

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

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

Section was "Dispute procedures".

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. 2:76-2.3, Utilization of agricultural management practices, recodified to N.J.A.C. 2:76-2.5.

Amended by R.2014 d.057, effective April 7, 2014.

See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).

Section was "Recommendations of site specific agricultural management practices where a board exists". Rewrote the section.

#### Law Review and Journal Commentaries

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

#### Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 239) adopted, which affirmed a county agriculture development board's approval of construction of a barn where the permit applicant, who operated a commercial farm pursuant to the requirements of N.J.S.A. 4:1C-9, was engaged in an accepted agricultural operation or practice and consequently had a legitimate agriculturally based reason under the Right to Farm Act for preemption of municipal land use authority. Application of the municipal ordinance would have entirely precluded applicant's ability to construct the barn, not merely restrict it, and moreover no testimony was offered to remotely suggest that fire or other emergency vehicles would be unable to reach the applicant's property, as access to the property was identical whether or not a barn would be built. In re Petty (Appeal of Resolution Issued by Warren County Agric. Dev. Bd.), OAL Dkt. No. ADC 05370-06, Final Decision (June 28, 2007).

Applicant failed to establish that she operated a commercial farm, as defined in N.J.S.A. 4:1C-3 and N.J.A.C. 2:76-2.1, because she did not provide clear evidence of income from agricultural production; thus, applicant did not meet the threshold for a site-specific agricultural management practice determination pursuant to N.J.S.A. 4:1C-9 and N.J.A.C. 2:76-2.3 and was unable to preempt application of a local zoning ordinance. Hertz v. Morris County Agric. Dev. Bd., OAL DKT. NO. ADC 07672-06, Final Decision (January 25, 2007).

Where the Tax Court of New Jersey had ruled that the landowners' premises met the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., which was a threshold issue in determining applicability of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., landowners were entitled to a determination by the county agricultural development board whether their commercial farm operation constituted a generally accepted agricultural operation or practice pursuant to N.J.A.C. 2:76-2.3(a) (all parties were in agreement with this result). In re Barton Nursery (Appeal From Decision of State Agric. Dev. Comm'n), OAL Dkt. No. ADC 6441-02, 2005 N.J. AGEN LEXIS 396, Initial Decision (August 5, 2005).

#### 2:76-2.4 Determinations of site-specific agricultural management practices where a board does not exist

(a) In counties where a board does not exist, a commercial farm owner or operator that meets the eligibility criteria pursuant to N.J.S.A. 4:1C-3 and 9 may submit an application to the Committee to determine if his or her operation constitutes a generally accepted agricultural operation or practice included in any of the permitted activities set forth in N.J.S.A. 4:1C-9.

(b) The provisions of N.J.A.C. 2:76-2.3(b) through (l) shall apply to the Committee's consideration of the application.

(c) The Committee shall pass a resolution granting, with or without conditions, or denying the request for a site-specific agricultural management practice determination. The resolution shall contain detailed findings of fact and conclusions of law, including commercial farm eligibility, the relationship(s), if any, between the operation or practice that is the subject of the application submitted pursuant to N.J.A.C. 2:76-2.3 and any activity permitted pursuant to N.J.S.A. 4:1C-9, and include references to any supporting documents. The resolution shall be forwarded to the commercial farm owner and commercial farm operator, if applicable, the municipality(ies) in which the commercial farm is located, and any other individuals or organizations deemed appropriate by the Committee within 30 days of passage of the resolution.

1. The decision of the Committee 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.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.

Amended by R.2014 d.057, effective April 7, 2014.

See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).

Section was "Recommendations of site specific agricultural management practices where a board does not exist". Rewrote the section.

#### Law Review and Journal Commentaries

Right to Farm Act Pre-empts 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 procedures and site-specific agricultural management practices and procedures

(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.

(c) If a commercial farm owner or operator believes a municipality or county's standards or requirements for agricultural operations or practices are unduly restrictive, or believes a municipality or county is unreasonably with-

holding approvals related to agricultural operations or practices, then the commercial farm owner or operator may request that the board, or the Committee in counties where no board exists, make a determination in the matter by requesting a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 or 2.4, respectively. The board, or Committee in counties where no board exists, shall review the matter and make a determination regarding whether RTFA protection is warranted.

(d) A commercial farm owner or operator shall not be precluded from requesting a site-specific agricultural management practice determination from a board, or from the Committee in counties where no board exists, pursuant to N.J.A.C. 2:76-2.3 or 2.4, respectively, for activities set forth in agricultural management practices 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.

