

February 26, 2004

John C. Dreyer
Dreyer Farms

Ron Meeks
Planning and Zoning Department, Cranford Township

Re: Request for SSAMP Determination – Final Agency Decision

Dear Mr. Dreyer and Mr. Meeks:

At its February 26, 2004 meeting, the State Agriculture Development Committee (SADC) reviewed Dreyer Farms' request for a site-specific agricultural management practice (SSAMP) determination.

Specifically, Dreyer Farms had requested that the SADC determine whether or not its proposal to construct fencing to prevent wildlife damage constitutes a generally accepted agricultural management practice.

The SADC determined the following:

- 1) Dreyer Farms' SSAMP proposal constitutes a generally accepted agricultural management practice, and
- 2) There is a legitimate farm-based reason to construct the fencing at a height (7.5-8 feet) greater than Cranford's municipal zoning regulations allow (4-6 feet).

This decision is a final agency decision appealable to the Appellate Division of the Superior Court.

If you have any questions, please contact David Kimmel, Agricultural Resource Specialist, at (609) 984-2504.

Sincerely,

Gregory Romano

Dreyer Farms Site-Specific AMP Request **Cranford Township, Union County**

Prepared by David Kimmel

Background

On September 5, 2003, the SADC received a written request from Dreyer Farms in Cranford Township, Union County for a site-specific agricultural management practice (SSAMP) determination (Item A). Specifically, Dreyer Farms requested that the SADC determine whether or not its proposal – to construct fencing to prevent wildlife damage – constitutes a generally accepted agricultural management practice.

Pursuant to N.J.A.C. 2:76-2.4, the SADC is reviewing this request because Union County does not have a County Agriculture Development Board. The SADC has adopted an AMP for fencing, “Fencing installation agricultural management practice for wildlife control,” N.J.A.C. 2:76-2A.9, but this AMP establishes standards for only two types of fences: high-tensile woven wire fences and electric fences. When other types of fences are installed, the AMP directs the farm operator to request a SSAMP recommendation from the appropriate CADB or the SADC (N.J.A.C. 2:76-2A.9.2).

In this case, Dreyer Farms is proposing to install both high-tensile woven wire fencing and high-strength polypropylene (plastic) fencing to prevent deer damage.

Commercial farm certification – The SADC received Dreyer Farms’ commercial farm certification on December 10, 2003 (Item B).

Site visit - I visited the farm on January 29, 2004 and met with:

- John Dreyer
- Henry Dreyer
- Madeline DiNardo (Union County RCE Agricultural Agent)

Additional People Consulted

- Ron Meeks (Cranford Planning and Zoning Dept.)
- Bill Goble (Cranford Engineering Dept.)
- Geoffrey Slifer (Snyder Research Farm)
- David Drake (Rutgers, RCE, NJ Agricultural Experiment Station)
- John King (NJ DEP, Principal Environmental Specialist)

Basic Issues

Dreyer Farms would like to install a fence to protect their farm from deer during the growing season. The proposed height of their fence (7.5 – 8 feet) exceeds the height allowed by Cranford Township regulations (4 – 6 feet). Rather than seeking a variance to construct the fence, Dreyer Farms has submitted a SSAMP request to the SADC through the process established by the Right to Farm Act. The SADC’s task is to determine whether or not the farm’s fence-construction proposal constitutes a generally accepted practice and whether or not there is a legitimate farm-based reason to preempt the municipality’s fence height restrictions.

Description of the Farm

Location – Dreyer Farms is located at [redacted] in Cranford, NJ in a suburban setting. It is surrounded by residences, and it is across one street from a Cranford public school and across another street from Nomahegan Park (see maps in Items A, B, and C).

Property – The property is 5.5 acres and consists of a house, farm market, barn, three greenhouses, several temporary greenhouses, and open land behind these buildings on which fruits and vegetables are grown. The farm has been in the family since 1904 and has been owned by Henrietta Dreyer (and her late husband) since the 1940s. John and Henry Dreyer, Henrietta's sons, are the current farm operators.

Operation – The Dreyers grow fruits, vegetables, annuals, and perennials, including field mums, bedding plants, chrysanthemums, and other flowers. The farm also sells assorted nursery plants that they buy from off the farm. The growing season typically lasts from April to October, and the farm market is typically open from mid-March to Christmas. When the farm market initially opens, the Dreyers sell perennials, plants, and flowers that they grow, as well as items such as fertilizer, grass seed, and mulch. The market stays open through the Christmas season to sell Christmas trees and Christmas related products.

