

New Rule, R.1993 d.223, effective May 17, 1993.

See: 25 N.J.R. 622(a), 25 N.J.R. 1963(a).

New Rule, R.1999 d.198, effective June 21, 1999.

See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

Former N.J.A.C. 2:76-2.4, Negotiation of conflicts between State regulatory practices and SADC recommended agricultural management practices, recodified to N.J.A.C. 2:76-2.6.

Law Review and Journal Commentaries

Right to Farm Act Pre-empt Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

2:76-2.5 Utilization of agricultural management practices and site specific agricultural management practices

(a) Owners and operators of commercial farms are afforded benefits and protections pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., P.L. 1983, c.31, as amended.

(b) The failure of a commercial farm owner or operator to comply with an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-2.2 or a site specific agricultural management practice adopted pursuant to N.J.A.C. 2:76-2.3 or 2.4 shall not be utilized in any judicial proceedings or proceeding before any governmental body or agency except for the process as described in N.J.S.A. 4:1C-10.1 and N.J.A.C. 2:76-2.10.

Recodified from N.J.A.C. 2:76-2.3 and amended by R.1999 d.198, effective June 21, 1999.

See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

Rewrote the section.

Law Review and Journal Commentaries

Right to Farm Act Pre-empt Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

2:76-2.6 Negotiation of conflicts between State regulatory practices and SADC recommended agricultural management practices

The Committee shall upon a finding of conflict between the regulatory practices of any State instrumentality and the agricultural management practices recommended by the Committee, commence a period of negotiation not to exceed 120 days with the State instrumentality in an effort to reach a resolution of the conflict, during which period the State instrumentality shall inform the Committee of the reasons for accepting, conditionally accepting or rejecting the Committee's recommendations and submit a schedule for implementing all or a portion of the Committee's recommendations.

New Rule, R.1993 d.223, effective May 17, 1993.

See: 25 N.J.R. 622(a), 25 N.J.R. 1963(a).

Recodified from N.J.A.C. 2:76-2.4 by R.1999 d.198, effective June 21, 1999.

See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

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Right to Farm Act Pre-empt Local Land-Use Authority. Lewis Goldshore and Marsha Wolf, 168 N.J.L.J. 1134 (2002).

2:76-2.7 through 2:76-2.9 (Reserved)

2:76-2.10 Negotiation of conflicts between any person aggrieved by the operation of a commercial farm

(a) Any person aggrieved by the operation of a commercial farm shall first file a complaint in writing, with the applicable board or the Committee in counties where no board exists, prior to filing an action in court. The complaint shall include detailed facts concerning the contested operation or practice.

(b) If a board exists and the dispute concerns activities that are addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-2.2 or a site specific agricultural management practice adopted pursuant to N.J.A.C. 2:76-2.3, the board shall:

1. Contact the commercial farm operator to provide evidence pursuant to N.J.A.C. 2:76-2.3(b) that the agricultural operation is a commercial farm, and, if the board is satisfied that the operation is a commercial farm, hold a public hearing.

- i. Testimony presented at the hearing may include verbal and written statements from aggrieved parties, the commercial farm operator, expert witnesses, and any other party deemed appropriate by the board; and

2. Issue findings and recommendations to the Committee, the aggrieved person, the municipality(ies) in which the commercial farm is located and the commercial farm operator within 60 days of receipt of the complaint.

- i. The findings and recommendations of the board shall be in the form of a written narrative providing a summary of the testimony, any supporting documents, and a copy of the agricultural management practice or site specific agricultural operation or practice utilized by the board in its recommendations and any other information requested by the Committee.

- ii. Any person aggrieved by the decision of the board shall appeal the decision to the Committee within 10 days of the receipt of the board's final decision. The Committee shall schedule a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and make a determination within 90 days of receipt of the petition for review.

- (1) The decision of the Committee shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

- (2) Any decision of the board that is not appealed shall be binding.

(c) If a board exists and 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, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-2.2 or a site specific agricultural management practice adopted pursuant to N.J.A.C. 2:76-2.3, the board shall forward the complaint to the Committee requesting the Committee's determination of whether the disputed agricultural operation constitutes a generally accepted operation or practice.

