new neighbors have moved into the area and that is when problems began. He further stated that this year he began organic farming since organic produce is very much in demand, requires no pesticides and is a quiet business. Mr. Chon stated that he orders poultry manure from a company in Lancaster, Pennsylvania by the truck trailer load and that the manure is dry (looks like powder) with less than 65% moisture, which can be spread at any time. The poultry manure is then spread by a manure spreader. Once the manure is spread, it is watered. Mr. Borisuk asked if Mr. Chon covered the manure after delivery, to which Mr. Chon answered that the regulations do not stipulate that it be covered. He stated that the manure is spread between the rows and then it is irrigated. Mr. Borisuk said that he is very familiar with chicken manure and that it must be put into the soil thoroughly or it will cause a significant odor. Mr. Garrison asked how long the poultry manure was in piles before it was spread. Mr. Chon responded that when he received a warning from Sgt. Olsen in July, he spread the manure over all the fields. He stated that he was then told not to spread any more of the manure which he has not done. Mr. Borisuk asked if he thoroughly cultivated the manure into the soil. Mr. Chon stated that he does the best he can with the equipment that he has, as he does not own a disc harrow. Ms. Specca asked if he applied the manure prior to planting or as a side dressing once the seeds have germinated. Mr. Chon replied that he applies the poultry manure as a side

dressing only. Ms. Allen stated that as she reads the guidelines you are supposed to incorporate it into the soil within 48 hours, but if it is used as a side dressing it would not be incorporated into the soil within 48 hours as the guidelines stipulates. Mr. Chon repeated that the manure was spread on top of the ground and then irrigated. Mr. Borisuk stated that the poultry manure agricultural management practice is the generally accepted practice that most farmers use, which is to spread the manure on the ground, incorporating it into the soil and then seeding, not as Mr. Chon is applying the manure. Since Mr. Chon's application is different, it creates a different problem which must be solved because the agricultural community not only needs to be good farmers, but good neighbors, as well.

Richard Brown asked if Mr. Chon was a certified organic grower, to which Mr. Chon responded negatively. Richard Brown then asked what the difference is between the chicken manure that Mr. Chon applies and other types of manure and whether any fly control is used on manure pile. Mr. Chon again replied that the poultry manure that he uses is steamed and is dry and the other manure is wet. He also commented that he does not use any chemicals since he is growing organic products. Mr. Binetsky asked Mr. Chon to explain his time frame for applying the poultry manure from the time he receives the truck loads. Mr. Chon replied that when he receives the poultry manure there could be a week delay but he tries to spread it within a day or two. He receives approximately **10\*** trailer loads for his 10 acres (2,000 tons per acre). He only applies the manure once a year. Ms. Specca asked Mr. Chon if he cultivated between the row of plants during the growing season to control the weeds. Mr. Chon responded that he does not cultivate again. Ms. Specca stated she assumes that he is using the manure as a weed control as well. Mr. Chon responded affirmatively.

Sgt. Olsen then addressed the Committee, and stated that he is in dispute with everything Mr. Chon said. He stated that Mr. Chon is not getting powdered manure but rather truck loads of pure basic chicken manure that is like putty with feathers still in the manure. He noted that Mr. Chon received two trailer loads of poultry manure but did not spread it for 6 days. He stated that when he was at the farm, his car was parked 200 yards away and it was covered with flies inside and outside. The neighbors also complained that their houses were completely covered with flies. He stated that after giving Mr. Chon 5 days notice, he spread the manure and said that he cultivated it into the soil but it was still spread out on the ground. People a quarter to a half mile away were complaining about the odor and the flies eleven days after the manure was spread. Sgt. Olsen also stated that Mr. Chon had poultry manure dumped last year in September and it was still sitting on his property in December and people were complaining about it last year. He also was told at that time what the proper procedure was for handling the manure. Sgt. Olsen circulated pictures of the farm showing the piles of chicken manure as of July, 1998. Sgt. Olsen also noted that Mr. Chon's farm is in a residential area, it is not a commercial area even though he believes Mr. Chon's property is grandfathered. Richard Brown asked if the actual use of the property was always farming and, if it was, when you create zoning maps, whatever was there, could continue to be there. If the use is discontinued, you cannot go back to the previous use. Mr. Borisuk commented that most poultry manure is a combination of poultry manure

and poultry house litter. Mr. Borisuk also asked if agriculture was permitted in all zones in Franklin Township. Sgt. Olsen stated that it is prohibited in certain zones. Sgt. Olsen then gave the following breakdown of events:

July 10, 1998 - Trucks delivered poultry manure.

July 16, 1998 - Advised Mr. Chon that he had 5 days to spread the manure.

July 19, 1998 - Mr. Chon spread the manure.

July 22, 1998 - The manure was spread above the ground, the odor was extremely strong and the flies were unbearable. The flies could be seen a half mile away.

