



The New Jersey Beekeepers Association

www.njbeekeepers.org

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January 15, 2018

Joseph Zoltowski, Director
Division of Plant Industry
NJ Department of Agriculture
PO Box 330
Trenton, NJ 08625-0330

RE: Proposed Amendments N.J.A.C. 2:24-1.1, 2.3, 3.1, and 6.4
Proposed New Rules: N.J.A.C. 2:24-7
Proposal Number: PRN 2017-216

Dear Mr. Zoltowski:

Attached is the New Jersey Beekeepers Association (NJBA) response to the proposed rules currently open for public comment. These comments are submitted on behalf of the ten branches of the Association, comprised of 1,462 member beekeepers in 323 municipalities spread throughout the 21 counties of the state:

Central Jersey Beekeepers Association
Essex County Beekeepers Society
Jersey Cape Beekeepers Association
Mid-State Beekeepers Association
Morris & Somerset County Beekeepers Association
Northeast New Jersey Beekeepers Association
Northwest New Jersey Beekeepers Association
Raritan Valley Beekeepers Association
South Jersey Beekeepers Association
Sussex County Beekeepers Association

Geff Vitale, President
Joseph Treimel, President
Jerry Futrell, President
George Sereduk, President
Bob Hughes, President
Frank Mortimer, President
James McCaulley, President
Maria Jablonski, President
Beth Ann Hall, President
Tom Makoujy, President

Respectfully,

Janet A. Katz, President
New Jersey Beekeepers Association

Encs.

New Jersey Beekeepers Association Comments

Draft NJ Department of Agriculture Beekeeping Regulations Rule Proposal dated November 20, 2017, 49 N.J.R. 3565

A. General Criticisms

1. The draft is inconsistent with the legislative intent of the statute, P.L.2015, Chapter 76 (codified at NJSA 40:48-1.5 and NJSA 4:6-24), which sought to encourage and enable beekeeping throughout the State. Instead these regulations put new, drastic and unnecessary barriers in the way of hobbyist and small commercial beekeepers.
2. There is no evidence that there is such a general problem with honey bees that such drastic new barriers to keeping bees should be adopted.
3. The draft is inconsistent with the direction given to the State Board of Agriculture (“Board”) and Department of Agriculture (“Department”) by the Resolutions concerning Beekeeping that were adopted by the assembled Delegates at the 2016 and 2017 State Agriculture Conventions.
4. The draft does not represent the Department’s own expertise. The draft is riddled with misunderstandings of beekeeping practice, bee behavior and bee biology, and reflects an exceedingly poor understanding of municipal land use planning and regulation in New Jersey.
5. The deficiencies in the draft regulations are a direct consequence of two key failures in the Department’s drafting process:
 - a. The Department mistakenly frames its statutory mandate as development “...of proposed new rules to include beekeeper responsibilities to the non-beekeeping public.” In fact, the Department’s role is to use its own expertise and that of outside experts to balance the important social, economic and environmental benefits of having honey bees throughout New Jersey, with those concerns for public health, safety and general welfare that are real, and not those concerns that are merely imaginary or based in fear and ignorance;
 - b. The Department failed to genuinely fulfill its statutory obligation (reinforced by relevant Resolutions adopted at the 2016 and 2107 Conventions) to consult with the New Jersey Beekeepers Association (“NJBA”) and academic experts in the course of developing regulations, and to involve others with important expertise. In April of 2016, Department staff presented a few pages of rough ideas about potential standards to the committee convened to work on the draft. In late July of 2017, more than fifteen months after presenting those few unformed ideas, and without any further input or review from Farm Bureau, NJBA or the Mid-Atlantic Apiculture Research and Extension Consortium (“MAAREC”), the Department revealed the fully-formed draft regulations that, little-changed, are the subject of this critique.

