

December 19, 2003

Gary Wodlinger

Anthony Mazzeo

Re: Conflict Resolution
Sepers Nursery
Newfield, Cumberland County
Aggrieved Party: Anthony Mazzeo

Dear Mr..Wodlinger and Mr. Mazzeo:

Enclosed please find a copy of the hearing report from the above referenced conflict resolution matter.

At its December 18, 2003 meeting, the State Agriculture Development Committee (SADC) adopted the hearing officer's report.

Pursuant to the Right to Farm Act, N.J.S.A. 4:1C-10.1c, this decision is being sent to the Cumberland County Agriculture Development Board (CADB). The Cumberland CADB is required to hold a public hearing and issue its findings and recommendations within 60 days of receiving the SADC's decision.

If you have any questions, please contact David Kimmel, Agricultural Resource Specialist, at (609) 984-2504.

Sincerely,

Gregory Romano

c: Bob Brewer, Cumberland CADB

encl.

State Agriculture Development Committee
Right to Farm Conflict Resolution

Hearing Report

Farm Operator: Louis Sepers d/b/a Sepers Nursery
Block , Lots
City of Vineland, Cumberland County

Aggrieved Party: Anthony Mazzeo

Date of Hearing: September 30, 2003

Background

Sepers Nursery (hereafter “Sepers Nursery or “the Nursery”) is a wholesale container nursery operation located on approximately 48 acres in the City of Vineland, Cumberland County.

Anthony Mazzeo is a co-owner with his son of two residential parcels bordering Sepers Nursery. (see map, Exhibit 1). Mr. Mazzeo filed a complaint with the Cumberland County Agriculture Development Board (CCADB), dated May 4, 2003, in which he expressed concern about dust and debris blowing onto his property from Sepers Nursery.* (Exhibit 2). Mr. Mazzeo later expanded his complaint to include noise from the trucks that deliver nursery products. The SADC offered its mediation services but Mr. Sepers declined to participate.

The CCADB forwarded the complaint to the State Agriculture Development Committee (SADC) for a public hearing pursuant to N.J.S.A. 4:1C-10.1c as the activities cited in Mr. Mazzeo’s complaint are not addressed by any agricultural management practices promulgated by the SADC. (Exhibit 3).

*Mr. Mazzeo began expressing his concerns about the dust created on Sepers Nursery prior to filing a formal Right to Farm Complaint with the CCADB. The CCADB attempted to informally mediate the conflict prior to sending it to the SADC, but was unsuccessful. (Exhibit 15).

Sepers Nursery certified to the SADC that the property is five acres or more, produces agricultural and/or horticultural products worth \$2,500 or more annually, and is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964. (Exhibit 4). Based upon the certification, it appears that Sepers Nursery meets the definition of “commercial farm” set forth in the Right to Farm Act (Act), N.J.S.A. 4:1C-3.

The SADC held a public hearing on September 30, 2003 pursuant to N.J.S.A. 4:1C-10.1c. Gary Wodlinger, Esq., represented Sepers Nursery at the hearing. In attendance were Anthony Mazzeo and his wife and Lou Sepers.

Issue

The issues before the SADC are whether the dust produced by Sepers Nursery and the truck activity on Sepers Nursery conform with generally accepted agricultural management practices.

Summary of Relevant Facts

Sepers Nursery is a wholesale container nursery that sells woody ornamentals, perennials and other plants. The Sepers family has owned and operated the property, which is located in an agricultural zone, as a nursery since 1949.

The Nursery creates the soil that it uses in its containers by mixing pine bark, peat moss and sand with a soil-mixing machine. The machine has a watering apparatus that is used to decrease the amount of dust that may be generated. Mr. Sepers estimates that the nursery performs 80 percent of its soil mixing between April and June and a small amount of mixing in March and the fall.

As a wholesale operation, Sepers Nursery uses trucks to deliver its products to different markets. The trucks may leave the farm as early as 3:00 or 4:00 in the morning to make their deliveries. According to Mr. Sepers, the trucks do not idle very long, as his employees will not wake up any earlier than required. Most of the shipping is done in the spring and summer, providing for a truck running daily in April and May, a truck running three times a week in June and July, and a minimal schedule after that.

Mr. Mazzeo lives adjacent to Sepers Nursery and is the closest neighbor to the Nursery's soil mixing operation. (see map, Exhibit 1). Photographs from the SADC's site visit show the proximity of Mr. Mazzeo's property to the soil mixing operation. (Exhibit 5).

Mr. Mazzeo testified that he has lived on his property for 50 years and that the Nursery used to be a much smaller operation. He testified that dust, sand, compost and other debris now blow onto his property as a result of the Nursery's soil mixing operation. The material settles on his pool, deck, outdoor furniture, house, and vehicles, causing him the hardship of spending time and money to clean his property.