Sgt. Olsen clarified that the July 1998 complaint is the only complaint that the municipality is concerned with at the present time and that is what the SADC should consider.

Ed Keener, a neighbor of Mr. Chon and also a Franklin Township Police Officer, addressed the Committee and stated that living conditions next to Mr. Chon's farm are very bad. He stated that in May and June many flies were in the area. In July the flies and odors became much worse. He contacted the Gloucester County Agricultural agent regarding additional information on farming practices, received the agricultural management practice regarding poultry manure application from Jerry Frecon and conveyed this information to Mr. Chon in an attempt to educate Mr. Chon regarding the 48 hour regulation. He stated that he has lived at his present location for approximately 9 years and this has only been happening the last two years.

Mr. Chon stated that he can get a certification stating that the poultry manure that he has delivered is dry (steamed) manure.

Several of the Committee members commented on the complaint as follows:

Mr. Borisuk stated that he is familiar with poultry manure application but not this particular application process. He stated that there is a lot of manure processed and the best way to recycle it is to put it back into the soil but the problem seems to be with the way it is being handled, the way it is being spread and the way it is being incorporated into the soil. He emphasized that Mr. Chon does have to follow regulations.

Richard Brown stated that the SADC does have an agricultural management practice for poultry manure but it does not address this particular problem. He stated since Mr. Chon's application of the poultry manure is a little different than the approved agricultural management practice, it would behoove Mr. Chon to smooth out some of the differences with the help of N.R.C.S. Also, since the SADC does not have an approved practice on waste products in general he felt the testimony of Mr. Chon indicating that a nine-acre piece of ground with ten trailer load of chicken manure with 20 ton to the trailer load would exceed the amount of material would be allowed to be applied in states that do have those requirements.

Ms. Allen stated that the regulations regarding the issue of incorporating the manure into the soil within 48 hours was not being adhered to since Mr. Chon stated that he applied the poultry manure and then irrigated. This would not incorporate it into the soil adequately within the time frame.

Ms. Dudas stated that the SADC adopted an Agricultural Management Practice (AMP) for Poultry Manure Application and Use in Crop Production on September 24, 1987. However, since this AMP has not been adopted pursuant to the Administrative Procedure Act (APA) this conflict is required to be heard by the SADC and not the CADB. The guidelines of the AMP state that manure will not be stockpiled in the field unless specific provisions are made to keep the manure dry and prevent runoff or leaching or effluent from the stockpile. Mr. Chon has not done this. The agricultural management practice is very clear that poultry manure with greater than 60% moisture must be spread within 24 hours of delivery. Since Mr. Chon's poultry manure piles are uncovered and exposed to the elements, it's probable that the manure piles have greater than 60% moisture. Also, side dressing of poultry manure is not addressed in the present AMP, since it is not a generally accepted practice. She also noted that according to Gary Lee, the NRCS District Conservationist, Mr. Chon does not have a conservation plan for his farm. Again, it is a generally accepted practice to have a conservation plan prepared when applying animal manures to agricultural fields.

It was moved by Mr. Borisuk and seconded by Mr. Richard Brown that the application of poultry manure on Insu Chon's property is not a generally accepted agricultural management practice for the reasons set forth at the hearing. The motion was approved (Ms. McNeill abstained because she had just arrived at the meeting).

Ms. Dudas noted that the recommendation of the Committee will be forwarded to the Gloucester CADB and to Mr. Chon.

**Recommendation/Conclusion:** Based on the investigation of facts as well as testimony as presented at the SADC meeting of September 17, 1998, the SADC found that:

- a) the poultry manure, which appeared to be a combination of poultry house litter and poultry manure, was stockpiled without provisions to keep it dry or prevent runoff. This operation is not in compliance with the Agricultural Management Practice (AMP) for Poultry Manure Application and Use in Crop Production adopted by the SADC on September 24, 1987;
- b) a farm conservation plan has not been prepared for this farm or its operations. Furthermore, it is a generally accepted practice to secure a farm conservation plan when applying animal manure to agricultural fields; and
- c) the practice of using poultry manure as a side dressing or weed control

agent is not a generally accepted operation or practice.

It is the SADC's determination that Insu Chon's poultry manure application on his farm located on Dutch Mill Road, Franklin Township, Gloucester County (Block 5602, Lot 2, 9.80 acres) is not a generally accepted agricultural operation or practice.

The State Agriculture Development Committee's review and determination of the agricultural operation or practice occurred at its meeting on September 17, 1998.

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Gregory Romano, Executive Director  
State Agriculture Development Committee

Amendment

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Mr. Chon stated that he receives 10 trailer loads of poultry manure to this farm, not the 25 trailer loads that appeared in the final report sent to the Gloucester County Agriculture Development Board on October 13, 1998.