B. Recommendations

1. The draft regulations have the effect of crushing instead of supporting beekeeping, and so completely fail to carry out the responsibilities of the Department to implement its statutory and other authorities, that the Board should wholly withdraw the draft regulations.
2. The beekeeping season is only a few months away. The “Best Management Practices Beekeepers Populated Areas” that were long promulgated by the Department should be adopted on an emergency basis as interim regulations to fulfill the statutory obligations of the Department and to provide a genuine and substantial measure of protection for the public in the coming season from those very few beekeepers who exhibit poor beekeeping practices.
3. A new drafting committee should be formed comprised of personnel from the Board and Department, those entities named in the statute: the NJBA, MAAREC, and the NJ League of Municipalities; as well as New Jersey Farm Bureau and other persons with expertise in bee behavior and biology, agriculture and land use regulation.
4. The new committee should seek to carry out its obligations under the statutes and guiding Resolutions of the Convention Delegates transparently through sharing of drafts and issues throughout the committee’s membership and for the entire duration of the drafting process. The goal should be to write regulations that genuinely support and sustain the broad social, environmental and economic benefits of beekeeping and limit it only when truly necessary to protect health and safety.

C. Key Problems of the Current Draft Regulations

1. Contrary to the express language of the relevant section of the authorizing statute, P.L.2015, Chapter 76 and codified at NJSA 40:48-1.5(1)A.(2)b, which allowed only for delegation to municipalities of the new authorities given to the Department under that new law, the draft regulations at proposed N.J.A.C.2:24-7.4(a) also improperly provide for wholesale delegation to towns of the Department’s longstanding bee health and hive inspection role:
 - a. Even if the statute allowed such delegation, towns lack the expertise to carry out apiary health inspections and health enforcement measures;
 - b. Towns’ lack of expertise will either be a bar to acceptance of delegated enforcement, lead to selective enforcement by towns, or lead to local code enforcement officials being tasked by towns with doing health inspections within hives;
 - c. Local code officials are not trained or qualified to carry out bee health inspections;
 - d. The draft regulations have no standards, no mechanisms, and no funding for training and qualification of these local officials in bee health inspections.

2. In proposed N.J.A.C. 2:24-7.4 (c)1.i., the draft regulations would gut the carefully crafted balancing of interests prescribed by the Legislature in the express language of the preemption statute by allowing municipalities that have existing apiary standards to petition the Department “for immediate resolution” to permit those former local standards to be enforced instead of the Department’s. In other words, the draft regulations have invented a local ordinance “grandfathering” provision that is not in the statute. This would avoid the statutory obligation of municipalities to adopt the Department’s standards by reference, or when seeking special local rules to consult with beekeeping experts and the League of Municipalities. This grandfathering provision is not authorized by the statute and is contrary to its intent and express language.

3. The extremely low proposed hive densities and severely restricted locations are irrational and unsupported by science or experience:
 - a. Urban bees are not allowed;
 - b. No bees are allowed by right on any lot that is a “residential lot”;
 - c. No bees are allowed as of right on any “commercial lot”;
 - d. No bees are allowed on lots smaller than ¼ acre regardless of zoning district or use;
 - e. Where agriculture is permitted, only 2 colonies are allowed on lands between ¼ acre and less than 5 acres;
 - f. Where agriculture is permitted, 40 colonies are allowed on lots of 5 acres or more, results in an irrational 2000 percent decrease in allowable hives between 5.00 acres and 4.99 acres;
 - g. Huge swaths of the urbanized and suburbanized parts of the State would be off-limits to managed honey bees;
 - h. These limitations are more restrictive than any limitations imposed by any other similar regulations or ordinances in other jurisdictions;
 - i. These extreme limitations are unsupported by any scientific studies and are contrary to recent positive experiences around the world with bees in urban and suburban settings.

