



## Right to Farm

# What Is the Municipality's Role in Farm Regulation?



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In the most densely populated state in the country, conflicts between farmers, their non-farming neighbors and local government entities are common—and increasing. The Right to Farm Act, N.J.S.A. 4:1C-1 et seq., affords responsible farmers protections against municipal regulations that constrain farming and against public and private nuisance actions.

Enacted in 1983, the Right to Farm Act was companion legislation to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., which established New Jersey's Farmland Preservation Program. The Acts were designed to work together to preserve New Jersey's agricultural industry—by keeping land in agriculture and by protecting the ability to farm.

The two Acts also established the county agriculture development boards (CADBs) and the State Agriculture Development Committee (SADC), a state agency in, but not of, the Department of Agriculture. The SADC administers the Right to Farm and Farmland Preservation Programs, and the CADBs administer the same programs on a local level.

In 1998, the Act was amended to strengthen the protections for farmers. P.L. 1998, c.48. One of the most significant changes was to provide for pre-emption of municipal ordinances that seek to regulate specific agricultural activities as long as the agricultural operation meets the eligibility standards in the Act. The New Jersey Supreme Court upheld the Act's municipal pre-emption provision, finding that farmers may conduct certain agricultural activities despite municipal regulations to the contrary. *Township of Franklin v. den Hollander*, 172 N.J. 147 (2002).

The following are some common questions and answers about how the



*The Right to Farm Act, N.J.S.A. 4:1C-1 et seq., affords responsible farmers protections against municipal regulations that constrain farming and against public and private nuisance actions.*

Act affects your authority to regulate agricultural activities.

### **Q Are all farmers entitled to the protections of the Act?**

**A** No. The Act is designed to protect only responsible farmers who meet the definition of "commercial farm." The criteria for eligibility, as set forth in the Act, include the following:

- To qualify as a commercial farm, an operation that is larger than five acres must annually engage in agricultural or horticultural production worth at least \$2,500 and be eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1. For farms smaller than five acres, the annual production requirement is a minimum of \$50,000 and the

farm must satisfy the eligibility requirements for farmland assessment, other than the farm-size requirement.

- Agriculture must be a permitted use on the farm under the municipal zoning ordinance, or be consistent with the municipal master plan as of Dec. 31, 1997. If the commercial farm was in operation on the effective date of the amendments to the Right to Farm Act (July 2, 1998), however, the zoning ordinance/master plan requirement does not need to be met.
- The farmer must conduct his operation, or a specific agricultural activity at issue, in compliance with the standards contained in agricultural management practices that have been promulgated

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by the SADC, or with generally accepted agricultural practices.

- The operation must be in compliance with relevant state and federal statutes and rules.
- The operation must not pose a direct threat to public health and safety.

**Q If a farmer meets the eligibility criteria of the Act, do his agricultural activities automatically preempt municipal ordinances?**

**A** No. Although the New Jersey Supreme Court upheld the Act's municipal pre-emption provision, it cautioned that the county agriculture development boards (CADB) and the State Agriculture Development Committee (SADC), do not have "carte blanche" right to impose their views, and directed the agencies to consider local ordinances and regulations that may affect an agricultural activity. Id. at 151-152.

The Court also held that the SADC and CADBs must consider the impact of the agricultural activity on public health and safety "and temper their determinations with these standards in mind." Id. at 151. Where there is a conflict between an agricultural activity and an ordinance, a farmer may not have to comply with

the ordinance if he can demonstrate a "legitimate agriculturally-based reason" for not complying. Id. at 153.

**Q What are agricultural management practices (AMPs)?**

**A** Agricultural management practices are standards for specific agricultural activities that are promulgated by the SADC through the rulemaking procedure. Farmers must be in compliance with AMPs to receive the protections of the Act. If an activity is not addressed by a promulgated AMP, the farmer must be in compliance with generally accepted agricultural management practices. The SADC and CADBs rely upon agricultural and soil experts to make this determination.

post operations, fencing installation and aquaculture. It currently is drafting AMPs for equine operations, farm markets, greenhouses and agritourism.

