



Memo

To: Agricultural and Preservation Partners
From: Jeffrey C. Everett, Deputy Executive Director, State Ag. Development Committee
Date: 5/2/2022
Re: Draft Soil Protection Standards (Revised) - Request for Informal Comments

On April 19, 2021, the State Agriculture Development Committee (hereafter “SADC” or “the Committee”) circulated a previous draft of the proposed soil protection standards to stakeholders and, partly due to informal comments received in response, discussed a modified approach at the October 28, 2021, SADC meeting. Pursuant to the Committee’s direction at the October 28 meeting and working in concert with the SADC’s Soil Protection Standards subcommittee, a revised draft proposal with corresponding rule text was discussed at the SADC’s April 28, 2022 meeting. At that meeting, the Committee approved the draft be circulated to our partners to solicit informal comments before the package is finalized and prepared for publication in the New Jersey Register as a formal rule proposal. Attached are the draft rules for your consideration (**Attachment 1**) along with the corresponding outline of what would constitute Subchapters 25 and 25A of Chapter 76 of the New Jersey Administrative Code (**Attachment 2**)

Per **Attachment 3**, which is the PowerPoint presentation from the aforementioned April 28 meeting, you will see how the methodology shifted from heavy reliance on a suite of Best Management Practices (BMPs), which landowners and easement holders felt were too complex and difficult to administer, to a more straight forward approach that utilizes “bright-line” definitions as to what does and does not constitute “soil disturbance.” Please let this memo briefly summarize the salient features of the proposal.

SUBCHAPTER 25. SOIL DISTURBANCE ON PRESERVED FARMLAND

§ 2:76-25.3 Definitions

This section is the foundation of the entire set of regulations, defining what is and isn’t considered soil disturbance. Please note that the soil disturbance definition is derived in part from the attached report (**Attachment 4**) produced by Rutgers for SADC and to a larger degree, various U.S. Department of Agriculture-Natural Resources Conservation Service publications and ultimately an internationally accepted definition adopted by ICOMANTH - the International Committee on Anthropogenic Soils. Staff consulted with the very practitioners and scholars who developed this framework so that it was

scientifically derived and legally defensible. Please note that the separation between “core” and “non-core” definitions will be discarded when the final rule is proposed to the New Jersey Register but in the interim, this format serves as a teaching tool along with the use of indentations as to how the various core definitions interact with one another. The foundation of this regulation is in fact the definitions, which must be read in concert with one another and in so doing, prevents a lengthier regulatory construct.

§ 2:76-25.4 Exemptions

Agriculture is inherently a soil disturbing activity but obviously one that is accorded deference throughout the proposed rule. Specifically, there are twenty-two agricultural practices we are suggesting should be exempt from counting towards the prescribed soil disturbance limit. In addition, the opportunity for future exemptions to be promulgated exists in order to expand beyond these initial twenty-two. Some of these practices are further fleshed out in the Supplemental Standards (Subchapter 25A), but all are spelled out in the Definitions section so landowners are not left wondering if a particular practice is exempt or not. Normal tillage practices and several soil and water conservation practices are among those exemptions explicitly listed.

§ 2:76-25.5 Allocation and limitation

This section memorializes the soil disturbance limitation agreed upon at the October SADC meeting, i.e. a maximum limit of 12% or 4 acres, whichever is greater. It clarifies that new disturbance placed on areas previously disturbed will not count twice, and disturbance within exception areas does not count towards the limit.

§ 2:76-25.6 Waiver

This section memorializes the soil disturbance limitation agreed upon at the October SADC meeting for farms with current disturbance within 50% of the prescribed 12%/4-acre limit to allow waivers to be issued by the SADC up to a maximum limit of 15% or 6 acres, whichever is greater. It also contemplates the requirements that need to be satisfied to be awarded a waiver bearing in mind the potential impacts of additional disturbance to adjacent properties.

§ 2:76-25.7 Aggregation and consolidation

Aggregating disturbance or transfer/aggregation is possible as spelled out in the draft. However, it would need to be done on contiguous preserved farms owned by the same owner.

§ 2:76-25.9 Soil rehabilitation application and certification procedures

This section contemplates properly rehabilitating disturbed soils to approximate their pre-disturbance condition. The affected areas will no longer count towards the soil disturbance limit upon such successful rehabilitation. Staff consulted with one of the leading authorities on soil rehabilitation to ground the regulation in well-developed scientific theory and practice. The section was bifurcated between application and certification procedures, with Appendix A serving as the technical standards.