Rationale for SSAMP Request

To protect their farm from persistent crop damage caused by deer, the Dreyers feel it is necessary to install a fencing system that would prevent deer from entering the farm. According to the Dreyers, there has been much deer damage to the farm over the years, particularly to the farm's fruit and vegetable crops. Deer live in the neighboring Nomahegan Park, which is part of a greater park system that connects to the larger Watchung Reservation, where additional deer reside.

During the growing season, or generally between April and October, deer will enter the farm and typically bypass the farm's nursery and flower plants to feed on the farm's fruits and vegetables. This problem increases during periods of less rain, times during which the farm's irrigated fruit and vegetable crops become one of the few sources of green food. One section of the farm had had an electric fence in the past, but this fence was removed due to safety concerns.

Proposed Practices

Fence location – As stated in their SSAMP request, the Dreyers are proposing to install a combination of permanent and non-permanent fencing. This fencing system would completely enclose the open field and the large greenhouse behind the Dreyer house (see map in Item A). The fencing would be installed just inside the Dreyer property lines.

The SSAMP proposal map also shows which part of the fencing system would be permanent (the fencing which would border the neighbors' backyards) and which part would be non-permanent (the fencing which would be across from the school and behind the Dreyer's house, stand, and other greenhouses/barn).

Permanent and Non-permanent fencing – For this discussion, ‘permanent fencing’ means fencing that would be installed and left in place until it was time to replace or repair it.

‘Non-permanent fencing’ means fencing that would be installed in the following manner: permanent posts would be installed, but the fencing which is attached to these posts would be taken down outside of the growing season (which generally lasts April to October). During the growing season, this ‘non-permanent fencing’ would also be rolled up to accommodate mowing, particularly along the stream. The fencing would also be rolled back in certain places behind the barn/greenhouse areas to allow farm machinery to pass through to the farm.

The Dreyers are considering a combination of permanent and non-permanent fencing because of aesthetic (neighbor-relations) concerns. According to John and Henry Dreyer, ‘the last thing we want to do is put up a fence and upset the neighbors, but we have to do something to prevent the deer damage.’ The Dreyers also prefer the farm’s open look/feel when there aren’t fences. One of the reasons for choosing the non-permanent type of fencing that the farm did (heavy duty plastic mesh grid) is that this fencing is relatively invisible and inconspicuous. In fact, in order to alert/teach deer of the fence’s presence, fence manufacturers recommend that fence-installers attach ribbons or pieces of white cloth to the fence for a few weeks after the fence is installed.

Specific type of fencing – The Dreyers are proposing to use high-tensile woven wire fencing for the permanent sections and heavy duty plastic mesh grid fencing for the non-permanent sections. John Dreyer noted the specific name for each fence type, which he will purchase from Wayside Fence Co. in Bayshore, NY:

- Permanent – high tensile galvanized fixed knot heavy duty deer fencing
- Non-permanent – Cintoflex high strength P polypropylene deer fencing

The permanent fencing is made of rectangles that start 3”x7” (high x wide) at the base, with the height of the rectangles gradually increasing as you move up the fence until the dimensions are 7”x7” at the top. The non-permanent fencing is made of 2”x2” squares (Item D).

Fence heights – The permanent sections would be 8 feet high, and the non-permanent sections would be 7.5 feet high.

Fence installation – The high tensile woven wire (permanent) fencing would be installed in accordance with the Rutgers Cooperative Extension document, “High Tensile Woven Wire Fences for Reducing Wildlife Damage” (Item E), and the fence manufacturer’s installation instructions and guidelines.

The heavy duty polypropylene (non-permanent) fencing would be installed in accordance with the fence manufacturer’s installation instructions and guidelines, with the exception that the following installation methods may be used to allow the fence to be rolled up, rolled back, or taken down outside of the growing season (i.e. to make it non-permanent):

For the posts, the farm might install 1.5 inch diameter metal pipes that would stick out of the ground about 4 feet. Inside these pipes, they would insert additional posts that

would rise to the desired fence height of 7.5 feet. The plastic fencing material would be attached to z-shaped hooks attached to the posts and secured with heavy-duty plastic ties/seals. When the ground near the fence needed to be mowed, the fence could be temporarily rolled up and held out of the way on the higher hooks. In a similar way, portions of the fence could be rolled back, or the entire fence could be rolled off outside the growing season.

Timeline - The Dreyers would like to install the fence by April to prevent deer damage during this year's growing season.

