

The Right to Farm Act in New Jersey

State Agriculture Development Committee (SADC)

Right to Farm Protections

- May preempt municipal/county ordinances
- Irrebuttable presumption that no commercial agricultural operation constitutes a public or private nuisance



Right to Farm Procedures

- Conflict Resolution
 - Complaint against a farmer is filed with CADB by municipality or neighbor
- Site-Specific AMP Request
 - Application made by farmer to CADB
- A combination of the above (municipal complaint can lead to an SSAMP request in the same proceeding before CADB)

How should a municipality seek relief when it believes a farmer is in violation of its ordinances?

- Municipality **MUST FIRST** file a complaint with the County Agriculture Development Board **BEFORE** filing **ANY** action in **ANY** court
- Required to file complaint with CADB rather than issue summons against farmer **EVEN IF THERE IS AN ALLEGED VIOLATION OF STATE LAW**
- CADB has no authority to refuse jurisdiction due to state law claim or due to pendency of a municipal court/superior court complaint

The CADB process – I

(Municipal zoning and “neighbor” disputes)

- Formal ‘conflict resolution process’ begins after a complaint is filed by municipality or private party with the CADB
- CADB makes formal determination whether farm meets eligibility criteria
 - e.g., if CADB determines farm is not a “commercial farm”, then it is not eligible for protection
- If CADB determines farm is not a “commercial farm”, then municipality or other complainant is free to take appropriate action in other forums (municipal court, superior court)
- If CADB determines farm is a “commercial farm”, then CADB must conduct a public hearing on the complaint if the complaint deals with an agricultural management practice (AMP) adopted by the SADC or a generally accepted agricultural operation or practice on the farm previously determined by the CADB
- If CADB determines farm is a “commercial farm”, but the complaint does not deal with an AMP adopted by the SADC or does not involve an operation or practice on the farm previously determined by the CADB, then the case is transferred to the SADC for a public hearing



The CADB process – II

(Site-specific AMP requests)

- Site-specific AMP (SSAMP) process begins after farmer files a request for a site specific agricultural management practice determination from the CADB
 - The applicant must set forth the agricultural activities in NJSA 4:1C-9a. through i. for which he or she is seeking an SSAMP determination
- CADB notifies municipality and SADC of the SSAMP request
- CADB determines whether farm meets the RTF eligibility criteria
 - If CADB determines farm is not a “commercial farm”, then farm is not entitled to an SSAMP determination and application is dismissed
 - If CADB determines farm is a “commercial farm”, then CADB proceeds with the SSAMP review process (may include the following: site visit, public hearing, consulting agricultural experts, soliciting municipal feedback)
- CADB makes formal SSAMP determination

Definition of Commercial Farm

If greater than 5 acres:

- produce agricultural or horticultural products worth **\$2,500** or more annually
- satisfy eligibility requirements of Farmland Assessment Act

If less than 5 acres:

- produce agricultural or horticultural products worth **\$50,000** or more annually
- satisfy eligibility requirements of Farmland Assessment Act (other than size requirement)

Criteria To Receive Protections

- Is it a “commercial farm?”
- Is area zoned for agriculture or was farm in operation as of July 2, 1998?
- Is operation consistent with “generally accepted agricultural management practices”, AMPs adopted by SADC, or a site-specific AMP?
- Is operation in violation of any federal or State laws or regulations?
- Does operation pose a direct threat to public health & safety?

Preemption of Municipal Regulations?

- Agricultural activities may preempt municipal regulations – but on a case-by-case basis – it’s not automatic

During CADB/SADC review (public hearing process):

- Appropriate consideration and deference given to municipal standards
- Balance agricultural needs against municipal public health and safety concerns
- Farmer has to show “legitimate agriculturally-based reason” for not complying with municipal regulations

Township of Franklin v. den Hollander, N.J. Supreme Court (2002)

Activities Eligible for Protection

- Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry
- Process and package agricultural output of farm
- Farm markets – but buildings and parking areas to be in conformance with municipal standards
- Control pests, predators and diseases of plants and animals
- On-site disposal of organic agricultural wastes
- Agriculture-related educational and farm-based recreational activities – but those activities must be related to marketing the agricultural output of farm
- Equine service and complimentary equine activities
- Generation of power or heat from biomass, solar, or wind energy (rules to be developed)

Activities Not Protected

- Landscaping business and activities
- Processing agricultural products not grown on the farm
 - Example: processing firewood from trees grown on someone else's property
- Agricultural labor housing
- Notes
 - Few RTF matters are ever clear-cut
 - If an activity is not eligible for RTF protection, it doesn't mean that a farmer can't do the activity – it just means RTF can't preempt local regulations or provide protection for the activity from nuisance suits



The more informal way to resolve conflicts - Mediation

- New Jersey Agricultural Mediation Program – a free service offered by the SADC
- Mediation is a voluntary process in which a trained, impartial mediator facilitates a discussion between the parties with a dispute
- The mediator has no decision-making authority, so successful mediation is based on the cooperation and participation of all parties.

For more information:

- Visit the Right to Farm Program website:
nj.gov/agriculture/sadc/rtfprogram/
- See “Q and A” article handout
- Contact your local CADB or the SADC
- SADC contact information:
 - (609) 984-2504
 - Brian D. Smith, Esq., Chief of Legal Affairs
 - David Kimmel, Agricultural Resource Specialist