

2:76-2A.4 Food processing by-product land application agricultural management practice

(a) The following words and terms, as used in this section, shall have the following meanings.

“Agronomic rate” means the whole food processing by-product application rate on a dry weight basis designed:

- i. To provide the amount of nitrogen or other nutrients needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land;
- ii. To minimize the amount of nitrogen or other nutrients from residual and all other fertilizer sources that passes below the root zone of the crop or vegetation grown on the land; and
- iii. To provide the amount of calcium or magnesium oxides capable of neutralizing soil acidity.

“Food processing by-product” means food processing vegetative wastes and/or food processing residuals generated from food processing and packaging operations or similar industries that process food products.

“Food processing residuals” means residuals resulting from the physical, chemical, and/or biological treatment of wastewater generated in food processing and packaging operations or similar industries that process food products, whose application to lands would benefit crop growth and soil productivity. Food processing residuals do not include process waste waters.

“Food processing vegetative waste” means material generated in trimming, reject sorting, cleaning, pressing, cooking, and filtering operations from the processing of fruits and vegetables and the like in food processing and packaging operations or similar industries that process food products. Vegetative wastes include, but are not limited to, tomato skins and seeds, pepper cores, potato peels, cabbage, onion skins, celery pieces, cranberry hulls, cranberry tailings, rice hulls, carrot stems, and coffee grounds.

(b) No commercial farm operator seeking protection of the Right to Farm Act shall apply food processing by-product to a commercial farm except in accordance with the requirements of N.J.A.C. 7:14A and this section.

(c) Only food processing by-product meeting the requirements of N.J.A.C. 7:14A-20.7(h)1 as determined by the Department of Environmental Protection shall be land applied to commercial farms.

(d) Food processing by-product shall not be applied to the land if it is likely to adversely affect a threatened or endangered species listed under section 4 of the Federal Endangered Species Act, 16 U.S.C. § 1533, or its designated critical habitat.

(e) Food processing by-product shall not be applied to agricultural land that is 10 meters or less from the waters of the State, as defined in N.J.A.C. 7:14A-1.2, unless otherwise specified by the Department of Environmental Protection.

(f) Food processing by-product shall be applied to agricultural land at an application rate that is equal to or less than the agronomic rate for the food processing by-product.

(g) Runoff and erosion controls are essential to sound management. Overland flow increases the potential for contamination of surface waters. Erosion decreases soil productivity and increases sediment loads in streams. Soil conservation practices are designed to promote infiltration and slow down the velocity of water that flows over the soil surface. Therefore, it is recommended that food processing by-product be land applied to commercial farms in conjunction with and conformance to a farm conservation plan prepared by the United States Department of Agriculture-Natural Resources Conservation Service (USDA-NRCS) and approved by the Soil Conservation District.

(h) It is recommended that each farm conservation plan address the commercial farm’s site characteristics in order to assess the farm’s suitability for land application of food processing by-product including, but not limited to, permeability of the most restrictive layer between zero and 60 inches, infiltration rate, soil drainage class, runoff class, slope, depth to seasonal high water table, frequency of flooding, depth to bedrock and ability to provide adequate buffer zones surrounding land application areas.

(i) Evaluating a commercial farm for beneficial use of food processing by-products requires working within the commercial farmer’s existing management system. Food processing by-products utilization should not alter decisions on the crops to grow, the crop rotations to use, and whether to drain, irrigate, or lime the soil. The crop management system dictates when a field is accessible, the frequency of food processing by-product application, the expected amount of nutrients the food processing by-products must deliver, and the application methods.

1. Food processing by-product may be applied to row, grain, pasture and horticulture crops. The crops most likely to be used in a food processing by-products utilization program are pasture and forage, grain and grass seed, and row crops. Row crops include food crops (crops grown for direct human consumption or animal feeds) and non-food crops such as Christmas trees and ornamentals.

2. All food processing by-product samples collected for analysis should be representative of the food processing by-product residual to be land applied.

3. All plant-available nutrients supplied via food processing by-products and other carriers (that is, manure or fertilizers) should be counted toward satisfying the nutrient requirement of a crop and should not exceed said nutrient requirement.

4. Applications of available nutrients to crops that will not be harvested (for example, green manure crops) shall be limited to that rate recommended as the “establishment” rate for that crop, and shall be assumed to be available for the next crop grown.