Municipality Concerns/Conflicts with Municipal Regulations

Cranford Township regulations state the following:

- A zoning permit is required to install a fence
- Should the proposed fence exceed either the height (4 – 6 feet) or percent openness allowed (50-100% solid), then a variance would be required from the Township's Zoning Board of Adjustment
- Fences are not permitted in floodways

The SADC received a letter from Daniel J. Aschenbach, Cranford's Mayor, describing these regulations (Item F). A letter was also received from Ron Meeks, Planning and Zoning Officer, describing the floodway/flood fringe area concerns raised by Bill Goble, Cranford Engineering Department (Item G).

I've spoken with both Ron Meeks and Bill Goble. Ron is aware of the Right to Farm Act's ability to preempt municipal land use authority, but he feels the farm may still need to get a variance from Cranford Township (even if the SADC determines that the farm's fence-construction proposal is acceptable and legitimate). I described my differing opinion on the need for the farm to seek a variance should the SADC approve the farm's proposal.

Ron also recommended that prior to the fence being installed, the farm should have the site surveyed and staked by a licensed engineer. His rationale was that there are sometimes discrepancies among surveys, and with the large number of neighboring property owners, the potential for such discrepancies is higher. (Cranford Township's first letter (Item F) included a copy of the municipality's fence regulations; these regulations do not specify that a survey is required.)

Ron would have also liked to see a survey of the farm showing precisely where the fence would be installed, but he said that seeing such a survey wasn't necessary – he wanted to make sure that the fence wouldn't be constructed on an easement right of way, but this concern has been addressed by saying that the fencing would be constructed within the Dreyers' property lines. Overall, Ron's position is not an adversarial one.

Bill Goble was concerned with flooding issues that might arise from the farm being in a floodway or flood fringe area. He said that the ditch/stream that runs through the farm is part of a drainage area for the community, and he was concerned that a fence crossing this ditch could aggravate drainage, runoff, or flood control. Bill noted that his concerns are all related to NJ DEP's stream encroachment regulations, and that these

concerns could be addressed by determining whether or not DEP would require the farm to obtain a DEP stream encroachment permit before installing the fence.

Addressing the Municipality's Concerns/Conflicts with Municipal Regulations

Fence height – The SADC has already established (through an adopted AMP, “Fencing installation agricultural management practice for wildlife control,” N.J.A.C. 2:76-2A.9) that installing fences to reduce wildlife damage is a generally accepted agricultural management practice. For deer fencing to be effective, such as the type of deer fencing Dreyer Farms is proposing to install, the fencing needs to be 7.5-8 feet high.

This opinion is supported by Madeline DiNardo, the Rutgers Cooperative Extension (RCE) Agent for Union County, and David Drake, a Wildlife Extension Specialist with Rutgers, RCE, and the NJ Ag Experiment Station (Items H and I). Both agricultural professionals have provided written support of Dreyer Farm’s fence-construction proposal: they describe the proposal (fence height, fence installation and construction, etc.) as a suitable/acceptable option for the farm and a generally accepted agricultural management practice.

Fence openness – Fence openness is not an issue because both types of fences in the proposal are less than 50% solid, the greatest municipal requirement.

Flooding concerns – Cranford Township’s flooding concerns have been resolved by looking at NJ DEP’s stream encroachment regulations (Flood Hazard Area Control, N.J.A.C. 7:13) and by speaking with John King, a Principal Environmental Specialist at DEP. The regulations state that ‘agricultural fences’ are a non-regulated activity in flood fringe areas and that ‘on-going farming operations’ are a non-regulated activity in floodway areas. ‘Non-regulated activity’ means an activity that would not require a DEP stream encroachment permit.

The entire farm is located in a flood fringe area, except for a small segment near Springfield Rd., which is in a floodway area. The proposed fence construction takes place entirely in the flood fringe area.

I described the farm’s fence-construction proposal, as well as Cranford Township’s flooding concerns, to John King. John, citing the DEP regulations and considering this specific case, stated that the type of fencing proposed for these farming purposes would be considered a non-regulated activity and therefore would not require a DEP stream encroachment permit.

Staff recommendation

The SADC staff recommendation is that

- Dreyer Farms’ SSAMP proposal to construct deer fencing (‘Proposed Practices’) constitutes a generally accepted agricultural management practice,
- There is a legitimate farm-based reason to construct the fence at a height greater (7.5-8 feet) than municipal zoning regulations allow (4-6 feet), and
- If Dreyer Farms encounters boundary line problems when erecting the fence, the farm may have to survey the property.