

**MODIFICATION OF RESOLUTION 2010-11-2 OF THE
MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD
RECOMMENDING IN PART AND DENYING IN PART A SITE-SPECIFIC
AGRICULTURAL MANAGEMENT PRACTICE FOR
BLOCK 50, LOT 4.03 IN THE TOWNSHIP OF UPPER FREEHOLD**

Mr. Bullock offered the following resolution and moved its adoption:

WHEREAS, on March 16, 2017, Jeff and Dana Gale, Calvin and Anna Malsbury, Dan and Denise Knoll, Robert and Elizabeth Eilers and Barbara McEvoy (the "Complainants") filed a Right to Farm Complaint Form ("Complaint") related to food waste deliveries, animal waste, runoff, and rodents occurring at Block 50, Lot 4.03 in the Township of Upper Freehold; and

WHEREAS, Helmlinger's Meadow Hill Farm LLC ("the Landowner") had applied for and received approval for the farm operation that had existed in 2010 pursuant to Resolution 2010-11-2 and is now seeking to modify the original Resolution to protect against the above referenced Complaint; and

WHEREAS, N.J.S.A. 4:1C-1 et seq. is known as the Right to Farm Act; and

WHEREAS, N.J.A.C. 2:76-2.1 et seq. details the State Agriculture Development Committee's rules; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3(b) the Board advised the State Agriculture Development Committee, township, and the Landowner of the Complaint; and

WHEREAS, pursuant to 4:1C-10.1 any person aggrieved by the operation of a commercial farm shall file a complaint with the applicable county agriculture development board or the State Agriculture Development Committee in counties where no county board exists prior to filing an action in court; and

WHEREAS, in the event the dispute concerns activities that are addressed by an agricultural management practice recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the county board shall hold a public hearing and issue findings and recommendations within 60 days of the receipt of the Complaint; and

WHEREAS, the MCADB conducted a site visit to view the subject property and the proposed operation prior to scheduling a public hearing on the matter. The site visit was held on April 3, 2017 and attended by a minority of board members, MCADB staff, Counsel for the landowner, the owners of the property, State Coordinator of Dairy Programs and Enforcement, representatives of the USDA-NRCS, Rutgers Cooperative Extension, the NJ Department of Agriculture, and the Freehold Township

Department of Health; and

WHEREAS, the MCADB heard testimony, reviewed submissions and exhibits, and considered the Complainants', Landowner's and the public's comments during the Board's public meetings on May 2, 2017; July 11, 2017; August 1, 2017 and September 5, 2017; and

WHEREAS, the MCADB found, pursuant to Resolution No. 2017-5-1 , that the Landowner's operation is a "commercial farm" as defined by the Right to Farm Act, set forth in N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3; and

WHEREAS, due to the prior SSAMP approved for activities on the farm, jurisdiction remained with the MCADB as per N.J.S.A. 2:76-2.7(d); and

WHEREAS, the subject matter of the current Complaint relates directly to the activities that were approved pursuant to Resolution 2010-11-2, specifically breeding and raising cows, pigs and chickens; farming hay; and boarding, training and sale of horses; and

WHEREAS, the Complaint requests the MCADB to review the current expansion of farm activities and modification of feeding the animals to determine if the Landowner should be protected under the Right to Farm Act; and

WHEREAS, the expansion of the activities and change in feeding remove the matter from the purview of *res judicata* and permits the MCADB to hear the complaint; and

WHEREAS, a subset of the Complainants, Dan and Denise Knoll, were represented by Eileen Kelly, Esq. and offered testimony and supporting exhibits identified below; and

WHEREAS, the remaining Complainants as well as some neighbors to the property offered their own testimony and exhibits listed below; and

WHEREAS, collectively the Complainants' testimony centered on a "terrible" smell emanating from the property that allegedly stemmed from a combination of source-separated food waste used to feed the steer on the property and the animal waste stored and spread on the property. The testimony also questioned the legality of some of the activities on the farm; and

