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CHAPTER 92

**AGRICULTURAL DEVELOPMENT
IN THE HIGHLANDS**

Authority

N.J.S.A. 13:20-1 et seq., specifically 13:20-29.

Source and Effective Date

Effective: March 1, 2013.
See: 45 N.J.R. 735(a).

Chapter Expiration Date

Chapter 92, Agricultural Development in the Highlands, expires on March 1, 2020.

Chapter Historical Note

Chapter 92, Agricultural Development in the Highlands, was adopted as new rules by R.2006 d.150, effective May 1, 2006. See: 37 N.J.R. 2913(a), 38 N.J.R. 1815(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 92, Agricultural Development in the Highlands, was scheduled to expire on May 1, 2013. See: 43 N.J.R. 1203(a).

Chapter 92, Agricultural Development in the Highlands, was re-adopted, effective March 1, 2013. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PURPOSE

2:92-1.1 Purpose

SUBCHAPTER 2. DEFINITIONS

2:92-2.1 Definitions

SUBCHAPTER 3. FARM CONSERVATION PLAN

2:92-3.1 Farm Conservation Plan requirements

SUBCHAPTER 4. RESOURCE MANAGEMENT SYSTEM PLAN

2:92-4.1 Resource Management System Plan requirements

SUBCHAPTER 5. PENALTIES AND ENFORCEMENT

2:92-5.1 Penalty and enforcement provisions

SUBCHAPTER 1. PURPOSE

2:92-1.1 Purpose

(a) This chapter establishes the practice standards and quality criteria that must be met for Farm Conservation Plans or Resource Management System Plans for agricultural or horticultural development which would increase, either individually or cumulatively, new agricultural impervious cover by three percent or more of the total land area of a Farm Management Unit, triggering the thresholds in the Highlands Preservation Area, established in the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.

(b) Nothing in this chapter shall be construed to alter or compromise the goals, purposes, policies, and provisions of, or lessen the protections afforded to farmers by, the Right to Farm Act, P.L. 1983, c. 31 (N.J.S.A. 4:1C-1 et seq.), and any rules or regulations adopted pursuant thereto.

(c) The requirements of these rules apply only to the percentage of the total land area of the farm management unit either individually or cumulatively within the Highlands Preservation Area.

SUBCHAPTER 2. DEFINITIONS

2:92-2.1 Definitions

For the purpose of this chapter, the following terms shall have the meanings described below, unless the context clearly indicates otherwise:

“Agricultural or horticultural development” means construction for the purposes of supporting common farmsite activities, including, but not limited to: production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

“Agricultural impervious cover” means agricultural or horticultural buildings, structures, or facilities with or without flooring, residential buildings and paved areas, but shall not mean temporary coverings.

“Appropriate agent” means a person outside of U.S. Department of Agriculture (USDA) who is authorized by NRCS to provide technical assistance in the delivery of technical services to implement Farm Bill Programs.

“DEP” means the New Jersey Department of Environmental Protection.

“Department” or “NJDA” means the New Jersey Department of Agriculture.

“Farm Conservation Plan” means a site specific plan that prescribes needed land treatment and related conservation and natural resource management measures, including forest management practices, that are determined to be practical and reasonable for the conservation, protection and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity and the control and prevention of non-point source pollution.

“Farm Management Unit” means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities,

producing agricultural or horticultural products, and operated as a single enterprise.

“Highlands Act” means the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.

“Highlands Preservation Area” means that portion of the Highlands region so designated by subsection b of section 7 of the Highlands Water Protection and Planning Act (N.J.S.A. 13:20-7).

“Local Soil Conservation District” means a soil conservation district established in accordance with the Soil Conservation Act, N.J.S.A. 4:24-1 et seq., which is regionally located and has jurisdiction on a county or multi-county basis.

“Natural Resources Conservation Service (NRCS)” means the technical agency of the USDA, authorized by Public Law 46 of the 74th Congress for the conservation of agricultural and related natural resources.

