



**“RTF Basics”
and
Changes to RTF
Procedures**



Part 1:

Basics of Right to Farm



New Jersey
State Agriculture Development
Committee

Updated April 2014

RTF Act: Procedures

1. Site-Specific AMP Request

- Application is made by farmer to CADB; if no CADB exists, application is made to SADC
- Acts as a proactive “shield” for farm owner/operator



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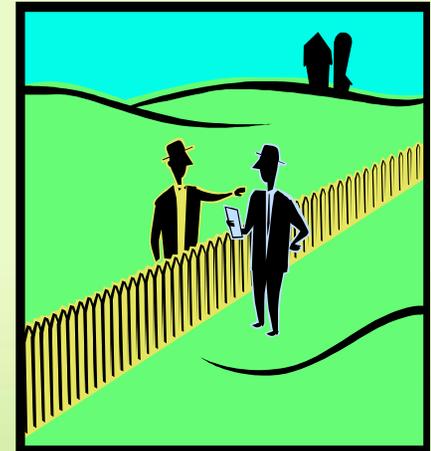
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3. A combination of the above

- Complaint can lead to an SSAMP request in the same proceeding before CADB



RTF Act: Criteria to Receive Protections

Threshold criteria are formally determined by CADB (or by SADC where NO CADB exists):

- ❑ The farm meets the definition of commercial farm in N.J.S.A. 4:1C-3 (FMU \geq 5 ac, satisfying FA criteria & \$2,500 income; or FMU < 5 ac., \$50,000 income).
- ❑ The farm is located in an area which, as of 12/31/97, agriculture is a permitted use, OR, was in operation as of 7/2/98 (N.J.S.A. 4:1C-9)
- ❑ Whether the activity is included in the list of protected activities in N.J.S.A. 4:1C-9.

RTF Act: Criteria to Receive Protections

Protected Activities under N.J.S.A. 4:1C-9:

- a. Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities with SIC classifications for agriculture, forestry, fishing and trapping
- b. Process and package agricultural output of farm
- c. Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards
- d. Replenish soil nutrients and improve soil tilth
- e. Control pests, predators and diseases of plants and animals
- f. Clear woodlands using open burning and other techniques, install and maintain vegetative and terrain alterations and other physical facilities for water and soil conservation and surface water control in wetland areas
- g. Conduct on-site disposal of organic agricultural wastes
- h. Conduct agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm
- i. Engage in the generation of power or heat from biomass, solar, or wind energy, provided that the energy generation is consistent with the provisions of, and the rules and regulations adopted pursuant to, P.L. 2009, c.213
- j. Engage in any other agricultural activity as determined by the SADC and adopted by rule...

CADB/SADC Threshold Determinations

Determinations **MUST** be made **BEFORE** CADB/SADC can hold hearing on merits of SSAMP/RTF complaint

- ❑ Commercial farm; Ag permitted area; Use not protected

Example #1: (Complaint - Moriuchi) On-farm processing of wood products not produced from the farm management unit.

Example #2: (SSAMP - Fisher) Harvesting spring water on farm mngt unit.

- ❑ Ag permitted area; Use is protected; Insufficient commercial farm income

Example: (SSAMP - Adams) Harvesting of mushrooms and mushroom logs.

CADB's Primary Jurisdiction



□ CADB has “Primary” Jurisdiction (vs. “Exclusive”)

“There may be instances where a CADB or the SADC concludes that an issue is beyond the jurisdiction of the agency, that adherence to local land use ordinances is appropriate, or even that there is no preemption on a specific issue, however that determination shall be made by the CAB or SADC in the first instance, rather than by the municipality or a court.”

Township of Franklin v. den Hollander, Superior Court of N.J., Appellate Division (2001)

□ Primary = situations in which BOTH the CADB and other agencies (municipality, county, etc.) have authority to make decision, but the CADB is better equipped to address the issue, at least in the first instance.

- Municipality/complainant **MUST** first file a complaint with the CADB **BEFORE** filing ANY action in ANY court
- CADB has **NO** authority to decline jurisdiction due to pendency of a municipal court/superior court complaint against commercial farmer

Limits to CADB's Jurisdiction



Health and Safety

“...although the CAB and the SADC have primary jurisdiction over disputes between municipalities and commercial farms, the boards do not have *carte blanche* to impose their views. Because the authority of the CAB is not unfettered when settling disputes that directly affect public health and safety, the boards must consider the impact of the agricultural management practice with these standards in mind.”

Township of Franklin v. den Hollander, N.J. Supreme Court (2002)

“The required attention to public health & safety imposes a limitation on such jurisdiction and requires a CADB to consider the impact of municipal land use ordinances, deferring to the municipality when appropriate.”