§ 2:76-25.10 Baseline mapping and monitoring

This section relates to the SADC’s partnership with Rowan University to map disturbance on all 2,700+ preserved farms. Namely, it is proposed that those baseline disturbance maps be sent to all landowners once the rule is adopted with the caveat that a site visit may be conducted upon the landowner’s request to ground truth what is reflected in the mapping. It is imperative that landowners bring any mapping

inaccuracies to our attention within 180 days of receiving the soil disturbance map for their property, particularly those landowners who may be eligible for a waiver because the baseline disturbance mapping is the source for determining whether landowners are eligible for a waiver. Staff envisions an online mapping application be made available where landowners could zoom in and see their farms in greater detail than a paper map can afford. This section also contemplates the documentation of future disturbance through the auspices of standard annual monitoring visits and provides for an appeal process if landowners disagree with disturbance mapping at any time.

§ 2:76-25.12 Request for hearing

As mentioned in the preceding paragraph, it is prudent to provide due process to landowners who may disagree with mapping or any other disturbance determination. Because the Farmland Preservation Program has historically relied heavily on partners, those grantees/easement holders will likewise be accorded an opportunity to request a hearing for any action where they feel they are aggrieved.

SUBCHAPTER 25A. SUPPLEMENTAL SOIL DISTURBANCE STANDARDS

§ 2:76-25A.4 Vegetative cover standard

The Exemptions section in Subchapter 25 exempts temporary parking areas, temporary storage areas, livestock confinement, and livestock training areas from the soil disturbance limit but only when “minimum vegetative cover” is maintained. Minimum vegetative cover is defined in the Definitions section as “vegetative cover of at least 70% for at least 9 months per calendar year” which borrows from the Right to Farm agricultural management practice for equine activities. Because measuring vegetation cover could be seen as a nebulous undertaking, Appendix A describes the step-point method, which has been deployed since the 1950s as a tool to assist in rangeland management.

§ 2:76-25A.5 Topsoil stockpiling standard

Best practices for creating and maintaining topsoil stockpiles are described in this section. As long as the standards are followed, topsoil stockpiles are exempted from the soil disturbance limit.

§ 2:76-25A.6 On-farm utilities construction standard

Here again, best practices are described and as long as the standards are followed, the contemplated activity - in this instance, on-farm utilities - is exempted from the soil disturbance limit.

Request for Stakeholder Comments on this rule proposal

To consider input from partners before the promulgation of these proposed rules in the New Jersey Register, the Committee is inviting interested parties to comment informally before the formal Register process commences. **Please submit your written comments within a 30-day review period that concludes June 10, 2022**, by electronic mail (strongly encouraged) to sadc@ag.nj.gov or, if necessary, by U.S. Mail at the following address:

State Agriculture Development Committee
Attn: Soil Protection Standards Comments
PO Box 330
Trenton, NJ 08625-0330

With those comments in hand, we will return to the Committee to finalize the details before a proposed rule is sent to the Register, tentatively this summer, with adoption slated for fall. In the interim, please do not hesitate to contact me at the above addresses or by phone at 609-984-2504. Thank you for your attention to this matter.

Distribution list:

State Agriculture Development Committee – Members
State Board of Agriculture – Members
County Agriculture Development Boards – Administrators
Municipal PIG Program Contacts
D&R Greenway
Friends of Hopewell Valley Open Space
Hunterdon Land Trust
Lamington Conservancy
Monmouth Conservation Foundation
Montgomery Friends of Open Space
New Jersey Conservation Foundation
NJ Highlands Council
NJ Pinelands Commission
Ridge & Valley Conservancy
South Jersey Land & Water Trust
The Land Conservancy of New Jersey
The Nature Conservancy
Trust for Public Land
County Boards of Agriculture – Presidents
New Jersey Department of Agriculture – Division Directors
Rutgers Cooperative Extension
New Jersey Farm Bureau
Farm Credit East
Northeast Organic Farming Association of New Jersey
USDA Farm Service Agency
USDA Natural Resources Conservation Service
USDA Rural Development
Soil Conservation Districts
Natural Resources Conservation Service
North Jersey Resource Conservation & Development
South Jersey Resource Conservation & Development