WHEREAS, the Complainants' testimony included statements that the smell was so unbearable at times that neighbors could not leave their homes, open windows, or invite over guests and could not enjoy their property in general. The testimony further described runoff from the subject property to neighboring properties that was perceived to be causing changes to vegetation and elevated levels of nitrate and algae in a neighbor's pool; and

WHEREAS, the Landowner was represented by Lauren Dooley, Esq., and Christopher Helmlinger, principal of Helmlinger’s Meadow Hill Farm LLC offered his own testimony as well as supporting exhibits, identified below, explaining the feed used on the farm, State and local agency involvement with the farm, the steps taken to reduce the smell from the feed and animal waste, and steps taken to divert and/or eliminate runoff from the subject property to neighboring properties; and

WHEREAS, the following exhibits were entered into evidence during the public hearing:

Exhibits from Complainant and Neighbors:

March 16, 2017 Request for Right to Farm Conflict Resolution Complaint Form	O-1
April 5, 2017 Email from Michele and Peter Blaso Asking to Be Removed from Complaint	O-2
May 2, 2017 Letter from Eileen Kelly	O-3
May 26, 2017 Filing by Eileen Kelly	O-4
June 13, 2017 Report of Incident/Complaint, NJ DEP	O-5
April 30, 2017 NJ State Police Operations Report	O-6
June 9, 2016 to June 27, 2017 Denise Knoll’s NJ DEP Case # Log	O-7
June 30, 2017 Email from Nick Bryson to Barbara McEvoy with Attached Photo	O-8
Two Photos of Wooded Area	O-9
Pool Water Analysis Eilers	O-10
Photographs (7, # A – G), taken by Margaret Karl, April 6, 2017	O-11
April 6, 2017 Report on McEvoy complaint to Township Board of Health	O-12
Two Photographs of June 7, 2017 site visit, taken by Margaret Jahn, Township Board of Health	O-13
April 5, 2016 Report of Malsbury complaint, Township Board of Health	O-14
May 23, 2016 Report of Knoll complaint, Township Board of Health	O-15

Report of 5.26.16 Lamberson Inspection with Related
Emails and Documents O-16

Photographs of Food Waste Taken by Margaret Karl
on May 26, 2016 O-17

Exhibits from Landowner:

Request for Right to Farm Conflict Resolution Response Form A-1

2017 FA-1 Farmland Assessment Form for Block 50 Lot 4.03 A-2

2015 IRS Schedule F A-3

Zoning Map A-4

Google Maps A-5

Receipts A-6

MCADB Resolution 2010-11-2 A-7

Sketch of New Food Storage Bin and Bin Block Detail A-8

March 12, 2010 Self-Certified Animal Waste Management Plan A-9

First Plus+: High Moisture Energy Supplement for
Beef and Dairy Cattle A-10

January 26, 2017 Email from Christopher Helmlinger
to Harriet Honigfeld with Two Photos A-11