1. No site-specific agricultural management practice approval shall be granted if it is inconsistent 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.

(e) A commercial farm owner and/or operator who obtains a site-specific agricultural management practice determination by resolution from the board, or from the Committee in counties where no board exists, may present the resolution to appropriate municipal officials in support of obtaining appropriate permits, if applicable.

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.

Amended by R.2014 d.057, effective April 7, 2014.

See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).

Section was "Utilization of agricultural management practices and site specific agricultural management practices". Added (c) through (e).

#### Law Review and Journal Commentaries

Right to Farm Act Pre-empt's 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 imple-

menting 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).

#### Law Review and Journal Commentaries

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

### 2:76-2.7 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 with 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, then the board shall contact the commercial farm owner or operator to provide evidence that the agricultural operation is a commercial farm pursuant to N.J.S.A. 4:1C-3.

(c) If appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that 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 approved by the board pursuant to N.J.A.C. 2:76-2.3. If board members conduct the inspection, the board shall ensure that less than a quorum, as defined in the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., is present at the inspection.

1. The board shall, at one or more regular meeting(s), determine commercial farm eligibility and/or determine whether the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

(d) If the board determines that the farm is a commercial farm pursuant to N.J.S.A. 4:1C-3 and that 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 approved by the board pursuant to N.J.A.C. 2:76-2.3, the board shall hold a public hearing in accordance with the hearing procedures set forth in N.J.A.C. 2:76-2.8 and with the provisions of N.J.A.C. 2:76-2.3(k).

1. The decision of the board, containing its findings and recommendations, shall be forwarded to the Committee, the aggrieved person, the municipality(ies) in which the commercial farm is located, the commercial farm owner, and the commercial farm operator, if applicable, within 60 days of receipt of the complaint.

i. The decision of the board shall be in the form of a resolution providing a summary of the testimony, detailed findings of fact and conclusions of law, references to any supporting documents, a copy of the agricultural management practice or site-specific agricultural operation or practice utilized by the board in its decision, and any other information requested by the Committee.

ii. Any person aggrieved by the decision of the board regarding a complaint against a commercial farm in accordance with (b) above 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 52:14F-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.

(e) 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 approved by the board pursuant to N.J.A.C. 2:76-2.3, the board shall contact the farm owner to provide evidence that the farm operation is a commercial farm pursuant to N.J.S.A. 4:1C-3.

1. The board shall determine whether the commercial farm operation or practice in dispute involves agricultural activity(ies) that is or are included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9.

(f) If appropriate, one or more board members or board staff may inspect the farm operation to confirm commercial farm eligibility and/or to verify that the operation or practice is included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. If board members conduct the inspection, the board shall ensure compliance with the provisions of the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., if applicable.

(g) If the board determines that the dispute subject to this section does not involve a commercial farm as defined in N.J.S.A. 4:1C-3 and/or agricultural activity(ies) included in

one or more of the protected activities set forth in N.J.S.A. 4:1C-9, then the board shall dismiss the complaint. The board's decision shall be set forth in a resolution containing detailed findings of fact and conclusions of law and references to any supporting documents. The resolution shall be transmitted to the commercial farm owner, the commercial farm operator, if applicable, the aggrieved person, the Committee, and the municipality(ies) in which the farm operation is located within 60 days of receipt of the complaint.

(h) If the board determines that the dispute subject to this section involves a commercial farm as defined in N.J.S.A. 4:1C-3 and agricultural activity(ies) included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9, then 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 a site-specific agricultural management practice determination and, if so, the status of the board's determination.

2. Upon receipt of the complaint, the Committee shall review the board's determinations that the dispute involves a commercial farm as defined in N.J.S.A. 4:1C-3 and agricultural activity(ies) included in one or more of the permitted activities set forth in N.J.S.A. 4:1C-9. As part of its review, the Committee may contact the farm owner to provide additional information. If the Committee determines that the dispute does not involve a commercial farm as defined in N.J.S.A. 4:1C-3 and/or agricultural activity(ies) included in one of more of the permitted activities set forth in N.J.S.A. 4:1C-9, then the Committee shall dismiss the complaint. The Committee's decision shall be set forth in a resolution containing detailed findings of fact and conclusions of law and references to any supporting documents. The resolution shall be transmitted to the commercial farm owner, the commercial farm operator, if applicable, the aggrieved person, and the municipality(ies) in which the farm operation is located.

i. 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.