4. The drafter’s use, without definition, of terms such as: “farm”, “residential lot”, “commercial lot” and “where there has been a determination of agriculture as permitted”, when setting the hive density and location limits reveals the drafters’ lack of understanding of basic concepts and terminology used in land use regulation under existing New Jersey law and practice:
 - a. "Residential lot" is not defined, so it is not clear whether this means a lot used residentially or zoned residentially;
 - b. It is unclear how a lot used as a residence in a zone that allows residential and agricultural uses would be treated;
 - c. Similarly, the term “commercial lot” could refer to a lot used commercially or zoned commercially. We have no way of knowing which;

- d. The phrase “where there has been a determination of agriculture as permitted” is also flawed because it requires that some (unknown) body must make a particularized determination about whether agriculture is allowed on the subject property under laws that are not specified;
 - e. “Farm” is not defined, but the drafters mistakenly seem to think that “Farm”, and “Commercial Farm” are the same thing under the Right to Farm Act. They are not;
 - f. The drafters mistakenly seem to think that there are only three lot size classifications in New Jersey: lands of less than ¼ acre, lands of ¼ acre to 5 acres, and lands greater than five acres in size;
 - g. The drafters mistakenly seem to think that there are only three classes of land use in New Jersey: “residential lots”, “commercial lots” and lands “where there has been a determination of agriculture as permitted”;
 - h. There are no provisions for industrially used or zoned properties;
 - i. There are no provisions that would allow hives to be maintained on any public or institutional property- so no bees at Rutgers, no bees at the Department’s own insect lab, no bees at any public garden or at any church or park, and no bees at the White House if it were in New Jersey.
5. Absent a waiver, the proposed lot use, size and density standards would prohibit most of the approximately 3,500 existing hobbyist and small commercial beekeepers in the State from keeping bees in some or all of the places where they now have bees:
- a. This new prohibition would be imposed despite very few documented complaints about genuine problems with these existing bees over a span of many years.
 - b. The summary statement concerning N.J.A.C. 2:24-7.2, which sets the lot use, size and density standards, reveals that those standards “incorporate prior independent (unrelated honey bees or beekeeping) land use evaluations...” In other words, *bee behavior and biology were not considered in setting density and location standards.*
 - c. The considerations applied by the drafters to hive number and location standards is not consistent with purposes of the authorizing statute or the Department’s direction from the Convention Delegates in the 2105, 2016 and 2017 Beekeeping Resolutions;
 - d. In each case the Resolutions require the Department to develop standards “...based upon the sound understanding of honey bee behavior of qualified experts within and without the Department.”
6. The draft regulations purport to seek a balance between the interests of beekeepers and their responsibilities to the non-beekeeping public. The extreme and unwarranted limitations on hive numbers and locations chosen by the Department do not reflect such a balance. These limitations do reflect the numerous inaccuracies and omissions in the summary and impact analysis statements that accompany the rule proposal:
- a. The summary statement asserts without any supporting data that there has been an increase in unregistered beekeepers and complaints;

- b. The summary statement concerning N.J.A.C. 2:24-7.2, which sets the hive density per lot standards, asserts that "...elimination of competition from other colonies for resources..." is an important basis for the density standards, but there is no science to support any link between host apiary lot size and resource availability;
- c. The summary and impact statements do not acknowledge the importance of pollination by honey bees in areas of the State outside of commercial agriculture;
- d. There is no mention of the benefits of honey bee pollination to home gardeners in all settings: rural, suburban and urban;
- e. There is no mention of honey bee pollination benefits to numerous bird species that rely upon seed forage that results from that pollination;
- f. There is no mention of the important social and educational benefits to people of all ages, especially young people, that come from interacting with honey bees and thereby learning about nature and the environment;
- g. There is no mention of the ongoing and documented loss of native bees that have long-provided much of these social, economic and environmental benefits, or of the concern that managed honey bee colonies may in the future be the only way to fill these important environmental niches.

The draft regulations fail to properly locate the point at which community interests are truly balanced because the Department has ignored very significant societal goods and asserted the existence of problems of a magnitude that does not exist.