1. The board shall inform the Committee if it has received a request for recommending a site specific agricultural management practice and, if so, the status of the board's development of the site specific agricultural management practice.

2. Upon receipt of the request, the Committee shall contact the commercial farm operator to provide evidence that the agricultural operation is a commercial farm as defined at N.J.A.C. 2:76-2.1, and, if the Committee determines that the operation is a commercial farm, hold a public hearing.

i. Testimony presented may include verbal and written statements from aggrieved parties, the board or its staff, the commercial farm operator, expert witnesses and any other party deemed appropriate by the Committee.

3. The Committee shall issue findings and recommendations to the board, the aggrieved person, the municipality(ies) in which the commercial farm is located and the commercial farm operator.

i. The findings and recommendations of the Committee shall include a summary of the testimony and any supporting documents utilized by the Committee in its recommendations.

ii. The Committee's decision shall be considered a final administrative agency decision and shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

New Rule, R.1999 d.198, effective June 21, 1999.
See: 31 N.J.R. 816(a), 31 N.J.R. 1603(a).

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SUBCHAPTER 2A. AGRICULTURAL MANAGEMENT PRACTICES: GENERALLY ACCEPTED OPERATIONS AND PRACTICES

2:76-2A.1 Recommendation basis

The agricultural management practices recommended in this subchapter are recommended pursuant to N.J.A.C. 2:76-2.2.

2:76-2A.2 Apiary agricultural management practice

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

"Apiary" means one or more colonies of honey bees.

"Bee" means members of the genus apis.

"Colony" means a hive or swarm of bees.

"Hive" means the manmade structure which contains a colony of honey bees.

(b) All overwintering apiaries must be registered with the New Jersey Department of Agriculture, pursuant to N.J.A.C. 2:24-3.1 et seq.

(c) Overwintering apiaries, honey production apiaries, queen and package apiaries and bee colonies utilized for crop pollination will not exceed an average density of 50 colonies per acre.

(d) All colonies must be located at least 25 feet from a public sidewalk, alley, street or road.

(e) All apiaries must be at least 300 feet from any residence, excluding the residence(s) associated with the agricultural operation. If less than 300 feet from any residence, a six feet high solid fence or hedge must be erected buffering the residence.

(f) All apiaries must have on site an adequate source of water which is no more than one-half mile from the apiary.

(g) All bee equipment and hives must be maintained in good condition.

(h) All colonies must be kept in movable frame hives in accordance with N.J.S.A. 4:6-10.

2:76-2A.3 Poultry manure agricultural management practice

(a) The poultry manure agricultural management practice applies to agricultural operations, which store poultry manure prior to land application and land apply poultry manure as part of crop production practices. Poultry manure is collected and stored in a variety of ways, depending on the need of the producer. The methods used to collect, handle and store the manure greatly affect its quality. Manure often has to be stored before it is land applied. Proper storage is essential for manure to maintain its value as a nutrient resource and to prevent it from polluting surface or groundwater. The important points to consider when storing poultry manure are to keep it covered so rainfall will not create runoff from the storage area and to stack the manure no more than five to six feet deep to prevent overheating and burning.

(b) Poultry manure should not be stored outside unless it is covered by some type of waterproof sheeting and water is diverted away from the stack. The manure stack should be located on high ground and away from drainage ways and sources of surface water. Covered stockpiles should be considered for short-term storage only. If manure will be stored in this manner for more than one month, place an impervious pad under the stack.

1. Stockpiles of manure can be protected by covering with plastic sheeting, which is anchored with earth or other suitable weighted materials. Anchor the edges by laying the sheeting edge across a small trench approximately 12 inches deep and backfilling with soil. Lay suitable weighted materials over the top of the plastic on the pile. Heavy gauge (six mil) plastic can last one or two seasons. Lighter gauge plastic is not recommended.

2. The liner consisting of a minimum of a six mil plastic is laid on the soil surface on top of which the stockpile is formed. If the soil is loose, compact it before laying out the plastic. Apply a 12-inch layer of manure over the majority of the plastic before forming the pile to minimize the possibility of tearing by the equipment tires. Fold the edges of the liner one to two feet up the sides of the pile and anchor in the manure. Apply the surface cover as described for a covered stockpile. The ground liner will be torn during unloading of the pile and new plastic will be required each year.