May 18, 2017 Letter from Lauren Dooley to Monique Purcell A-12

May 25, 2017 Supplemental Submission of Farm
Management Unit Forms A-13

May 26, 2017 Filing by Lauren Dooley A-14

Six Photographs Submitted by Lauren Dooley A-15

July 24, 2017 Email from Jason Beck to Harriet Honigfeld A-16

Rutgers Article "Feeding Animals –
The Business of Food Scraps" A-17

EPA Handout "Reduce Wasted Food by Feeding Animals A-18

Conservation Plan Executed September 17, 2014	A-19
September 21, 2017 Brief Prepared by Lauren Dooley	A-20
<u>Exhibits from the Monmouth CADB:</u>	
Aerial Map Block 50 Lot 4.03	B-1
Topographic Map Block 50 Lot 4.03	B-2
Photo from 1/23/17	B-3
Site Visit Photos from 4/3/17	B-4
April 4, 2017 Letter from Clare Flanagan Lubinda, District Conservationist, USDA-NRCS	B-5
June 30, 2017 Letter from Daniel Wunderlich to Christopher Helmlinger	B-6
April 21, 2017 Email and Write Up from Jasen Berkowitz, Rutgers Cooperative Extension of Salem County	B-7
April 21, 2017 Letter with Attachments from Monique Purcell, Director, Division of Agricultural and Natural Resources, NJ Department of Agriculture	B-8
April 24, 2017 Memorandum from Jerzy Chojnacki, Monmouth County Board of Health	B-9
Organix Recycling Website Excerpt on Food Recycling Programs, April 5, 2017 Download	B-10
Nutrient Requirements for Beef Cattle	B-11
Leftovers for Livestock: A Legal Guide for Using Food Scraps as Animal Feed	B-12
July 7, 2017 Letter from Richelle Wormley to Christopher Helmlinger with Attached Odor Fact Sheet	B-13
July 26 and July 27, 2017 Email Chain Between Lauren Dooley and Sandra Howland	B-14
April 10, 2017 Email from Clare Flanagan to Harriet Honigfeld w/Marked Aerial Map	B-15
September 5, 2017 Letter from Frank Minch to Harriet Honigfeld	B-16

WHEREAS, after having considered the testimony given and exhibits presented on June 6, 2017; July 11, 2017; August 1, 2017; and September 5, 2017, the MCADB makes the following findings of fact and conclusions of law:

1. The property is part of a Farm Management Unit.
2. The Farm Management Unit is comprised of Block 50, Lot 4.03; Block 51, Lot 2.03; Block 53, Lot 1.01; Block 47, Lot 19; Block 29, Lot 2.01 and Block 51, Lot 1 in the Township of Upper Freehold; Block 502, Lot 30.03 in the Township of Chesterfield; and Block 2739, Lot 49 in the Township of Hamilton, and is greater than five acres.
3. The Farm Management Unit satisfies the eligibility criteria for, and receives, differential property taxation pursuant to the Farm Land Assessment Act, N.J.S.A. 54:4-23.1 et seq. from the Township of Upper Freehold.
4. The property is located within the AR zone that permits agriculture as verified by the Upper Freehold Township Master Plan and township land use ordinance.
5. The Farm Management Unit does produce agricultural or horticultural products worth more than \$2,500.00 and as such does meet the requirements of a Commercial Farm pursuant to the Right to Farm Act.
6. The farm operation consists of the raising of approximately 110 steers, 15 pigs, and 10 horses at one time as well as the production of hay and field crops.
7. The steers are housed in a barn, and approximately 500 pounds of bedding has been added to the barn to reduce the odor from ammonia.
8. The steers are fed source-separated food waste, consisting of discarded fruits and vegetables, that is delivered approximately two (2) times a week by Organix. Loads range between 17,000 and 35,000 pounds.
9. The Organix deliveries were originally stored in a food storage bin adjacent to the animal waste storage bin on the home farm. Organix installed a new bin during the course of the hearing that is located on the other side of the subject property, several hundred feet away from the animal waste storage bin.
10. After the Complaint was filed, the Landowner began mixing 0.3-0.5 pounds of sodium bicarbonate per day into the source-separated food in an effort to reduce the odor from the livestock.
11. The State of New Jersey has not yet promulgated any regulations or guidelines to regulate the use of pre-consumer or post-consumer food waste for

the cattle industry.