5. All crop management practices shall aim at attaining the expected yield goal.

6. All crops shall be planted during the season of the year which is most appropriate for the growth of that crop, such that crop growth and maturation, with consequent nutrient uptake and utilization, is maximized.

7. A crop should be sown on fallow fields within 30 days of the initiation of food processing by-product land application activities on said fields, provided field conditions permit or as soon thereafter as field conditions permit.

8. The food processing by-product application rate for each field should be uniform over all sections of that field.

9. Where appropriate, applications of nutrients via food processing by-product may be modified at the discretion of the Department of Environmental Protection through evaluation of monitoring reports, compliance inspection reports or other relevant information including, but not limited to, data concerning food processing by-product quality, soil and crop yield, expert research in the field, and recommendations by County Agricultural Extension Agents or staff of the USDA-NRCS, Soil Conservation District or State Agriculture Development Committee.

(j) Subsurface injection and/or surface application are generally acceptable methods of land applying food processing by-product. Other methods of application, as reviewed and approved in writing by the Department of Environmental Protection, may be more appropriate for certain land applications of food processing by-product. The characteristics of a specific food processing by-product and of the specific commercial farm land application site (for example, slope and infiltration rate) should be evaluated to determine the most appropriate application method. The Department of Environmental Protection, where necessary, may limit the availability of a specific method of application where site specific factors warrant.

(k) Sometimes runoff is inevitable, even from pastures and well-protected fields. This is especially true during high-intensity storms and when the soil is frozen. Regardless of other conservation practices that might be in place, food processing by-products shall not be put on the soil at these times. In fact, N.J.A.C. 7:14A-20.7(b)2ii prohibits the application of food processing by-product to flooded, frozen or snow-covered land if the food processing by-product could enter surface waters or wetlands. Generally, land is considered flooded when the soil at the surface of the land is saturated with water, regardless of whether water is visible on the ground. Such flooding conditions may be produced by heavy precipitation that occurs locally or at some distance from the commercial farm, the rise of any nearby surface waters, the rise of the groundwater table, the melting of snow and ice, or irrigation.

New Rule, R.1999 d.325, effective September 20, 1999.
See: 31 N.J.R. 1655(a), 31 N.J.R. 2739(a).

2:76-2A.5 Commercial vegetable production agricultural management practice

(a) Pursuant to the authority of N.J.A.C. 1:30-2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the Rutgers Cooperative Extension "1999 Commercial Vegetable Production Recommendations" as the commercial vegetable production agricultural management practice, subject to the modifications as stated in (c) below.

(b) The Rutgers Cooperative Extension will revise its publication annually to include new information. The adoption and incorporation by reference in (a) above does not include future supplements and amendments.

(c) The recommendations concerning sewage sludge addressed by the "1999 Commercial Vegetable Production Recommendations" in the section entitled "Sewage Sludge" or any other section, are excluded from the commercial vegetable production agricultural management practice.

(d) Copies of the "1999 Commercial Vegetable Production Recommendations" may be purchased from Rutgers, The State University of New Jersey, Publications Distribution Center, RCE, Cook College, 57 Dudley Road, New Brunswick, NJ 08901-8520. In addition, the publication is available free of charge on the Rutgers Cooperative Extension site on the world wide web at <http://www.rce.rutgers.edu>.

New Rule, R.1999 d.366, effective October 18, 1999.
See: 31 N.J.R. 2021(a), 31 N.J.R. 3081(b).

2:76-2A.6 Commercial tree fruit production agricultural management practice

(a) Pursuant to the authority of N.J.A.C. 1:30-2.2, the State Agriculture Development Committee hereby adopts and incorporates by reference the Rutgers Cooperative Extension "New Jersey Commercial Tree Fruit Production Guide 1999" as the commercial tree fruit production agricultural management practice.

(b) Rutgers Cooperative Extension will update its publication as changes in labels and restrictions warrant. The adoption and incorporation by reference in (a) above does not include future supplements and amendments.

(c) Copies of the "New Jersey Commercial Tree Fruit Production Guide 1999" may be purchased from Rutgers, The State University of New Jersey, Publications Distribution Center, RCE, Cook College, 57 Dudley Road, New Brunswick, NJ 08901-8520. In addition, the publication is available free of charge on the Rutgers Cooperative Extension site on the World Wide Web at <http://www.rce.rutgers.edu>.

New Rule, R.1999 d.367, effective October 18, 1999.
See: 31 N.J.R. 2023(a), 31 N.J.R. 3081(c).