“New Jersey Field Office Technical Guide (NJ-FOTG)” means the USDA-NRCS technical reference, customized for the State of New Jersey, prescribing practices and standards for the conservation and management of soil, water and related natural resources.

“Resource Management System (RMS) Plan” means a site specific farm conservation plan that:

1. Prescribes needed land treatment and related conservation and natural resources management measures, including forest management practices, for the conservation, protection, and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of non-point source pollution; and
2. Establishes criteria for resources sustainability of soil, water, air, plants, and animals.

“State Soil Conservation Committee (SSCC)” means the committee established pursuant to the Soil Conservation Act, N.J.S.A. 4:24-1 et seq.

“Technical Service Provider (TSP)” means NRCS certified professionals outside of the U.S. Department of Agriculture (USDA) that help agricultural producers apply conservation practices on the land.

“Temporary coverings” mean permeable, woven and non-woven geotextile fabrics that allow for water infiltration or impermeable materials that are in contact with the soil and are used for no more than two consecutive years.

“USDA” means the United States Department of Agriculture.

SUBCHAPTER 3. FARM CONSERVATION PLAN

2:92-3.1 Farm Conservation Plan requirements

(a) Agricultural or horticultural development that results, individually or cumulatively, in at least three percent but less than nine percent increase in new agricultural impervious cover to the total land area of the Farm Management Unit since enactment of the Highlands Act (August 10, 2004) requires the development and implementation of a Farm Conservation Plan approved in accordance with this section.

1. Prior to any development activity, the owner or operator of a farm management unit or his agent shall develop a farm conservation plan with the assistance of the NRCS, TSP or an appropriate agent in conformance with Sections III and IV of the June 1, 2005 NRCS NJ-FOTG, as amended and supplemented, which is hereby adopted and incorporated by reference.

- i. Copies of the NJ-FOTG are available from the NRCS Field Offices and the State Office at 220 Davidson Ave, 4th Floor, Somerset, NJ 08873.

- ii. An electronic copy of the NJ-FOTG is available at <http://www.nrcs.usda.gov/technical/efotg/>.

- iii. A copy of this document is on file in the NJDA office of the Director, Division of Agricultural and Natural Resources, P.O. Box 330, Trenton, NJ 08625.

2. The following shall be contained in the Farm Conservation Plan submitted for approval:

- i. The name, address, block(s) and lot(s) of the operation and the name and telephone number of the emergency contact;

- ii. The owner or operator’s name, signature and date;

- iii. A soil map;

- iv. An aerial photograph or diagram of the field;

- v. Identification of soil, water and animal resources, specifically, threatened and endangered species;

- vi. A list of conservation practices to be implemented;

- vii. The location and schedule for applying new practices;

- viii. Records of plan implementation activities;

- ix. A plan for operation and maintenance; and

- x. Any other site-specific information necessary for plan certification.

3. The Farm Conservation Plan shall be reviewed, and if appropriate, approved by the local Soil Conservation District. Plans developed in consultation with entities other

than the NRCS or TSP must be reviewed by NRCS for approval prior to submission to the local Soil Conservation District for review.

4. The local Soil Conservation District shall transmit a copy of the approved plan to the State Soil Conservation Committee. If any part of the Farm Management Unit is preserved under any farmland preservation program, the local Soil Conservation District shall also transmit a copy of the plan to the State Agriculture Development Committee.

5. The local Soil Conservation District shall approve the Farm Conservation Plan if it finds that the plan meets the NJ-FOTG Quality Criteria (Section III) and Practice Standards (Section IV) for soil, water and animal resource concerns, specifically threatened and endangered species.

6. The Farm Conservation Plan shall be executed in accordance with the implementation schedule contained in the approved plan.

7. Anyone aggrieved by a decision of the Soil Conservation District shall have an opportunity to appeal in accordance with N.J.A.C. 2:90-1.6.