3. If a permanent location for manure storage is desired, a concrete slab can be constructed on which to place a covered stockpile. The concrete should be at least six inches thick, reinforced with wire mesh and placed on six inches of compact gravel. To prevent concrete failure, thicken the perimeter of the concrete to form a footer where traffic enters and exits. Construct the stockpile as described for a covered stockpile, as set forth in (b)1 above. Anchor the cover sheet edges with wood poles, concrete blocks or other heavy objects on the concrete slab.

4. Bunkers are permanent aboveground concrete slabs with two parallel walls of concrete identical to those used for storing silage on livestock farms. A bunker allows deeper piling and compaction of manure to reduce the total area required for the manure storage. An end wall can be constructed to slightly increase the storage capacity. However, loading the structure is more easily accomplished without an end wall. A cover of plastic sheeting can be attached to the walls with batten strips and anchored with a suitable weighted material. A more permanent cover of fiberglass reinforced fabric with edge anchorage eyelets similar to that used for truck covers may be utilized.

5. Concrete slabs, bunkers or other structures with permanent roofs may be constructed to eliminate the need for plastic covers. The roof structure must be a clear span supported by the outside walls or perimeter posts. Roof structures must be of sufficient height to

allow manure piling. Compaction loading will be difficult under a roof. Roofs 12 feet or higher will require wall panels to protect the stored manure from excessive blowing rain.

(c) The rate of manure application should be limited to that amount required for crop production and maintenance of a reasonable level of soil fertility. The amount of poultry manure used depends on crop needs, soil fertility levels, physical characteristics of the soil and the potency of the manure. The actual amount of manure applied should be calculated for each crop production situation as follows:

1. Manure analysis should be conducted;
2. Soil fertility tests should be conducted on land areas to be fertilized;
3. Crop needs for projected yields for each of the main fertilizer elements should be determined from appropriate guides for crop production; and
4. Manure application should be limited to amounts needed to make up the difference between crop needs and existing soil fertility levels.

(d) The following concern field application of poultry manure:

1. Manure should not be spread on ground that is frozen, snow covered or too wet to be plowed within the time limits listed in (d)3 and 4 below.

2. A manure free vegetative buffer zone of not less than 25 feet shall be maintained along or around defined drainage channels and sinkholes on slopes of six percent or less. On slopes greater than six percent, the vegetative buffer shall be four times the percent slope times 100 feet. Where a vegetative buffer is not established, manure shall not be spread closer than 50 feet from the defined drainage channel or sinkholes on slopes of six percent or less. Without a vegetative buffer on slopes greater than six percent, the distance shall be eight times percent slope times 100 feet. For example, the buffer zone for a 10 percent slope should be: $8 \times 0.10 \times 100 = 80$ feet.

3. The following manure management alternatives concern manure with less than 60 percent moisture content:

- i. Manure to be spread on land which will be tilled, shall be incorporated in the soil within 48 hours by:

- (1) Moldboard plowing;
- (2) Chisel plowing followed by disking; or
- (3) Other methods which at a minimum achieve the results attained by the methods identified in (d)3i(1) or (2) above.

- ii. Manure may be spread on the surface of pasture or hayland having more than a 75 percent vegetative cover.

iii. Manure may be spread on the surface on land where no-till corn will be planted at half the recommended rate as determined in (c) above during the months of March, April, or May.

4. Manure containing 60 percent or more moisture shall only be spread on cropland to be tilled and must be incorporated in the soil the same day by:

i. Moldboard plowing;

ii. Chisel plowing followed by disking; or

iii. Other methods which at a minimum achieve the results attained by the methods identified in (d)4i or ii above.

5. The following concern land slope:

i. Manure shall not be applied on land where the slope exceeds eight percent, except when injected or plow furrow application is made.

ii. If injected or plow furrow application is made, the slope of the land shall not exceed 10 percent.

6. The requirements for the application of manure as contained in (d)5 above may be modified if the application is made according to an approved conservation plan, developed by the Soil Conservation District for the control of runoff and erosion, and which has been implemented by the owner.

New Rule, R.1999 d.199, effective June 21, 1999.
See: 31 N.J.R. 823(a), 31 N.J.R. 1607(a).