- 7. The procedural provisions for seeking a waiver of the density limitations are unduly burdensome and unworkable.
 - a. There will potentially be thousands of such waiver applications within the first month of adoption of this draft, and each application may involve multiple locations and numerous hives;
 - b. The administrative systems and personnel for hearing and decision on the waivers do not exist in the Department or in any of the towns which may undertake to be the enforcing authority;
 - c. There is no funding mechanism provided by the draft regulations to fuel the massive waiver effort;
 - d. The requirement, as a predicate for a waiver hearing, that every apiary be certified as free of disease is functionally impossible because we have only one State Apiarist who is trained and authorized to make those certifications;
 - e. The application, public notice and hearing requirements are just like those required for a zoning variance even though avoiding such variance applications was a fundamental reason the pre-emption statute was adopted by the Legislature.

8. The substantive criteria for waivers are fuzzy and without clear standards. Laws that are as vague as these regulations are invalidated by the courts on constitutional due process grounds because of the potential for abusive and selective enforcement.
 - a. Property size is a factor but no size(s) that would be favored or disfavored are specified;
 - b. The distance between the hive(s) location and adjoining homes is a factor, but no distance is specified;
 - c. Whether the proposed hives are the first or additional hives on the property is a factor, but it is not clear which situation is to be favored or why it matters;
 - d. The prior history of complaints against the applicant for violations of the regulations is a factor regardless of whether those complaints were proven or unfounded, and regardless of whether they are minor record keeping violations or more serious issues;
 - e. The zoning district is a factor, but no favored or disfavored districts are stated;
 - f. Whether the hives serve some business purpose or the hives are to be kept as a hobby is a factor, but why this is a factor is not stated, so it is not clear whether it is better or worse for the beekeeper to sell a few bottles of local honey from the front porch;
 - g. The final factor: "Other such facts as the governing authority may believe appropriate to consider according to the case and circumstances presented at the time the application is heard[,]” places such broad and potentially arbitrary discretion in the authority hearing the waiver request that no other stated “standard” matters at all.

Taken together, the procedural and substantive problems of the waiver provisions make their meaningful implementation impossible. They are a sham.

9. The draft regulations reverse the statutory policy and place the burden of seeking extraordinary relief on beekeepers, instead of on towns:
 - a. The statute envisions that the Department would create standards applicable throughout the State that would apply to all beekeepers;
 - b. The draft regulations create a regime in which most all beekeepers would need special waivers to allow them to continue to keep the bees they have now and to establish new apiary locations anywhere but on large farms;
 - c. Legislature recognized that the Department’s general rules might not always work in every situation, so towns that find “...a condition or circumstance in the municipality that is not resolved by the [Department’s general] standards...” are allowed to get extraordinary relief first by seeking guidance from the Department, and then if that does not resolve the issue within 90 days, through the creation of local standards. N.J.S.A. 40:48-1.5(1)c.;
 - d. The statute explicitly places the burden of seeking extraordinary relief on towns, not on beekeepers, but through the proposed waiver process, the draft regulations reverse those policies and improperly place the burden of seeking extraordinary relief on beekeepers.

10. The waiver revocation process provided in 2:24-7.3A(f) doubles down on the neighbor veto provided by the waiver process and further exposes the entire waiver process to be a sham:
 - a. Any resident or property owner within the same town as the apiary may initiate the waiver revocation hearing process.
 - b. The revocation hearing process can be initiated by a non-resident property owner or someone with an ax to grind who lives miles away from the targeted apiary;
 - c. There is no limitation on the number of times multiple revocation proceedings can be initiated against the same targeted apiary;
 - d. There is no allocation of the burden of proof, so a beekeeper could be forced to repeatedly appear at hearings to present the same proofs;
 - e. There is no allocation of costs for the proceeding, so towns may try to require the beekeeper to bear the costs of multiple revocation proceeding(s);
 - f. This provision is transparently designed to exhaust a beekeeper into removal of apiaries in the face of opposition despite having previously proven the suitability of the apiary and the beekeeping practices in the apiary.