8. Anyone who is aggrieved by the determination made in accordance with (a)7 above shall, upon written request transmitted to the Department within 20 days of that determination, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to 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.

i. Requests for hearings shall be sent to Director, Division of Agriculture and Natural Resources, N.J. Department of Agriculture, PO Box 330, Trenton, New Jersey 08625-0330.

SUBCHAPTER 4. RESOURCE MANAGEMENT SYSTEM PLAN

2:92-4.1 Resource Management System Plan requirements

(a) Agricultural or horticultural development that results, individually or cumulatively, in at least nine percent or more of new agricultural impervious cover to the total land area of the Farm Management Unit since enactment of the Highlands Act (August 10, 2004) requires the development and implementation of a Resource Management System Plan in accordance with this section.

1. Prior to any development activity, the owner or operator of a farm management unit or his agent shall develop a Resource Management System Plan with the assistance of the NRCS, TSP or appropriate agent in conformance with the June 1, 2005 NRCS NJ-FOTG, as

amended and supplemented, which is hereby adopted and incorporated by reference.

i. Copies of the NJ-FOTG are available from the NRCS Field Offices and the State Office at 220 Davidson Ave, 4th Floor, Somerset, NJ 08873.

ii. An electronic copy of the NJ-FOTG is available at <http://www.nrcs.usda.gov/technical/efotg/>.

iii. A copy of this document is on file in the NJDA office of the Director, Division of Agricultural and Natural Resources, P.O. Box 330, Trenton, NJ 08625.

2. The following shall be contained in the RMS plan submitted for approval:

i. The name, address, block(s) and lot(s) of the operation and the name and telephone number of the emergency contact;

ii. The owner or operator's name, signature and date;

iii. A soil map;

iv. An aerial photograph or diagram of the field;

v. Identification of soil, water, air, plant and animal resources including endangered and threatened species;

vi. A list of conservation practices to be implemented;

vii. The location and schedule for applying new practices;

viii. Records of plan implementation activities;

ix. A plan for operation and maintenance; and

x. Any other site-specific information necessary for plan certification.

3. Upon receipt and prior to approval, the local Soil Conservation District will transmit a copy of the Resource Management System Plan to the DEP, who must review and approve it with or without conditions or deny it within 60 days of receipt.

4. The Resource Management System Plan shall be reviewed, and if appropriate, approved by the local Soil Conservation District. Plans developed by entities other than the NRCS or TSP must be reviewed by NRCS for approval prior to submission to the local Soil Conservation District for review.

5. The local Soil Conservation District shall transmit a copy of the approved plan to the State Soil Conservation Committee. If any part of the Farm Management Unit is preserved under any farmland preservation program, the local Soil Conservation District shall also transmit a copy of the plan to the State Agriculture Development Committee.

6. The local Soil Conservation District shall approve the RMS plan if it finds that it meets the NJ-FOTG Quality Criteria and Standards for soil, water, air, plants and animal resources.

7. The Resource Management System Plan shall be executed in accordance with the implementation schedule contained in the approved plan.

8. Anyone aggrieved by a decision of the local Soil Conservation District shall have an opportunity to appeal in accordance with N.J.A.C. 2:90-1.6.

9. Anyone who is aggrieved by the determination made in accordance with (a)8 above shall, upon written request transmitted to the Department within 20 days of the determination, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to 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.

i. Requests for hearings shall be sent to Director, Division of Agriculture and Natural Resources, N.J. Department of Agriculture, PO Box 330, Trenton, New Jersey 08625-0330.

SUBCHAPTER 5. PENALTIES AND ENFORCEMENT

2:92-5.1 Penalty and enforcement provisions

(a) Any person who violates N.J.S.A. 13:20-29.a, or any provision of this chapter, or the requirements of a Farm Conservation Plan or Resource Management System Plan developed pursuant to this chapter, shall be liable to a civil administrative penalty of up to \$5,000 for each violation pursuant to the procedures set forth in this section to determine the amount of the penalty.

