CUMBERLAND COUNTY AGRICULTURE
DEVELOPMENT BOARD

In the Matter of the Complaint of	)	
THE CUMBERLAND COUNTY BOARD OF HEALTH,	)	
	)	
Petitioner,		DECISION
	)	
vs.		DATED: August 20, 2002
	)	
DANIEL CHUPASHKO, d/b/a D & S FARMS	)	
	)	
Respondent.	)	

This case arises from bad odors circulating in the City of Millville, Cumberland County, as the result of respondent's application of liquid chicken manure.

This matter came on for hearing before the Cumberland County Agriculture Development Board (hereinafter referred to as "this Board") as the result of a written Complaint submitted by the Cumberland County Board of Health under date of June 27, 2002. The Complaint alleges that respondent deviated from prescribed agricultural management practice for use of liquid poultry manure alleging that the use constituted a public health nuisance that interfered with the comfort and/or general well being of the inhabitants of the City of Millville.

There was a criminal complaint filed in the Millville Municipal Court charging the violation of the Public Health Nuisance Code, which action was stayed by that court pending the outcome of these proceedings before the Cumberland County Agriculture Board.

All proceedings, including deliberations were conducted in open meetings in conformance with the Open Public Meetings Act, *N.J.S.A.* 10:4-6, *et seq.* All testimony was sworn, except for that part which was documentary, and the hearing was considered quasi-judicial and the evidence considered by this Board was presented by the two sides involved. Unsworn public statements were not permitted. Both the petitioner and respondent were represented by counsel: The Cumberland County Board of Health by Richard H. Daniels, Esq., and Daniel Chupashko, doing business as D & S Farms by Mitchell H. Kizner, Esq., of Flaster Greenberg. This Board agreed that Samuel J. Serata, Esq., the Special Assistant County Counsel representing the Board should preside over the hearing and act as hearing officer.

The main hearing was scheduled for July 9, 2002, at 7:00 p.m., and this Board then reconvened for deliberations in a public hearing August 6, 2002, at which time the deliberations were concluded with August 20, 2002 determined as the date this written decision would be provided.

Preliminarily this Board independently investigated and requested evidence needed to establish jurisdiction. At the beginning of the hearing the Hearing Officer announced that the board had concluded the three essentials of jurisdiction:

1. Respondent is a commercial farmer as he farms over five acres and his income is over $5,000.00.
2. The premises in Millville are zoned for agricultural use and were being used for agricultural purposes prior to July 2, 1998.
3. There is a recognized farm practice involved. See: *N.J.A.C.* 2:76-2A3.

Both Petitioner and Respondent agreed this Board had jurisdiction.

Mark Wiley, a Senior Sanitary Inspector employed by the Cumberland County Board of Health testified that on June 5, 2002, as the result of numerous complaints of bad odors, he inspected premises located on both sides of County Road 553 (Dividing Creek Road) and observed liquid chicken manure on the surface of the untilled ground that "looked like" it was applied the day before. On the field located on the south side of the road, Wiley observed men spreading liquid chicken manure. On cross-examination he testified that he could not tell when the chicken manure still on the surface was applied and the ground surface exhibited no indication of plowing or disking. He also testified there was no health risk involved.

Daniel Chupashko stated he started farming cereal crops in 1975 and works 40 hours per week farming. He stated he actually leases 660 acres of land in Millville, of which 550 acres are tillable. He also spreads liquid chicken manure on lands located in East Vineland and Buena without complaint, and finds the material is good for the soil and much less expensive than other types of fertilizer. Samples are sent to Penn State University for testing. He further testified that he always incorporates the liquid chicken manure into the soil the same day it is spread. He observed that the odor seemed stronger when the temperature is higher and the wind direction spreads the odor.

Mr. Chupashko testified that moldboard plowing did not work on this soil, chisel plowing alone did not adequately cover the liquid manure, and he used a chisel plow followed by disking with extra weight. By doing this, he was able to seal the moisture into the soil. He further testified that he planted corn, grain sorghum and soybeans, and that he did not want to apply the chicken manure too early because it leached out of the soil.

When queried, he testified that injectors are probably the best way to apply the liquid chicken manure, since that placed the material immediately below the surface and covered it as it was applied. Mr. Chupashko stated he had an injector coming and intended to use it on the Millville site.

Both parties were invited to provide written submissions to this Board at the conclusion of the hearing, and both did so. In addition, Mitchell H. Kizner, Esq., pursuant to request, submitted maps showing rates of application to different areas and a letter indicating that the soil conservation plan was in

the process of being updated. Copies of analysis of the liquid chicken manure, the soil tests, and other documentation were also supplied to this Board.

In the course of the deliberations, this Board carefully considered the testimony of the witnesses, the documentation supplied by all parties, the argument of counsel and the experience of its members. All of these factors led this Board to the following conclusions concerning the use of liquid chicken manure at the Millville, New Jersey site, which consists of Block 136, Lots 1,2,3, and 4:

1. The odor of liquid chicken manure is obnoxious to many people and due to the particular weather conditions involved in this case, the odor may have been more concentrated than if the humidity and temperature were lower and the wind speed greater.
2. There was no convincing evidence that the Respondent, Daniel Chupashko, violated the generally accepted agricultural practice set forth in *N.J.A.C.* 2:76-2A3, although there were some problems with the currency of the soil and liquid chicken manure tests.
3. Liquid chicken manure should never be stored on the site.
4. The application should be by the injection method only if the liquid chicken manure has moisture content of 60% or more, and to a depth of six inches beneath the surface of the soil.
5. The Respondent must have a current nutrient management plan including a soil analysis applicable to the crop(s) to be planted and grown, and records maintained to ensure his adherence to the plan.
6. The Respondent must have a current analysis (not more than 60 days prior to application) of the liquid chicken manure to be applied.
7. The documentation reflected above shall be available for inspection by the Cumberland County Agriculture Development Board upon request.