

Equine Rules SADC Response to Morris CADB's Comments

1. COMMENT: The Morris County Agriculture Development Board (CADB) felt that N.J.A.C. 2:76-2A.10 **lacks clarity and is unenforceable**, because it provides guidelines rather than actual numerical standards, citing the proposal's standards for stocking rates and fencing as examples. The CADB felt the rule would not adequately help CADBs when making Right to Farm determinations. As an example, the Morris CADB **criticizes the failure of the rule to set a specific maximum number of horses permitted on farms** for any of the rule's three management regimes. The CADB also opined that the rule would be difficult to apply if a mixture of regimes is used, such as a combined pasture and drylot regime, and that it would be difficult to determine compliance with AMPs based on monitoring of turnout times, the percentage of vegetative cover, yield potential of pasture, pasture management techniques, drainage, soil types, and outdoor temperatures. **The CADB stated that that if farm stocking rates are determined on a case-by-case basis using the standards in the rule, there is no need for a general AMP, because each case will require a site-specific AMP recommendation.**

The CADB also felt the **fencing section was not sufficiently specific** to be helpful in determining qualification for RTF protection.

The CADB contrasted the SADC's proposal with the equine policy the CADB had developed on its own, which it said sets clear standards regarding animal density, total floor space of equine-related structures, and manure management. The CADB policy sets an animal density (stocking rate) standard of one animal unit per acre, and an equine-related structure standard capping the area occupied by such structures at 3.5% of the farm's gross area.

RESPONSE: The SADC respectfully disagrees with the Morris CADB and **feels that N.J.A.C. 2:76-2A.10 does set clear and adequate guidelines and standards for use with Right to Farm matters.** These standards take into account the health and safety interests of the surrounding community without unnecessarily constraining the farm operator. These standards also acknowledge the great variety in size, intensity and management practices of equine facility operators. The SADC believes the standards do provide guidance to apply to specific sites, and complement the Right to Farm process that allows for site specific determinations of agricultural management practice compliance. In response to the CADB's comments that the AMP rule lacks clarity and is unenforceable, the SADC reiterates its statement in the rule proposal's summary that "the AMP is not a rule with which all horse farms are required to comply. Rather, it is a gauge upon which CADBs and/or the Committee will use to determine if a farm is eligible for right-to-farm protection. Such determinations will be dependent upon the representations of the farmers as well as a site visit to the farm by an equine expert to verify the farmer's representations. If, after a farm is granted right-to-farm protection, the CADB is notified that the farmer changed his horse management scheme or implemented a different scheme, then the CADB would investigate the matter, with the assistance of equine experts. Failure to comply with any conditions in an AMP or right-to-farm approval granted by the CADB or Committee means that the farm is no longer entitled to right-to-farm protection."

The rules provide standards by which a CADB hearing a right-to-farm matter will apply its expertise to the specific set of facts in accordance with the criteria set forth in the rule. For example, whether a fence's setback is 'sufficient' will be determined by addressing site specific conditions in light of the factors enumerated in N.J.A.C. 2:76-2A.10(f). The CADB, to make its

determination, may also consult with an equine or other agricultural expert. The idea that CADBs may benefit from experts' input during right-to-farm matters is in fact recognized by the SADC's existing Right to Farm Act regulations. N.J.A.C. 2:76-2.3(d) and 2:76-2.10(b)1.i.

Thus, the SADC does not agree that the rule should set a numerical setback standard for items such as fencing. By instead using an operational performance standard, the rule provides commercial farm operators with the flexibility to site fencing in ways that best suit their operations, and allows the CADB to consider issues specific to the region or the nature of the area in which the farm is located. This approach is consistent with the Right to Farm statute, which not only authorizes the adoption of AMPs, but expressly authorizes the CADBs to make "site specific" determinations as to whether a particular practice is an AMP.