11. The initial and continuing education requirements imposed upon beekeepers are entirely novel, are not required of any other livestock or horticultural activity, are poorly defined and are a dangerous precedent for agriculture:
 - a. The NJBA and its many local branches throughout the State support beekeeper education through numerous voluntary programs and classes, but feel strongly that imposition of such education as a condition of lawful beekeeping is the wrong approach;
 - b. Today it is bees, tomorrow bulls? It would certainly satisfy some within the environmental community if the Department's Animal Waste Management Regulations included initial and continuing education requirements for livestock producers and if the DEP imposed such requirement for agricultural fertilizer applicators. This education requirement from the Department for beekeepers is an unwelcome precedent for agriculture;
 - c. There is no curriculum, syllabus, or statement of basic competencies about the required continuing education except when and how frequently beekeepers are subjected to it;
 - d. Since there are no specifics stated in the draft regulations about the required education, it is impossible to link that education to genuinely expected potential gains in bee health or public safety;
 - e. The education requirement is therefore merely an unnecessary barrier to beekeeping that will have significant negative effects on bees and beekeepers, and the growers, gardeners and species, large and small throughout the State who rely upon them.

12. The proposed overly burdensome hive registration and education requirements will impede important efforts to protect bee health. Because apiary registration would trigger the beekeeper education requirement, it would likely result in reduced rates of hive registration:
 - a. The NJBA supports reasonable apiary registration and hive marking requirements;

- b. The principal purpose of apiary registration under prior law has been to help the State Apiarist control outbreaks of disease, if they occur;
 - c. By knowing where colonies are located and who controls them, the Apiarist can inspect, quarantine or require destruction of diseased colonies;
 - d. The draft regulations make controlling beekeepers and the locations of their bees the most important purpose of apiary registration;
 - e. Beekeepers' desire to avoid the new and overly burdensome registration and education requirements will likely reduce rates of hive registration, making it harder for the State Apiarist to find nearby bees when disease is found, and thereby severely impeding the important bee health efforts of the Department
13. Most of the qualifying criteria for apiary registration are overly vague and unworkable. Others are likely violations of due process:
- a. In order to register an apiary the beekeeper must provide an "Affirmation ...that the beekeeper is not aware of any unresolved citizen complaints."
 - b. The Department is directed to review, among other factors, whether there are "...unresolved citizen complaints and request additional information, if necessary before electronically issuing the registration."
 - c. "Unresolved citizen complaint" is not defined. It is not clear who may make a complaint, what it must be about, or to whom it must be made;
 - d. Does "unresolved citizen complaint" mean an anonymous phone call to the local zoning officer about cars parking on the lawn? A private municipal court complaint about an alleged trespass offense that has not yet been adjudicated or even found to be based upon probable cause by the municipal judge? A neighbor's call to the beekeeper complaining about yellow jackets on the citizen's deck? A neighbor's gripe to another neighbor that he hates the color the beekeeper paints her boxes?
 - e. Since "citizen" is not defined, who has legal standing to make a complaint that matters? Does it mean that non-citizen resident aliens may not complain? Is it enough to be a resident of the same town, county or state? Or does a complainant need a sufficiently particularized property interest that he or she would be entitled to notice? These regulations don't tell us;
 - f. It is not clear what "additional information" the Department may or should request if there is an "unresolved citizen complaint".
 - g. The regulations state that the Department shall deny the registration of any hobbyist beekeeper who has an outstanding complaint. Denial is required whether the complaint has been proven valid or is just pending. This is likely a violation of due process of law;
 - h. If the registration is denied, but the beekeeper elects to have bees on in that location anyway (somewhere that may be a very large lot that has hosted bees for decades without incident or valid complaint from a party with legitimate standing to make it), that apiary will no longer be on the Apiarist's map, and the bee health protection purposes of the registration requirement will be directly defeated.