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

**A** When an individual, including a municipality, is "aggrieved" by a commercial farm operation, the Act requires such persons to file a complaint with the applicable CADB prior to filing an action in court. Municipalities seeking to enforce their ordinances are therefore required to file a complaint with the CADB rather than issue a summons against the farmer. The SADC or

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To date, the SADC has adopted AMPs for apiaries, poultry manure application, food processing by-product application, commercial vegetable and tree fruit production, natural resource conservation, on-farm com-

CADB would then hold a public hearing to determine whether the farmer is entitled to the protections of the Act.

In the den Hollander decision, the New Jersey Supreme Court recognized that the SADC and CADBs have primary jurisdiction over disputes between municipalities and commercial farms - meaning that such disputes should be heard by the agencies rather than in court. Id. at 151. (All final decisions of the SADC, however, can be appealed to the New Jersey Superior Court, Appellate Division.)

For example, Farmer Brown grows fruits and vegetables on a farm in Salem County. He has experienced significant crop damage from deer that wander onto his farm from an adjacent county park. Farmer Brown erects a high-tensile woven wire fence at a height of eight feet around his farm to prevent the deer from entering his property. A township ordinance prohibits fencing that exceeds six feet in height.

If the township wished to enforce its fence ordinance against Farmer Brown, it would be required to file a complaint with the local CADB rather than issue a summons and proceeding in municipal court. The CADB would hold a public hearing to determine whether Farmer Brown meets the eligibility criteria of the Act. The CADB would consider the township's ordinance and the reasons for the ordinance. It



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would then balance the township's interests, including its public health and safety concerns, against the farmer's reasons for not complying with the ordinance to determine whether Farmer Brown's fence may preempt the ordinance.

**Q Can a farmer seek the protections of the Act before anyone has filed a complaint against him?**

**A** A farmer may arm himself with the protections of the Act by applying to his local CADB for a "site-specific agricultural management practice recommendation." The CADB would determine whether the farm meets the eligibility criteria of the Act. If it does, and the farmer's proposed activity conflicts with a municipal ordinance, the CADB would consider the ordinance to determine whether the agricultural activity can preempt the municipal ordinance.

For Example, Farmer Jones operates a dairy farm in Warren County. She wants to construct a new barn for her cows and believes the best location for the barn is 15 feet from the property line. A municipal ordinance requires a 25-foot setback.

Farmer Jones may apply to her CADB for a "site-specific agricultural management practice recommendation" for approval to construct a barn 15 feet from the property line. The CADB would follow the same procedure in the example above to determine whether Farmer Jones's barn may preempt the setback ordinance.

**Q If a municipality believes that a farm does not meet the Act's definition of "commercial farm," can it issue a summons against the farmer instead of filing a complaint with the local CADB?**

**A** No. The New Jersey Superior Court, Appellate Division, has held that whether an agricultural operation meets the definition of commercial farm should be determined first by the SADC or CADBs. *Borough of Closter v. Abram Demaree Homestead, Inc.*, 365 N.J. Super. 338, 349-350. (App. Div. 2004).

**Q In light of the amendments to the Act, can a farmer still apply to his municipality for site plan approval or a variance to construct a farm building—or does he have to apply to his CADB for a site-specific agricultural management practice recommendation?**

**A** A farmer has the right to apply to his municipality for site plan approval or a variance. The Right to Farm Act procedures are voluntary; if a farmer wishes to proceed outside of the Act, he may.

**Q If a farmer tells a municipal official that the township can't enforce its regulations against him because of the Right to Farm Act, what should the municipality do?**

**A** A farmer cannot assert that he is protected by the Right to Farm Act without a formal determination from a CADB or the SADC. If a municipality believes the farmer is in violation of an ordinance, it should file a complaint with the local CADB.

**Q What happens if a CADB or the SADC determine the farm is not entitled to the protections of the Act?**

**A** If a CADB or the SADC finds that a farmer is not protected by the Act, the municipality can enforce and apply its ordinances. (If this determination is appealed, however, the township should seek legal advice regarding how to proceed pending an appeal.)

**Q If a farm has been preserved under the state's Farmland Preservation Program, does it automatically receive right-to-farm protection?**

**A** No. A CADB or the SADC would still need to determine whether the farm meets the eligibility criteria set forth in the Right to Farm Act.