Township of Franklin v. den Hollander, N.J. Supreme Court (2002)

Limits to CADB's Jurisdiction



Appropriate Municipal Regulation

“...In sum, in exercising its authority under the Act, the CAB or SADC must afford a local agency comity in recognition that the municipality interests must be appropriately acknowledged and considered.”

Township of Franklin v. den Hollander, N.J. Superior Court, Appellate Division (2001)

“The Boards must act in a matter consistent with their mandate, giving appropriate consideration not only to the agricultural practice at issue, but also to local ordinances and regulations, including land use regulations, that may affect the practice”

Township of Franklin v. den Hollander, N.J. Supreme Court (2002)

So, Preemption of Local Regulations:

- ❑ Agricultural activities MAY preempt municipal and county regulations
- ❑ Appropriate consideration and deference MUST be given to local standards

BALANCING TEST:

- Balance agricultural needs against municipal public health and safety concerns
- Farmer has to show “legitimate agriculturally-based reason” for not complying with municipal regulations



Preemption of Local Regulations:

But what about SITE PLAN REVIEW?

- ❑ Review of site plan elements is often needed (particularly for OFDM facilities)
- ❑ CADBs maintain primary jurisdiction over local regulations, such as when SSAMP requests are made, but...
- ❑ Complexity of site plan review process might exceed the financial or technical capabilities of CADBs
- ❑ CADBs do not have statutory jurisdiction to review some elements



Preemption of Local Regulations



Farmers may:

Apply to CADB for SSAMP - and CADB can give approval of many site plan elements, but deferring to local review over others

OR

Apply to municipality for site plan review - and seek relief from specific requirements with the CADB afterward

CADBs and/or municipality can:

Waive or reduce requirements based on site-specific considerations

(for example: scale, intensity, farm's setting, road, minimum improvements needed for safety)

RTF Act: Other Eligibility Requirements

Compliance with applicable state and federal laws and regulations. Examples:

- ❑ Stormwater management
- ❑ Freshwater wetlands
- ❑ Animal waste management
- ❑ **BUT NOT** child support payments, federal taxes, etc. (not affecting use of farm for agricultural activities)



Does not pose a threat to public health and Safety

Example: CSA's entrance/exit driveway creates a traffic hazard on intersecting public road



State Laws/Regs Delegated to Towns

- ❑ State laws & regulations must **STILL** be complied with even though enforcement has been delegated to the municipality or county & is set forth in a local ordinance or county resolution.

Example #1: NJ stormwater management rules

Example #2: County Environmental Health Act, etc.

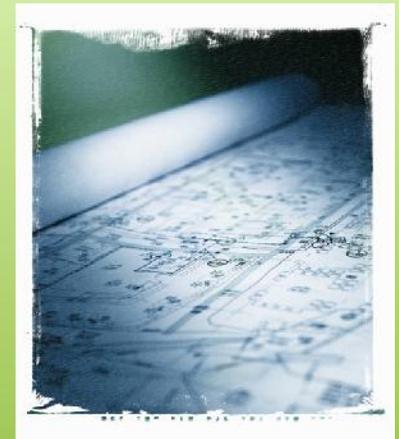


- ❑ **BUT**, if municipality or county requirements exceed state standards, preemption is possible (not a given)

Example #1: Municipality's stormwater management ordinance exceeds state standards and requires a 1,000 foot setback to streams

Example #2: Municipality adopts a septic code requiring > 10 feet to ground water

CADB must still balance local laws with farmer's legitimate need to engage in the agricultural activity



- ❑ **AND** CADBs have the right to defer issues back to the municipality if too complex for the CADB

Other Direction from the Court:



Due Process Concerns - Especially for SSAMPs

“Agricultural boards must conscientiously consider the impact of the proffered agricultural use on surrounding property owners. Failure to do so is an abuse of discretion. Boards shall provide notice to affected property owners when an application is made, as in this case, by the farmer. Failure to do so in clear terms, describing with particularity the subject of the application and the consequences of the determination to be made, may deprive the determination of its binding effect on those individuals. Boards must temper their determinations with due consideration of the impact on affected parties”.

Curzi v. Raub, N.J. Superior Court, Appellate Division (2010)

Part 2: RTF Procedures

**Four Changes
to
Existing
RTF Procedures**



Change #1: CADBs make Threshold Eligibility Findings Before Sending Complaints to SADC

For complaints where no AMP exists, CADB must 1st determine:

- ❑ Meets definition of commercial farm
- ❑ Locational requirements
- ❑ Dispute involves activity listed on list of RTF eligible activities

If these criteria are met, complaint is forwarded to SADC for a hearing

If these criteria are not met, CADB dismisses complaint

- ❑ CADB's action is appealable to SADC

Example: Farm owner wants RTF protection to park non-ag trucks

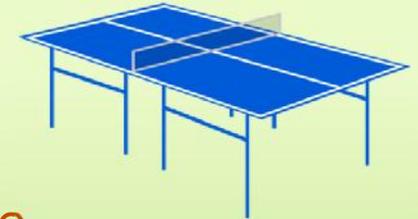


Change #2: Avoiding the Ping-Pong in the Complaint Process!