14. The neighbor notice requirement of the apiary registration application, when coupled with the absence of “unresolved citizen complaint” requirement, seems designed to give objecting neighbors an effective veto over otherwise lawful beekeeping:
 - a. In order to register an apiary the beekeeper must affirm that he or she has provided notice “...to neighbors who share a property line about the presence and location on the property of the beekeeper’s hives;”
 - b. The notice requirement seems to exist solely to elicit objections or complaints about the proposed or existing apiary location that could give the Department pause in issuance of an apiary registration under the “unresolved citizen complaint” requirement;
 - c. The notice requirement applies whether the property is the minimum permissible ¼ acre or 200 acres in size, and whether the hives are 20 ft. or 2 miles from the property line;
 - d. The notice requirement applies to each annual registration of longstanding apiary locations as well as to new locations;
 - e. No source to obtain contact information or required means to provide the notice is set forth in the draft regulation;
 - f. In the absence of specificity as to what constitutes adequate notice (how to contact the “... neighbors who share a property line...” and what to say or send), every registration will potentially be subject to a challenge that notice was inadequate;
 - g. The annual notice requirement, and the “unresolved citizen complaint” that it seems designed to elicit, place undue burdens on beekeepers’ otherwise lawful activities, and will be an administrative nightmare for the Department or any town that undertakes enforcement.

15. Under the draft regulations, apiaries that comply with all of the draft regulation’s standards could still be shut down:
 - a. “Notwithstanding compliance with this chapter, including these apiary standards, it shall be unlawful for any beekeeper to keep a hive or hives in such a manner or of such disposition as to be a direct threat to public health and safety.” Proposed N.J.A.C. 2:24-7.1(f);
 - b. “Direct threat to public health and safety” is not defined and no criteria for analysis are provided;
 - c. Any apiary subject to the draft regulations could be the subject of a discretionary enforcement action even if it meets every published standard;
 - d. This potentially returns unfettered and arbitrary discretion back to towns in direct contravention of the statutory intent that there be statewide standards prescribed by the Department;
 - e. There is no allocation of the burden of proof, so towns could require beekeepers to prove that their apiaries are not a threat instead of requiring the party that wants to shut down an apiary to prove that it is a direct threat to public health and safety.

- f. The “direct threat to public health and safety” idea has been inappropriately borrowed from the Right to Farm law (4:1C-1 et seq.). Under Right to Farm, Commercial Farms are potentially exempt from local regulations (including local public health and safety laws) and from nuisance suits in Superior Court, so threats to public health and safety must be considered by the State Agriculture Development Committee (SADC) and County Agriculture Development Boards (CADB’s) when they exercise their authorities to grant such exemptions.
 - g. The “direct threat to public health and safety” check is not properly included in the Department’s beekeeping regulations because they do not confer any exemption from private nuisance suits, and because the beekeeping regulations themselves are the standards adopted to protect public health and safety, not exemptions from such standards.
16. Taken together, the severe and unwarranted limitations on hive location and density, the sham waiver provisions that have only vague criteria, and the open-ended opportunity to revisit alleged threats to public health and safety, even for apiaries that comply with all regulatory standards, have the effect of returning to municipalities open-ended discretion to control the way beekeeping is done. This is exactly the opposite of the intent of the adopted statute.
17. The drafters’ lack of understanding of basic concepts and terminology of land use regulation and practice under existing New Jersey law is revealed by the inconsistent use in different sections of the draft regulations of the terms: “citizen”, “neighbors who share a property line”, “person who...resides in or owns property in the municipality where the waiver applies...” and “all property owners within 200 feet of the applicant’s property”, to designate persons entitled to notice or conferred other standing by the draft regulations:
- a. There does not seem to be an organizing principle behind use of the differing terms;
 - b. None of the terms is the same as those used by the Municipal Land Use Law or in other Department Regulations;
 - c. The differing terms are confusing and will hinder compliance by beekeepers and enforcement by authorities;
 - d. The amateurish nature of the terminology used in the draft regulations is well illustrated by use in draft N.J.A.C 2:24-7.3A(f) of the phrase “person who...resides in or owns property in the municipality where the waiver applies...” to confer standing to seek revocation of a previously granted waiver. This language would allow someone who lives in another country and owns lands miles away from the apiary (but in the same municipality) to seek revocation of the waiver. But if the property line also happens to be the municipal boundary, an immediately adjoining landowner whose property is across that municipal boundary would not be able to bring the same action;
 - e. The entire waiver revocation process is poor public policy, but it is made even more irrational and uneven (like so much of these draft regulations) by amateurish drafting.