Mr. Mazzeo testified that the dust problem was better this summer than last summer because there was more rain this summer. He suggested that Sepers Nursery move their mulching operation to a different location on the property.

He also stated that Vineland health inspectors have inspected his property and the Nursery but that they have not taken any action because the dust is not blowing when they have been there.

Mr. Mazzeo testified that trucks drive on and off the Nursery from early in the morning (3:00 a.m.) to late at night and that he and his wife are awakened by the truck

noise. Mr. Mazzeo testified that the trucks stop to shut a gate on the Nursery, leaving the trucks running while they do so. The trucks also make noise by shifting gears as they come up a hill. He suggested that the trucks drive to Sepers Nursery via Weymouth Road, where there are less houses to disturb.

Mr. Mazzeo submitted a petition signed by other residents in the vicinity of Sepers Nursery. It proclaims to be a petition to “address the problems caused by Sepers Nursery. . . [m]ainly for mulch, dust, pollution and noise.” (Exhibit 6).

Sepers Nursery began addressing Mr. Mazzeo’s complaints in 2002. It made the following modifications to their operation to decrease the amount of dust created:

- used coarser, more fibrous (less fine particle) grade of peat moss
- added water to the soil mixing operation to settle dust
- planted quick-growing evergreen hedge of Leyland Cypress trees along the property line between the Nursery and Mr. Mazzeo’s property to serve as a permanent windbreak
- installed a 12-foot high screen around the soil mixing operation to serve as an immediate windbreak
- when possible, mixing is done when high winds are not expected

The Nursery believes that a combination of these measures and the rainy spring and summer reduced the amount of dust created by the Nursery. The Nursery also submitted a description of the evergreen trees that it planted to serve as a permanent windbreak, establishing that the trees are fast-growing. (Exhibit 7).

Gary Wodlinger, Esq., testified on behalf of Sepers Nursery at the hearing. He stated that Sepers Nursery has been located at this site for about 50 years and has been mixing soils for about 25 years. Mr. Wodlinger submitted an excerpt from the Southern Nurseryman’s Association, which includes best management practices for containerized

nursery operations and a report from a Cumberland County Agricultural Extension Agent. (Exhibit 8).

Regarding the complaints about truck noise, Mr. Wodlinger stated that it is essential for the Nursery to deliver its product when the customers request it and that it is customary for nurseries to make early morning deliveries. The practice of the Nursery is to start the trucks and leave the yard promptly. Sepers Nursery denies the allegation that the truck drivers stop to shut a gate. It does not instruct its drivers to shut the gate, nor do they do so on their own. The Nursery submitted a letter from one of its truck drivers in support of its position that its truck drivers make an effort to minimize the noise and that they do not shut the gate. (Exhibit 9).

When questioned as to whether Sepers Nursery could move its soil mixing operation to a location that is further away from residences, Mr. Sepers responded by stating that it would not be feasible to move the operation because it would involve moving various buildings that are used for mixing and potting onto areas that are currently used for production.

Sepers Nursery submitted a document drafted by Lou Sepers that describes the Nursery's operation, industry standards, and the efforts made by the Nursery to address Mr. Mazzeo's concerns. (Exhibit 10).

Municipal Standards

At the hearing, Mr. Wodlinger stated that two sets of tickets regarding truck noise were dismissed in municipal court after Sepers Nursery moved for dismissal based on the fact that the CCADB has jurisdiction over such complaints pursuant to the Right to Farm Act. The court's dismissal was presumably based upon the requirement in the Right to

Farm Act that persons aggrieved by an agricultural operation are to file their complaints with the SADC or appropriate CADB prior to filing an action in court. N.J.S.A. 4:1c-10.1a. The New Jersey Supreme Court, however, has mandated that the SADC and CADBs consider and acknowledge municipal regulations in right to farm matters. Township of Franklin v. den Hollander, 338 N.J. Super. 373 (App. Div. 2001), *aff'd*, 172 N.J. 147, 152 (2002).

To fulfill this requirement, the hearing officer requested Mr. Wodlinger to obtain in writing the position of the City of Vineland with respect to the noise complaint. (See letters, Exhibits 11, 12, and 13). The City of Vineland Health Officer, Louis Cresci, Jr., sent a letter dated October 24, 2003, stating that Sepers Nursery is exempt from the State noise control regulations, N.J.A.C. 7:29-1 et seq., because it is an agricultural operation. (Exhibit 14).^{*} Although the City has ordinances addressing noise, Mr. Cresci did not reference them, but instead referenced the State's regulations and the exemption contained therein.