The OLD ping-pong procedure for complaints with activities not addressed by a rule AMP or SSAMP:



- ❑ CADB forwards complaint to SADC
- ❑ SADC holds public hearing on all details of dispute
- ❑ SADC sends hearing report back to CADB
- ❑ CADB holds ANOTHER public hearing (on all the same issues)
- ❑ If appealed, sent back to SADC w/in 10 days & forwarded to OAL, with final SADC decisions resulting



Example: uses at wineries: Dispute involves uses (tastings, festivals, weddings, tours, classes) and details of activity (hours, noise, parking, etc.)

Change #2: Avoiding the Ping-Pong in the Complaint Process!

- ❑ There is now a NEW procedure for complaints with activities NOT addressed by a “rule AMP” or SSAMP
- ❑ The procedure was revised for consistency with NJ statute (N.J.S.A. 4:1C-10.1)



Change #2: Avoiding the Ping-Pong in the Complaint Process!

The **NEW** procedure for complaints with activities not addressed by a rule AMP or SSAMP:

- ❑ CADB forwards complaint to SADC
- ❑ SADC holds public hearing **limited to whether the disputed activity constitutes a generally accepted ag management practice**
- ❑ SADC sends hearing report to CADB
- ❑ CADB holds **its** public hearing **on the specifics of the dispute**
- ❑ If appealed, sent back to SADC w/in 10 days & forwarded to OAL, with final SADC decisions resulting

Example: SADC determines tastings, festivals, tours and classes are eligible for RTF protection but **weddings** are not. CADB then has its hearing on the **details** (hours, noise, parking, etc.) of only the **eligible activities**.

Change #3: Public Notice Requirements

SSAMP Determination

Written notice by commercial farm at its sole expense, via certified mail, RRR &/or personal service to:

- Municipal clerk & land use board secretary where commercial farm is located + within 200 feet of adjoining municipality;
- Property owners (on certified list) within 200 feet of commercial farm property;
- SADC;
- County planning board (if commercial farm adjacent to county-owned road/property); and
- NJDOT Commissioner (if commercial farm on State highway)

By publication in official newspaper/general circulation newspaper of municipality

RTF Complaint

Written notice by the CADB within 10 days of receipt of complaint to:

- Commercial farm owner;
- Commercial farm operator (if applicable);
- SADC; and
- Municipality(ies) where commercial farm is located.