**Q Can a township adopt and enforce a right-to-farm ordinance that prohibits or restricts agricultural activities that are protected by the Right to Farm Act, such as processing the agricultural output of the farm?**

**A** The SADC encourages municipalities to adopt ordinances that provide equal or greater protections to farmers than the Right to Farm Act. If there is a conflict between a right-to-farm ordinance and the Right to Farm Act, a CADB or the SADC may find that the agricultural activity preempts the right-to-farm ordinance and that the prohibited activity is permissible despite the ordinance.

**Q If a farmer receives approval to construct a building through a site-specific agricultural management practice recommendation from its CADB, does he need to receive a building permit?**

**A** Yes. If an agricultural building requires a construction permit under the Uniform Construction Code, N.J.A.C. 5:23-1 et seq., the farmer will need to receive such a permit. The Right to Farm Act does not preempt the Uniform Construction Code.

**Q What happens if a farmer is not complying with a promulgated AMP or site-specific agricultural management practice recommended by a CADB?**

**A** Promulgated and site-specific AMPs are not enforceable regulations—they are merely standards with which a farmer must comply to receive the

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protections of the Act. The consequence of a farmer not complying with such practices is that he is not entitled to the protections of the Right to Farm Act.

**Q What activities are protected by the Act? What should a municipality do if it believes that activities on a parcel of land are not agricultural despite the landowner's assertion that it is a commercial farm?**

**A** The list of protected activities can be found at N.J.S.A. 4:1C-9. Certain activities that are related to agriculture may not be protected by the Act. For example, the processing of agricultural products, including timber, that are grown on another person's property—not the subject farm—is not a protected activity. The municipality should contact its local CADB or the SADC for assistance. If it is clear that the activities are not protected, the municipality will not be required to file a right-to-farm complaint with its local CADB.

**Q Are farm markets protected by the Act?**

**A** The Act includes farm markets in the list of protected activities, but stipulates that farm market buildings and associated parking areas must conform to municipal standards. This means that a municipality may not be able to prohibit a farmer from having a farm market on his property as long as the building and parking areas comply with municipal ordinances.

**Q Is agricultural labor housing protected by the Act?**

**A** In a recent right-to-farm matter, the SADC held that agricultural labor housing is not protected. This decision was appealed to the New Jersey Superior Court, Appellate Division, where it is pending.

The SADC is currently considering adopting a regulation to give right-to-farm protection to agricultural labor housing pursuant to a provision in the Act that authorizes the SADC to expand the Act's list of protected activities through the rulemaking procedure.

**Q Are horse farms protected by the Act?**

**A** Currently, only equine production activities, such as breeding, pasturing and hay production, are protected by the Act. The SADC is planning to propose a rule in the near future that will extend Right to Farm

protections to other equine activities, such as boarding and riding lessons.

**Q Is there an alternative procedure for resolving disputes between farmers, their neighbors and municipalities?**

**A** Farmers can opt to mediate conflicts with municipalities and neighbors through a free service offered by the SADC. Mediators are trained and certified by the SADC. This service has been a successful alternative to the hearing process.

The Right to Farm Act was designed to "provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in New Jersey." N.J.S.A. 4:1C-2e. As housing

developments increase, and more and more farms are permanently preserved, the Right to Farm program will continue to be a tool for sorting out the respective rights of farmers, their neighbors and municipalities.

More information can be found on the SADC's website at [www.state.nj.us/agriculture/sadc/rtfprogram.htm](http://www.state.nj.us/agriculture/sadc/rtfprogram.htm). Municipal officials can also call their local CADB or the SADC for assistance.

This article is for informational purposes only, and is not intended as legal advice.

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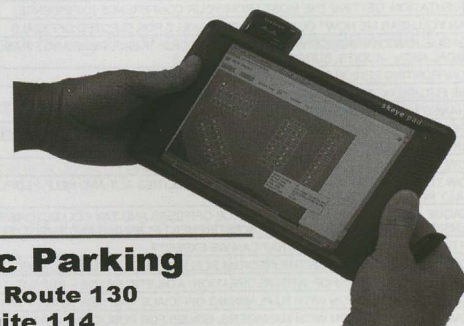
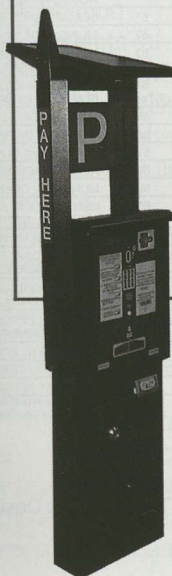
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