(b) Pursuant to N.J.S.A. 13:20-29.b.(1), the Department or the local Soil Conservation District may institute a civil action in the Superior Court for injunctive relief to prohibit and prevent the violation(s) and the court may proceed in a summary manner.

(c) If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense.

(d) The Department shall use the factors described below to determine the amount of a civil administrative penalty under this section. The standards below assign each violation a point value. The total number of points is used to determine the penalty amount per day for each violation. The factors, and the point values assigned to them, are as follows:

1. The seriousness of the violation shall be classified as major, moderate or minor and assigned points as follows:

i. Major violation shall include an intentional, deliberate, purposeful, knowing or willful act or omission by the violator and is assigned three points;

ii. Moderate violation shall include any unintentional but foreseeable act or omission by the violator and is assigned two points; and

iii. Minor violation shall include any violation not identified in (d)1i or ii above and is assigned one point.

2. The percentage of agricultural impervious cover shall be assigned points as follows:

i. A violation impacting nine percent or more new agricultural impervious cover is assigned two points; and

ii. A violation impacting at least three percent but less than nine percent new agricultural impervious cover is assigned one point.

(e) The Department shall sum the total points assigned according to the factors in (d) above, and shall determine the penalty amount per day using the following table:

Penalty points table

<u>Total Points</u>	<u>Penalty Amount Per Day</u>
5 or more	\$5,000
4	\$4,000
3	\$3,000
2	\$2,000

(f) The Department shall investigate alleged violations of the rules and take appropriate action, which may include, but is not limited to, the following:

1. Assessment of a civil administrative penalty pursuant to (c), (d) and (e) above, or opportunity to correct the violation pursuant to (f)2 below.

2. If a Farm Conservation Plan or Resource Management System Plan has been developed, but not fully implemented, the Department shall determine the status of compliance with the plan. Where a violation is found, the Department may allow 60 days to correct the violation, before imposing a civil administrative penalty.

(g) For a violation under this section, the Department may adjust the daily civil administrative penalty amount based on the following factors:

1. The violator's compliance history;

2. The nature, timing and effectiveness of measures the violator takes to mitigate the effects of the violation;

3. The nature, timing and effectiveness of measures the violator takes to prevent future similar violations;

4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or

5. Other specific circumstances of the violator or violation.

(h) No assessment shall be levied until after the party has been notified by certified mail or personal service and has been provided an opportunity for a hearing, in accordance with N.J.A.C. 2:1-3.10(a).

(i) Any amount assessed shall take into account the seriousness and duration of the violation and whether the violation involves the failure to prepare or to implement a Farm Conservation Plan or Resource Management System Plan and shall also provide for an enhanced penalty if the violation causes an impairment to water quality, depending on the severity of the impairment. Any civil administrative penalty assessed under this may be adjusted by the Secretary of Agriculture upon the posting of a performance bond by the violator, or upon such terms and conditions as the Secretary may establish by regulation.

(j) Any person who fails to pay a civil administrative penalty in full shall be subject, upon order of a court, to a civil penalty of up to \$5,000 for each violation. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense. Any such civil penalty imposed may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L. 1999, c. 274 (N.J.S.A. 2A:58-10 et seq.).

(k) All penalties collected pursuant to this chapter shall either be used, as determined by the Highlands Water Protection and Planning Council (Highlands Council), by the State Agriculture Development Committee for the preservation of farmland in the preservation area or by the State development transfer bank used or established by the Highlands Council to purchase development easements/credits in the preservation area.

1. The Department will forward quarterly reports to the Highlands Council and the State Agriculture Development Committee detailing any civil penalties collected pursuant to these rules.

(l) Anyone who is aggrieved by a determination pursuant to this section shall, upon written request transmitted to the Department within 20 days of that determination, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to 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.

1. Requests for hearings shall be sent to Director, Division of Agriculture and Natural Resources, N.J. Department of Agriculture, P.O. Box 330, Trenton, New Jersey 08625-0330.