Mr. Cresci noted in his letter that the Nursery is “not exempt from regulations regarding dust control or idling trucks, which are both air pollution issues.” (Exhibit 14).

Compliance With Relevant State and Federal Law

Mr. Wodlinger stated at the hearing that the Vineland Department of Health (hereafter “Health Department”) dismissed five complaints regarding dust from Sepers Nursery based on the fact that the CCADB has jurisdiction over such complaints pursuant to the Right to Farm Act.

^{*} Agricultural activities are exempt from the operational performance standards set forth in N.J.A.C. 7:29-1 et seq. N.J.A.C. 7:29-1.4(a)1.

The Health Department's dismissal of these complaints may have been misguided if it has authority under the County Environmental Health Act (CEHA), N.J.S.A. 3A2-21 et seq. to enforce the State's air pollution regulations. Under CEHA, the New Jersey Department of Environmental Protection may delegate the administration of State environmental health laws and regulations, including air pollution regulations, to local health departments. N.J.S.A. 3A2-28. Although the Right to Farm Act gives the SADC and CADBs primary jurisdiction over right to farm complaints, N.J.S.A. 4:1C-9, an agricultural operation must be in compliance with all relevant federal or State statutes, rules and regulations to receive the protections of the Act. Thus, if the Health Department has the authority to enforce State regulations under CEHA, the Right to Farm Act would not preempt this authority . *

(If the Health Department does not have authority under CEHA, the New Jersey Department of Environmental Protection has the authority to enforce State air pollution laws.)

None of the parties produced any evidence regarding whether Sepers Nursery is in violation of air pollution regulations nor did the hearing officer make an independent inquiry into the matter.

Accordingly, the conclusions in this report are conditioned upon the Nursery being in compliance with State and federal laws, including air pollution regulations. If there is a subsequent determination that the Nursery is not in compliance with State laws by the County (if it has the authority under CEHA), State, federal government, or an

* CEHA also gives local health boards the authority to adopt and enforce environmental health ordinances to control air pollution and other environmental health hazards, which may be more stringent than State regulations. N.J.S.A. 26:3A2-27. This report does not address whether the Right to Farm Act (Act), which may preempt local ordinances, would preempt local ordinances adopted pursuant to CEHA.

administrative or judicial court, then the Nursery will not be entitled to the protections of the Act unless and until such violations are abated.

Industry Standards

To receive the protections of the Right to Farm Act, an agricultural activity must be a generally accepted agricultural practice or must comply with a specific agricultural management practice (AMP) if the SADC has promulgated one related to the activity at issue. N.J.S.A. 4:1C-9. Because the SADC has not promulgated any AMPs related to nursery operations, Sepers Nursery must conform with generally accepted agricultural practices.

Sepers Nursery submitted a report prepared by James R. Johnson, Agricultural Agent, Nursery Production, for Rutgers Cooperative Extension of Cumberland County. The report, dated September 8, 2003, included a detailed analysis of the Nursery's "media mixing operation." (Exhibit 8). Mr. Johnson observed that the Nursery uses a "tumble mixer," which is one of three normally used for commercial nursery production in southern New Jersey and throughout the United States. He concludes that the tumble mixer is the most appropriate for Sepers Nursery, based on its business size. Mr. Johnson noted that the Nursery modified its system to reduce drift of particulate matter from the site. He concluded that the system with its modifications effectively reduces particulate movement from the site. When the recently planted, fast-growing, hedge matures, the particulate movement should be further reduced.

Mr. Johnson acknowledged that during "exceptional environmental events" such as high wind gusts, total control of particulate movement may not be possible. He noted, however, that Sepers Nursery has "designed an effective plan to reduce the production

and environmental variables” and that under “normal” conditions, “effective control of particulate matter release should be achieved.”

Regarding Mr. Mazzeo’s complaints about the truck activity on Sepers Nursery, it appears that early morning truck activity is a generally accepted practice in the horticultural industry. Carl Nordstrom, Executive Director of the New Jersey Nursery and Landscape Association, informed the hearing officer that nurseries have to respond to market demands. If customers need to receive the product in the morning, it is accepted in the nursery industry that the trucks will ship the product in the early morning hours to assure timely delivery.

Conclusions and Determination

Based upon the foregoing discussion, it appears that the truck activities on Sepers Nursery and the soil mixing system used by the Nursery conform to generally accepted agricultural management practices and are thus entitled to the protections of the Right to Farm Act. The hearing officer makes no findings with respect to compliance with other State or federal law.

Date:

Marci D. Green
Hearing Officer
State Agriculture Development Committee