12. No government agency has issued any violations against the farm.
13. The Landowner created a drainage swale near the animal waste storage facility prior to the filing of the Complaint. Since the filing, the Landowner has taken steps to revegetate the swale and nearby field.
14. An Animal Waste Management Plan had been formulated in 2010 for the subject property and, due to the increase in the livestock on the farm, a new, updated self-certified animal waste management plan and a new declaration page was submitted to keep the farm in compliance with the NJ Animal Waste Management law.
15. The animal waste storage bin is located on the home farm and has a designed capacity of 6,080 cubic feet of storage. Because of the increased number of livestock on the farm, the bin reaches capacity within about sixty days.
16. The Landowner spreads manure on his farm management units and other area farms with which he maintains contracts to accommodate the capacity limits of the animal waste storage bin.
17. Following the filing of the Complaint, the Landowner installed a new stormwater inlet, connecting to an existing drainage system, to reduce the volume of water entering the Animal Waste Storage Facility.
18. Any rodents on the farm are well within the scope of generally accepted agricultural management practices.
19. The Landowner has taken significant steps to mitigate runoff from the subject property to neighboring properties, as vegetation has greatly improved. The Landowner should continue to work with the Natural Resource Conservation Service ("NRCS") and the Department of Agriculture to ensure compliance with State rules and regulations.
20. The spreading of animal waste and animal waste management on the farm is a protected activity per the Right to Farm Act; however, overspreading can result in too many nutrients in the fields that could lead to scarring of the fields. The Landowner, with the assistance of the NRCS, is to develop a soil-testing plan to make sure that the fields are not overly saturated with nutrients.
21. The use of source-separated food waste as cattle feed and the odors associated with this process under its current use is found by the MCADB to not be a generally accepted farm management practice nor a permissible activity for a Commercial Farm, as the practice of using food waste as the primary source of a steer's diet is not commonplace in the industry, the practice

is potentially exacerbating the odor emanating from the subject property, and, at this point, there is no related adopted AMP or affiliated regulations in place at this time associated with the New Jersey Right to Farm Act.

NOW, THEREFORE, BE IT RESOLVED that, based on the aforesaid findings of fact and conclusions of law, the Monmouth County Agriculture Development Board makes the following determinations:

1. The runoff issues, presence of rodents, and animal waste management and associated odors stemming from the subject property have been properly mitigated and found by the MCADB to be generally accepted farm management practices and are permissible activities for a Commercial Farm, under the New Jersey Right to Farm Act, subject to the above conditions as set forth in the findings of fact and conclusions of law.
2. The use of source-separated food waste as cattle feed and the odors associated with this process under its current use is found by the MCADB to not be a generally accepted farm management practice nor a permissible activity for a Commercial Farm, as the practice of using food waste as the primary source of a steer's diet is not commonplace in the industry, the practice is potentially exacerbating the odor emanating from the subject property, and, at this point, there is no related adopted AMP or affiliated regulations in place at this time associated with the New Jersey Right to Farm Act; and

BE IT FURTHER RESOLVED that the implementation of any activities on the farm must conform to all relevant Federal and State statutes, rules and regulations, including, but not limited to the New Jersey Department of Agriculture, the New Jersey Department of Environmental Protection and the United States Department of Agriculture; and

BE IT FURTHER RESOLVED that if over time the subject farm substantially changes its operations to deviate from the provisions agreed upon in these resolutions, the Landowner, Municipality or any other aggrieved party would be entitled to return to the Board to request relief; and

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the State Agriculture Development Committee, Lauren Dooley, Esq., Eileen Kelly, Esq., the Complainants, and the Landowner; and

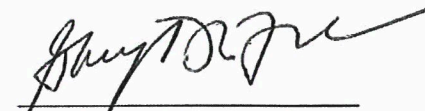
BE IT FURTHER RESOLVED that any person aggrieved by this resolution may appeal to the SADC in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 10 days from the receipt of this resolution. The decision of the SADC shall be considered a final administrative agency decision. If this resolution is not appealed within 10 days, this resolution is binding.

Seconded by Mr. DeFelice and approved on roll call by the following vote:

	Yes	No	Abstain	Absent
Mr. Bullock	X			
Mr. Buscaglia	X			
Ms. Butch	X			
Mr. Clayton*	X			
Mr. DeFelice	X			
Mr. Foster			X	
Mr. Giambrone	X			
Ms. Grbelja	X			
Mr. Holmes			Recused	
Mr. Potter	X			

* Alternate member in 2017

I do hereby certify that the foregoing is a true copy of a resolution adopted on October 3, 2017, and memorialized by the Monmouth County Agriculture Development Board at a meeting on the 14th of November, 2017.



Gary DeFelice, Secretary