Regarding the CADB's comment that 'there is no need for a general AMP if stocking rates are to be determined on a case-by-case basis,' the SADC disagrees and believes that right-to-farm matters will be more readily resolved with the promulgated AMP. The AMP rule establishes the generally accepted practices and standards with which farms must comply to be entitled to Right to Farm protection by identifying the concerns and standards and providing guidance for how they must be met. *Having a promulgated AMP rule also streamlines the Right to Farm conflict resolution process, as outlined in N.J.A.C. 2:76-2.10, by eliminating the requirement for an initial, extra SADC public hearing, which otherwise is required for all third party complaints where there disputed practice is not covered by an existing AMP rule or site specific AMP.*

The SADC appreciates the Morris CADB's efforts to research and create its own equine farm standards. The SADC feels confident, however, that the standards it establishes in this rule are appropriate and adequate, as the rule is based on extensive research conducted by Rutgers Cooperative Extension. Based on its research, the SADC feels that the stocking rate and equine-related infrastructure standards outlined in the Morris CADB's policy could be unduly restrictive of commercial equine farms if implemented on a statewide basis.

The rules also adequately address the Morris CADB's concern as to how to treat an operation in which a mixture of regimes is used. If the regimes are such that they can be viewed as separate operations, under the rules the CADB could review each aspect of the operation based on the standards applicable to it. If the operation falls within none of the specific categories of regimes, N.J.A.C. 2:76-2B.2(g) provides that activities not addressed by the rules shall be given a site specific analysis in accordance with the authority provided by N.J.S.A. 4:1C-9.

2. COMMENT: The Morris CADB disagreed with the how the rule states that fencing should be set back from property lines at a distance sufficient to prevent neighbors from having impermissible access to horses. The CADB wrote that farmers cannot prevent people from trespassing onto their property and cannot be held responsible for the actions of trespassers.

RESPONSE: The intent of the rule language is to incorporate distances that will discourage impermissible access to the horses, assuming neighbors are not trespassing on the farm owner's property. Of course, no rule or regulation can completely prevent the illegal or inappropriate behavior of others; however, placement of the fence far enough back from the property line will act to minimize such conflicts. These sufficiency determinations may be made in light of the farm's location and the nature of its surroundings.

3. COMMENT: The Morris CADB commented that N.J.A.C. 2:76-2B.3 was unclear on whether a CADB could limit Right to Farm Act approval of the area occupied by equine-related infrastructure to less than 15%. The CADB felt the rule should be revised and clarified by allowing CADBs to set their own percentages, at any point up to but not surpassing 25%, to better address local conditions.

The CADB felt this is needed to provide it with the authority and the flexibility to consider local constraints and differences in management standards when reviewing equine proposals. The Morris CADB stated that it needs to be able to restrict equine-related infrastructure to levels below 15% to comply with the New Jersey Supreme Court decision in the case of Township of Franklin v. David den Hollander, which directs the SADC and CADBs to consider relevant municipal standards when making decisions related to agricultural management practice issues.

RESPONSE: The SADC appreciates the Morris CADB's comments. In developing N.J.A.C. 2:76-2B.3, the SADC included a provision to allow CADBs to determine the maximum permissible equine-related infrastructure eligible for Right to Farm protection within a range of 15-25% of the total usable area of the farm. The SADC did not write the rule with the intention to allow – and disagrees with the Morris CADB's suggestion that the rule be amended to allow – CADBs to establish limits on the area occupied by equine-related infrastructure to percentages that are less than 15%.

The SADC further disagrees with the implication that under N.J.A.C. 2:76-2B.3(c), relevant municipal standards will not be able to be (or have not been) considered when making decisions related to agricultural management practice issues. The SADC has considered this issue and is aware that some municipalities have land use coverage standards which specify limits lower than those found in N.J.A.C. 2:76-2B.3(c). The SADC has contemplated such conflicts and determined that the 15-25% standard does not pose a threat to public health and safety. The SADC has also determined there are legitimate, agriculturally based reasons that commercial equine farms have or may wish to have equine-related infrastructure occupying as much as 15-25% of the farm's total usable area as evidenced by the site-specific research conducted by the SADC in support of development of this rule proposal.

Upon further review of the rule, the SADC agrees that the proposal's language is not entirely clear regarding whether CADBs would be able to establish their own percentages outside (less than) the 15-25% range. It therefore amends N.J.A.C. 2:76-2B.3 as follows: "It shall be the responsibility of each county agriculture development board (CADB) to determine the maximum permissible percentage of total usable area occupied by equine-related infrastructure based on the level of, or proximity of the farm to, non-agricultural development. In counties where no CADB exists, it shall be the responsibility of the Committee to make this determination. This maximum permissible percentage shall not be less than 15% nor more than 25%."