2:76-2A.7 Natural resource conservation agricultural management practice

(a) The purpose of this section is to establish a generally accepted agricultural management practice for the implementation of a farm conservation plan for the conservation and development of soil, water and related natural resources on farmland.

(b) The following terms, as used in this section, shall have the following meanings:

“District” or “Soil Conservation District” (SCD) means a governmental subdivision of this State, organized in accordance with the provisions of N.J.S.A. 4:24-1 et seq.

“Farm conservation plan” means a site specific plan developed by the landowner and approved by the local soil conservation district which prescribes needed land treatment and related conservation and natural resource management measures including forest management practices that are determined practical and reasonable to conserve, protect and develop natural resources, to maintain and enhance agricultural productivity and to control and prevent non-point source pollution.

“United States Department of Agriculture, Natural Resources Conservation Service, (NRCS) Field Office Technical Guide” means a composite of national, regional, State and local data and standards derived primarily from local universities, NRCS and conservation district offices and cooperating conservation agencies which administer natural resource conservation programs.

(c) The implementation of a farm conservation plan on farmland shall be a generally accepted agricultural management practice recommended by the Committee.

1. A farm conservation plan shall be prepared in conformance with the following:

i. United States Department of Agriculture, Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG), revised April 20, 1998, incorporated herein by reference, as amended and supplemented; and

ii. Forest management practices shall be in accordance with standards and specifications adopted by the New Jersey Department of Environmental Protection, Bureau of Forest Management where such standards and specifications are not included in the NRCS FOTG.

2. For purposes of this recommended agricultural management practice, a farm conservation plan which includes recommendations concerning land application of sewage sludge-derived products is not recommended as a

generally accepted agricultural management practice by the Committee.

New Rule, R.2000 d.96, effective March 6, 2000.
See: 31 N.J.R. 3881(a), 32 N.J.R. 787(a).

SUBCHAPTER 2B. SUPPLEMENTAL AGRICULTURAL ACTIVITIES

Authority

N.J.S.A. 4:1C-9(i) and 4:1C-10.4.

Source and Effective Date

R.2000 d.97, effective March 6, 2000.
See: 31 N.J.R. 3882(a), 32 N.J.R. 787(b).

2:76-2B.1 Determination basis

Pursuant to N.J.S.A. 4:1C-9(i), the supplemental agricultural activities contained in this subchapter are determined to be eligible to receive the protection of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

2:76-2B.2 Eligibility of pick-your-own operations for Right to Farm protections

(a) As used in this section, “pick-your-own operation” means a direct marketing alternative wherein retail or wholesale customers are invited onto a commercial farm in order to harvest agricultural, floricultural or horticultural products.

(b) A pick-your-own operation is determined to be a permissible activity entitled to receive the protections and benefits of the Right to Farm Act, provided that the commercial farm operation of which the pick-your-own operation is a component meets the criteria as set forth in N.J.S.A. 4:1C-9.

SUBCHAPTER 3. CREATION OF FARMLAND PRESERVATION PROGRAMS

Law Review and Journal Commentaries

Farmlands—Municipal Land Use. Judith Nallin, 136 N.J.L.J. No. 12, 70 (1994).

2:76-3.1 Applicability

This subchapter provides for any eligible landowner to voluntarily petition a county agriculture development board or a subregional agricultural retention board for the creation of a farmland preservation program.

2:76-3.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agreement" means a legally binding written document between the landowner(s), and the board which must be signed by both parties and certified by the State Agriculture Development Committee to signify approval of a petition for creating a farmland preservation program.

"Agricultural Development Area" hereinafter referred to as ADA, means an area identified by a board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agriculture Development Committee.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

"Committee" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

"Development easement" means an interest in land less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 and any relevant rules or regulations promulgated pursuant hereto.

"Farmland preservation program" means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the "Farmland Preservation Bond Act of 1981," P.L. 1981, C.276, which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 and the maintenance and support of increased agricultural production as the first priority use of that land.

"Petition" means a formal written document adopted by the board, which an eligible landowner must submit to the board when applying for inclusion in a farmland preservation program.

"Premises" means the property under easement which is defined by the legal metes and bounds description in the Agreement.

"Soil and water conservation project" means any project designed for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, the impoundment, storage and management of water for agricultural purposes, or the improved management of land and soils to achieve maximum agricultural productivity.

Amended by R.1986 d.196, effective June 2, 1986.

See: 18 N.J.R. 508(a), 18 N.J.R. 1193(b).

Added definition "premises".