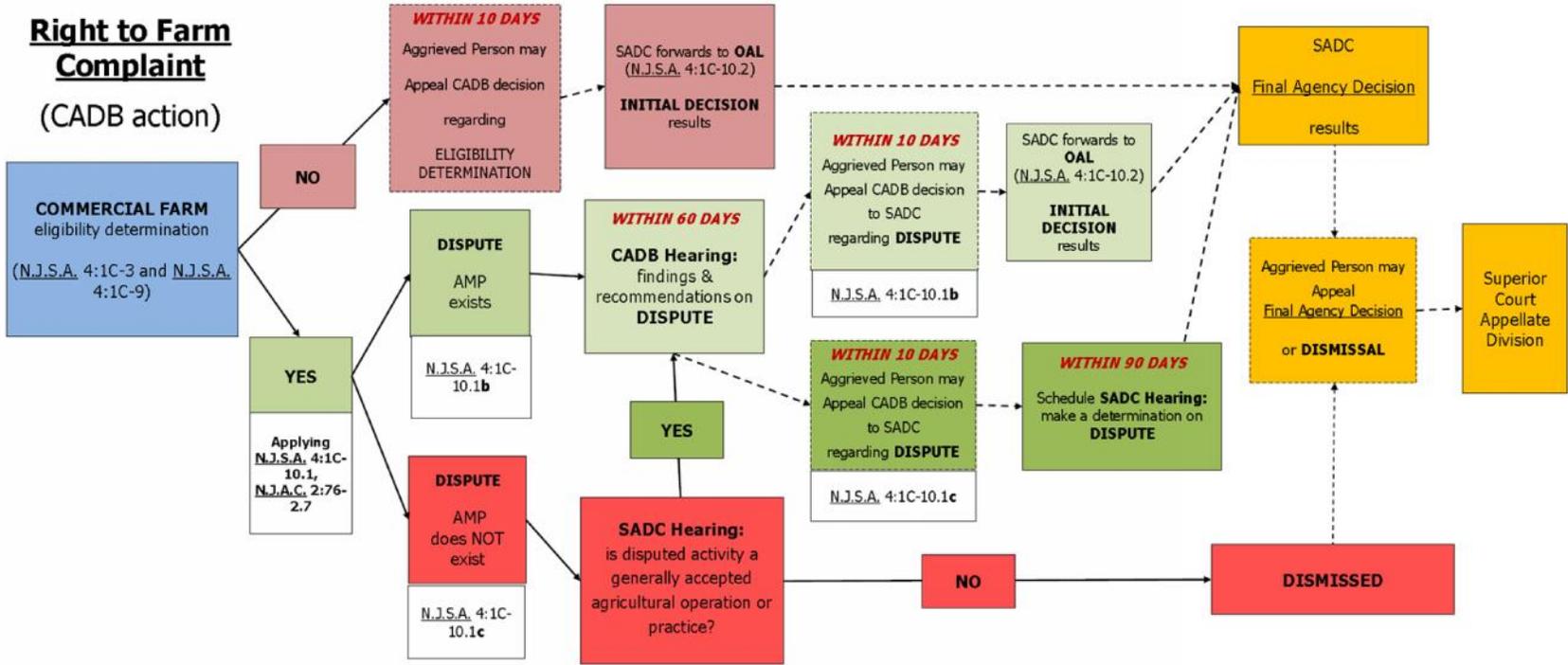
Change #4: CADB Resolution Contents

- ❑ CADB determinations **MUST** be in the form of a detailed resolution including *findings of fact and conclusions of law*.
- ❑ References **MUST** be made to any supporting documents that were considered by the CADB in its resolution.
- ❑ This requirement was added in order to ensure that a comprehensible record is created, should any appeal be filed.



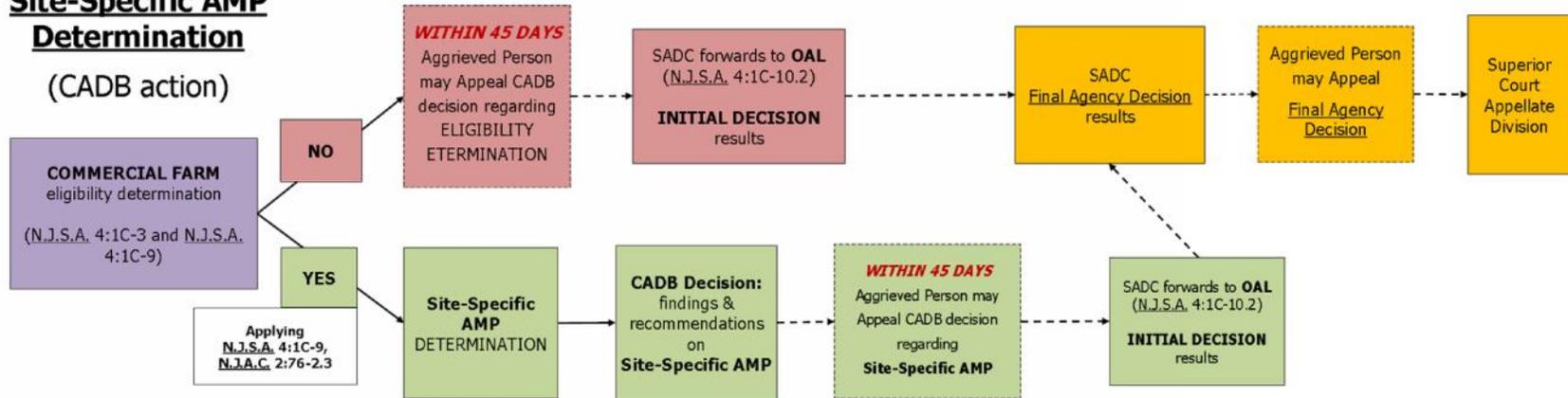
Right to Farm Complaint

(CADB action)



Site-Specific AMP Determination

(CADB action)

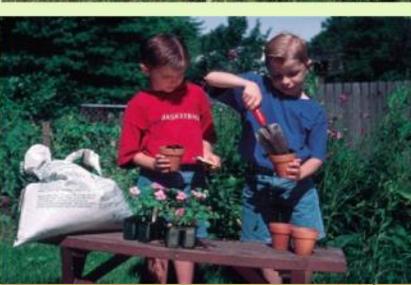


Right to Farm Rules

- ❑ The RTF rule changes were proposed on June 17, 2013, approved for adoption on January 31, 2014 after public comments were received, and became effective upon publication in the New Jersey Register on April 7, 2014.

- ❑ For more information
 - ❑ Visit the SADC website:
<http://nj.gov/agriculture/sadc/ruleprop/index.html>

 - ❑ Contact the SADC:
(609) 984-2504
sadc@ag.state.nj.us



THE END

