

September 26, 2001

See Service List

Re: **Casola v. Monmouth County Agriculture Development Board**
OAL Docket No. ADC 06462-00S
SADC Docket No. 1318-01

Dear Counsel:

At its meeting on September 20, 2001, the State Agriculture Development Committee (SADC) considered two motions in the above-referenced matter: the Casolas' interlocutory appeal of Judge Tassini's Order dated August 15, 2001 and the Planning Board of the Township of Holmdel's (Planning Board's) motion to disqualify the SADC from rendering final decisions in this matter. Enclosed please find the two orders issued by the SADC on those motions. The Planning Board had requested oral argument on its motion to disqualify; however, the SADC considered the motion without oral argument because not all parties could attend the SADC meeting.

Please note that all actions taken by the SADC are subject to the Governor's review of the minutes of the meeting at which those actions were taken. N.J.S.A 4:1C-4f. In light of the pending hearing, the SADC is requesting an expedited review of the minutes by the Governor's office. We will notify you once the Governor's review period has expired.

Sincerely,

Marci D. Green, Esq.
Chief of Legal Affairs

encl.

3: Joanne M. Restivo, Deputy Clerk
Honorable John R. Tassini, ALJ

ORDER DETERMINING
INTERLOCUTORY APPEAL
OAL DOCKET NO. ADC 06462-008
AGENCY DOCKET NO. RTF1318-01

IN THE MATTER OF
THE RIGHT TO FARM ACT
APPLICATION OF CASOLA

This Order determines the interlocutory appeal filed by Antonio and Kim Casola (“Casolas”) of the burden of proof and procedural rulings issued by the Administrative Law Judge (“ALJ”) contained in his “Order Relative to Burden of Proof, Etc.,” dated August 15, 2001. In that Order, the ALJ held that the Casolas must bear the burden of proof in demonstrating that their agricultural activities conform to generally accepted agricultural management practices pursuant to N.J.S.A. 4:1C-9 and N.J.A.C. 2:76-2.3 and that the hearing to be held before the ALJ is to be de novo. For the reasons set forth below, the ruling regarding burden of proof is reversed and the ruling that the hearing shall be de novo is adopted.

Pursuant to the Right to Farm Act (“Act”), N.J.S.A. 4:1C-1 et seq., an owner or operator of a commercial farm may conduct specified agricultural activities notwithstanding municipal ordinances to the contrary if the appropriate county agriculture development board (“CADB”) determines that the activities constitute a generally accepted agricultural operation or practice and if other criteria of the Act are met. N.J.S.A. 4:1C-9. The State Agriculture Development Committee (“SADC”) adopted rules for such “site-specific agricultural management practice” determinations. N.J.A.C. 2:76-2.3. The rules state that a commercial farm operator or owner may apply to the CADB in its county for a determination of whether his or her operation constitutes a generally accepted agricultural operation or practice. N.J.A.C. 2:76-2.3(a). The procedure for making such a determination is also set forth in the rule. Ibid. Any person aggrieved by a CADB’s site-specific agricultural management practice decision may appeal the decision to the SADC. N.J.S.A. 4:1C-10.2; N.J.A.C. 2:76-2.3(f). Unless the CADB’s determination is appealed to the SADC the CADB’s decision is binding. N.J.A.C. 2:76-2.3(f)2.

As the ALJ stated in his Order, the applicant for a permit, approval, etc. bears the burden of proof of facts essential to the application. (Order, p.17, citing In re Vineland Chem. Co., 243 N.J. Super. 285, 315 (App.Div.), certif.denied, 127 N.J. 323 (1990)). In an appeal of a permit action, however, the burden of proof rests on the proponent of the action desired. National Audobon Society v. Historic Smithville Development Co. 1989 N.J. ENV. LEXIS 180 (OAL DKT. NO. ESA 1140-83, Agency DKT. NO. 82-49) (March 12, 1989). This is true whether it is an appeal by a disappointed applicant who seeks a permit after being denied by a state or local agency, in which case the would-be permittee has the burden of showing that the application meets the relevant standards, or, as in this case, it is an appeal by an interested third party

objector who seeks to overturn an approval. See e.g. Gannett Outdoor Advertising Co. v. New Jersey Turnpike Authority, 92 N.J.A.R.2d (TRP) 1 (where New Jersey Turnpike Authority objected to sign approval granted by New Jersey Department of Transportation, Turnpike Authority had burden of proof to demonstrate that proposed sign did not meet regulatory criteria); G&P Restaurant Co., Inc. v. Municipal Board of Alcoholic Beverage Control of City of Passaic, 92 N.J.A.R.2d (ABC) 5 (objector had burden of proving action of municipal board in approving liquor license was erroneous). In either case the burden is upon the party seeking relief to establish the facts or circumstances upon which that person relies. In this case, the claimant for relief is the Township of Holmdel, which seeks to overturn the CADB's determination that the Casolas' disputed agricultural activities constitute generally accepted agricultural operations or practices.

With respect to permit or approval applications, the initial burden of proof rests with the applicant who seeks the permit or approval. Accordingly, in requests for site-specific determinations, the farm owner/operator has the burden of showing that his or her agricultural activities conform with generally accepted agricultural management practices and meets the other statutory criteria. Ibid. Once the determination has been made by the CADB that the applicant has met his or her burden of proof, in this case with the issuance of the site-specific agricultural management practice, the burden then shifts to the party or parties contesting the CADB's action. At that point the governmental action is presumed valid unless and until the contrary is demonstrated, with the burden of proof thereof on the attacking party. See e.g. Edelstein v. City of Asbury Park, 51 N.J. Super. 368, 389 (App.Div. 1958); Lyons Farms Tavern, Inc. v. Municipal Board of Alcoholic Beverage Control of the City of Newark, 55 N.J. 292 (1970) (municipal board's exercise of discretion in granting or withholding approval of liquor license to be accepted on de novo review by Director of Alcoholic Beverage Control in absence of clear abuse or unreasonable or arbitrary exercise of discretion).

The presumption of validity and reasonableness of agency action is even stronger where the agency has developed special expertise in scientific or technical areas, as is the case here. Newark v. Natural Resource Council, Department of Environmental Protection, 82 N.J. 530, 540 (1980). The Legislature gave the CADBs the responsibility of making site-specific agricultural management practice determinations because of their agricultural knowledge and expertise. Each CADB consists of seven voting members who are residents of the county, four of whom are actively engaged in farming, the majority of whom own a portion of the land they farm, and three of whom represent the general public. Three non-voting members also serve on the CADB: a representative of the county planning board, a representative of the local soil conservation district and the county agent of the New Jersey Cooperative Extension Service. Once the quasi-legislative function of review of a site-specific agricultural management practice has reached finality, the determination is deserving of the presumption of validity. What continues is the quasi-judicial review of the allegations of the objector, namely that the site-specific determination was improperly issued.

The SADC reverses that portion of the Order regarding burden of proof and finds that the burden of proof is on the Township of Holmdel to show that the Casolas' activities do not constitute a generally accepted agricultural operation or practice. The SADC affirms and adopts that portion of the Order concluding that the hearing shall be de novo.