

**RESOLUTION OF THE CUMBERLAND COUNTY AGRICULTURE
DEVELOPMENT BOARD**

#2009-02

DECISION IN THE MATTER OF:

**SIMON V. ERNST V. CRUZANDALE FARMS, Docket No. CUM-L-001243-06,
REFERRED BY
COURT ORDER OF HON. MICHAEL BROOKE FISHER, J.S.C.**

This matter arises from a civil suit for damages to the residential property of the plaintiff, Robert J. Simon, as a result of surface water flowing onto his property from the lands of defendant upland owner, defendant, Roger P. Ernst, who leased his lands to third-party defendant, Duane Cruzan, trading as Cruzandale Farms (Cruzandale), according to a lease agreement requiring indemnification of the defendant landowner. In the course of that litigation Judge Fisher, presiding over the trial, referred the matter to the Cumberland County Agriculture Development Board (CCADB) to determine whether or not Cruzandale followed a recognized agricultural practice.

On January 20, 2009, this matter came before the CCADB for a hearing at which Frank P. Menaquale Esq., the attorney for Cruzandale, John G. Takacs, Esq., the attorney for Mr. Simon, made representations and Duane Cruzan and Robert J. Simon were both sworn and testified.

By agreement of counsel, prior to the hearing a letter dated December 8, 2008 from Frank F. Menaquale containing a statement of facts with attached exhibits was distributed to the members of the CCADB. At the hearing both attorneys agreed that the letter and statement of facts contained therein were to be considered as argument, but the following exhibits attached thereto were marked into evidence:

- A. Letter dated February 4, 2008 of Duane A. Cruzan, Owner, to Frank P. Menaquale, Jr., Esq., with copies of Weather Report and Irrigation Records for July 2006.
- B. Interview of December 12, 2007 of Mr. Richard Joseph, stepson of Robert Simon, by Paul Robinson of Farm Family Casualty Insurance Company.
- C. Tract 283 Conservation Plan between Duane A. Cruzan, Customer, and Cumberland-Salem Conservation District, dated May 16, 1997.
- D. Hydraulic Analysis for Mr. Robert Simon by Lew W. Mayer, P.E. Licensed State of Maryland
- E. Letters dated April 2, 2008 and November 12, 2008 from Lew W. Mayer, P.E. to John G. Takacs commenting on flood map and reviewing letter of Mr. Dutill, II, dated October 15 2008.
- F. Letter dated October 15, 2008 of Charles R. Dutill, II, P.E. to Frank P. Menaquale, Jr., Esq., evaluating situation.

G. Map and explanation of Flood Zone Designations showing premises affected.

H. Copy of *N.J.A.C. 2:76-2A7*.

The CCADB is satisfied that the underlying facts are not in question. Robert J. Simon is the owner of a residence. Roger P. Ernst is the record owner and Duane Cruzan, trading as Cruzandale Farms is the tenant/operator of the area immediately upland of the Ernst lot. Ernst and Cruzan operate a commercial farm within the parameters of *N.J.S.A. 4:1C-3*.

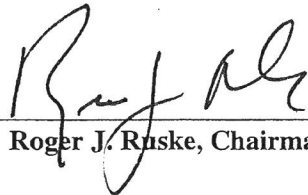
The CCADB has carefully reviewed the facts of this situation and finds:

1. The Tract 283 Conservation Plan between Duane A. Cruzan, Customer, and Cumberland-Salem Conservation District, dated May 16, 1997 constitutes an agricultural management practice recommended by the State Agriculture Development Committee as set forth in *N.J.A.C. 2:76-2A7*
2. Duane A. Cruzan, as tenant of Roger P. Ernst complied with the requirements of the Soil Conservation Plan provided to him by the Cumberland-Salem District.
3. The flooding in question was most probably caused by an unusual weather event in which there was approximately three inches of rainfall in a time period of 45 minutes to one hour.

FOR THESE REASONS, BE IT RESOLVED BY THE CUMBERLAND COUNTY AGRICULTURE DEVELOPMENT BOARD THAT Roger P. Ernst and his tenant/operator Duane Cruzan, trading as Cruzandale Farms did not violate, and complied with the Soil Conservation Plan which constituted the accepted agricultural management practice applicable to the premises owned and occupied by them.

Motion made by: Dr. Ernie Zirkle Motion seconded by: Fred Van Meter

February 17, 2009
Date



Roger J. Ruske, Chairman

This resolution was duly heard and approved at a publicly advertised meeting of the Cumberland County Agriculture Development Board held on February 17, 2009 at 7:00 PM