(i) If the Committee determines that the dispute subject to this section involves a commercial farm as defined in N.J.S.A. 4:1C-3 and agricultural activity(ies) included in one or more of the permitted activities set forth N.J.S.A. 4:1C-9, then the Committee shall hold a public hearing in accordance with the hearing procedures set forth in N.J.A.C. 2:76-2.8. The hearing shall be limited to consideration of whether or not the disputed agricultural activity constitutes a generally accepted operation or practice.

1. If the Committee determines that the disputed agricultural activity constitutes a generally accepted operation

or practice, its determination shall be sent to the board for a public hearing on the allegations of the complaint filed by the aggrieved person against the commercial farm.

2. If the Committee determines that the disputed agricultural activity does not constitute a generally accepted operation or practice, the complaint shall be dismissed. The Committee's determination 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.

3. The Committee's determination pursuant to (i)1 or 2 above shall be in the form of a resolution containing detailed findings of fact and conclusions of law and references to any supporting documents. The resolution shall be sent to the board, the aggrieved person, the municipality(ies) in which the commercial farm is located, the commercial farm owner, and the commercial farm operator, if applicable.

(j) Upon receipt of the Committee's determination pursuant to (i)1 above, the board shall hold a public hearing on the allegations of the complaint filed by the aggrieved person against the commercial farm. The board shall issue its findings and recommendations within 60 days of the receipt of the Committee's decision. The board's hearing shall be conducted in accordance with the procedures set forth in N.J.A.C. 2:76-2.8 and with the provisions of N.J.A.C. 2:76-2.3(k).

(k) Any person aggrieved by the decision of the board regarding a complaint against a commercial farm in accordance with this section shall appeal the decision to the Committee within 10 days from receipt of the board's decision. The Committee shall schedule a hearing 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.

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

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

Recodified from N.J.A.C. 2:76-2.10 and amended by R.2014 d.057, effective April 7, 2014.

See: 45 N.J.R. 1449(a), 46 N.J.R. 599(a).

Section was "Negotiation of conflicts between any person aggrieved by the operation of a commercial farm". Rewrote the section.

#### Law Review and Journal Commentaries

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

#### Case Notes

This section applies only in cases where the Board issues a decision in a dispute concerning activities that are addressed by an Agricultural Management Practice; therefore, the ALJ erred in relying, in part, on the regulation because petitioner's claim did not involve a dispute over an

AMP, but, instead, whether the activities on the premises of an adjacent landowner were conducted for agricultural purposes. *Bohlin v. Brickyard*, OAL Dkt. No. ADC 743-08, Final Decision (November 5, 2009).

#### 2:76-2.8 Hearing procedures for Right to Farm cases

(a) The Committee and county agriculture development boards shall follow the procedures set forth in this section for cases arising from the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. and the Right to Farm rules set forth at N.J.A.C. 2:76-2, 2A, and 2B.

(b) The procedures set forth in this section shall apply only after the county agriculture development board or the Committee determines that it has jurisdiction to hear the Right to Farm case.

(c) Procedures applicable to requests by a commercial farm for a site-specific agricultural management practice determination (see N.J.A.C. 2:76-2.3 and 2.4) shall be as follows:

1. Written notice of the request shall be given by the commercial farm, at its sole expense, via certified mail, return receipt requested, and/or by personal service, to:

i. The clerk and land use board secretary of the municipality in which the commercial farm is located. If the commercial farm is located within 200 feet of an adjoining municipality, then written notice of the request shall be given as set forth in (c)1 above to the clerk and land use board secretary of the adjoining municipality;

ii. The owners of all real property, on the current tax duplicates, within 200 feet in all directions of the property upon which the commercial farm is located. The commercial farm shall be solely responsible to pay for and obtain a certified list of property owners in accordance with N.J.S.A. 40:55D-12.c;

iii. The State Agriculture Development Committee;

iv. The county planning board, if the commercial farm is located on property adjacent to a county road or county-owned property;

v. The Commissioner of the New Jersey Department of Transportation, if the commercial farm is located on a State highway;

vi. The public, by publication in the official newspaper of the municipality, if there is one, or in a newspaper of general circulation in the municipality.

2. The written notice set forth in (c)1 above shall state the date, time, and place of the hearing; the site-specific agricultural management practice(s) that will be considered at the hearing; the identity of the property upon which the commercial farm is located by street address, if any, or by reference to lot and block number(s); the location and times at which documents in support of the commercial farm's request are available at the office of the board; and