

STATE AGRICULTURE DEVELOPMENT COMMITTEE

POLICY

CONFLICT RESOLUTION PUBLIC HEARING GUIDELINES FOR CADBs

I. PURPOSE

The following guidelines are recommended procedures for County Agriculture Development Board (CADB) public hearings to resolve disputes between commercial farm operators and persons who are aggrieved by farm operations pursuant to N.J.S.A. 4:1C-10.1. Some of the guidelines are requirements of the Right to Farm Act (Act), N.J.S.A. 4:1C-1 et seq. and the regulations promulgated thereunder. For those procedures which are required by the Act or regulations, a citation is provided.

II. AUTHORITY

N.J.S.A. 4:1C-10.1
N.J.A.C. 2:76-2

III. POLICY

1. CADBs are required to hold public hearings and issue findings and recommendations:
 - a. Within 60 days of receiving a written complaint in which the disputed activity is addressed by an agricultural management practice recommended by the State Agriculture Development Committee (SADC) and promulgated pursuant to the Administrative Procedure Act. (N.J.S.A. 4:1C-10.1(b));
 - b. Within 60 days of receiving a written complaint in which the disputed activity is addressed by a site specific agricultural management practice recommended by the CADB pursuant to N.J.A.C. 2:76-2.3. (N.J.S.A. 2:76-2.10); and
 - c. Within 60 days of receiving a decision from the

SADC regarding whether a disputed activity constitutes a generally accepted agricultural operation or practice. (N.J.S.A. 4:1C-10.1(c)).

2. The hearing shall be conducted in conformance with the Open Public Meetings Act, N.J.S.A. 10:4-6 *et seq.* All deliberations and testimony shall be heard in open session, except that matters which fall within the attorney-client privilege may be discussed in closed session. N.J.S.A. 10:4-12b(7). After the public hearing of a particular right to farm issue, the CADB may provide for a limited period of time in which subsequent written submissions may be given to the CADB for consideration, and for incorporation into the hearing record. It is also recommended that the CADB deliberate and issue its findings and recommendations at an open public meeting held after the one in which the public hearing is conducted. In the interim, CADB staff can prepare recommendations based upon the testimony and the written record and provide the CADB with its recommendations at the subsequent meeting.
3. Upon receiving a complaint as described in Paragraphs 1a or 1b above, or a SADC decision as described in Paragraph 1c above, the CADB shall schedule a public hearing and notify the complainant, the commercial farm operator, any known expert witnesses and any other person deemed appropriate by the CADB of the time and place of the public hearing. The CADB should forward a copy of the complaint to the commercial farm operator.
 - a. With respect to complaints filed pursuant to Paragraphs 1a or 1b above, the CADB is required to contact the commercial farm operator and request that he/she provide evidence that the agricultural operation meets the Act's definition of a commercial farm operator. The necessary documentation to establish that the operation is a commercial farm can be found at N.J.A.C. 2:76-2.3(b). If the CADB is satisfied that the operation is a commercial farm, it shall schedule a public hearing. (N.J.A.C. 2:76-2.10(b)1).
 - b. With respect to complaints filed pursuant to Paragraph 1c above, the SADC will have already established whether the commercial farm operator meets the definition of a commercial farm pursuant to the Right to Farm Act during its public hearing process.
4. Generally, it is the parties' option whether to be represented by legal counsel. In most cases, there is no requirement to be represented by legal counsel; however if a party is a close corporation, the only non-attorney permitted to represent the corporation is a principal of the corporation.
5. The chairperson of the CADB should act as the hearing officer.

- a. The members of the CADB should take the testimony of all witnesses under oath or affirmation. All parties should be given the right of cross-examination, either directly, if not represented by an attorney, or through their attorneys if represented. All testimony should be subject to the discretion of the hearing officer and subject to reasonable limitations as to time and number of witnesses.
 - b. The chairperson of the CADB, any members of the CADB, or counsel to the CADB may administer oaths and affirmations. (N.J.S.A. 2A:67A-2)
 - c. Testimony may include verbal and written statements from aggrieved parties, the commercial farm operator, expert witnesses, and any other party deemed appropriate by the CADB. (N.J.A.C. 2:76-2.10(b)1i). Verbal testimony may be given in narrative form or by question and answer. Parties should not be bound by statutory or common law rules of evidence or any formally adopted in the New Jersey Rules of Evidence, but the CADB may exclude irrelevant, immaterial or unduly repetitious evidence. All relevant evidence should be heard and admitted.
 - d. The CADB should record the hearing utilizing a sound recording device or a stenographer.
6. At the conclusion of the public hearing process:
- a. The CADB is required to issue findings and recommendations within 60 days of receipt of the complaint to the SADC, the aggrieved person, the municipality(ies) in which the commercial farm is located and the commercial farm operator. (N.J.S.A. 4:1C-10.1; N.J.A.C. 2:76-2.10(b)2).
 - b. The findings and recommendations of the CADB are to 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 CADB in its recommendations and any other information requested by the SADC. (N.J.A.C. 2:76-2.10(b)2).
 - c. The findings and recommendations should include the following:
 - (1) Caption (names of complainant and defendant)
 - (2) Appearances of parties and their representatives, if any
 - (3) Statement of Issue(s)
 - (4) Factual Discussion, including summaries of testimony and documents
 - (5) Fact Findings
 - (6) Recommendations

7. CADB decisions can be appealed to the SADC within 10 days of receipt of the CADB's findings and recommendations. (N.J.S.A. 4:1C-10.1(d); N.J.S.A. 4:1C-10.2; N.J.A.C. 2:76-2.10(b)2ii).