18. The new requirement proposed in draft N.J.A.C 2:24-2.3(a) that all apiaries shipping queen or package bees within New Jersey (instead of just into New Jersey as now required) have a valid apiary health certificate could be laudable on its face, but is impossible to carry out as a practical matter with present resources:
- a. The only person trained and authorized to inspect bees and issue such certificates in New Jersey is the State Apiarist;
 - b. We have only one State Apiarist;
 - c. It is not physically possible for one official to conduct all of the inspections of hives and apiaries in New Jersey necessary to fulfill this new requirement;
 - d. The State Apiarist's workload is already very high during the season inspecting hives of migratory commercial beekeepers and sellers of nucleus hives;
 - e. The current system for queens and packages relies upon apiary health certificates issued by inspectors in the States from which those bees are shipped and so does not burden our own Apiarist;
 - f. The Department would need to fund additional bee inspector positions to fulfill this new requirement.
19. The numerous definitions of "Hobbyist Beekeeper", "Commercial Beekeeper", "Migratory Commercial Beekeeper", "Non-Qualified Commercial Beekeeper" and "Qualified Commercial Beekeeper" seem more directed at creating unnecessary complexity and showing off the drafters' rudimentary (and flawed) understanding of beekeeping culture and applicable law than in creating distinctions that matter from a regulatory perspective.
- a. "Commercial Farm" is already a term of art under the Right to Farm Act. Renaming a beekeeper whose operation is a "Commercial Farm" under the Right to Farm Act's criteria as a "Qualified Commercial Beekeeper" who is exempt from these regulations serves little purpose and is confusing;
 - b. The term "Migratory commercial beekeeper" is unnecessary and inaccurate because it is used only to state that such a beekeeper "does not overwinter hives in New Jersey and is not required to register pursuant to N.J.A.C. 2:24-3.1." This definition is unnecessary because the regulations already require only beekeepers overwintering bees in New Jersey to register their apiaries. The definition is inaccurate because some migratory commercial beekeepers do overwinter some bees in New Jersey, and the apiaries that host those bees are subject to the registration requirement;
 - c. The terms "Hobbyist Beekeeper" and "Non-Qualified Commercial Beekeeper" create a useless distinction. Neither is eligible for Right to Farm protection, and each is subject to the draft regulations. The bees don't know if their Mama got sold down the river or their honey got sold off the porch.
 - d. Unlike the Right to Farm Act, the statute that these draft regulations seek to implement, P.L.2015, Chapter 76, does not exempt beekeepers from local zoning laws, so local ordinances concerning accessory uses, home occupations, and all other zoning regulations limiting commercial activities still apply to beekeepers who do not qualify for Right to Farm protection;

- e. There really are only two relevant classifications: beekeeping operations that are qualified as Commercial Farms under the Right to Farm Act (who are not subject to the location and density limitations of the draft regulations so long as they comply with generally accepted agricultural management practices) and all other beekeepers (who are subject to the full scope of the draft regulations).
20. The rudimentary (and flawed) understanding of honey bee behavior and biology of the drafters of the proposed regulations is well illustrated in the criticisms of the draft regulations in Professor David Gilley's letter commenting on the proposed regulations.
- a. Professor Gilley is an experienced honey bee researcher;
 - b. The NJBA incorporates Professor Gilley's letter (attached) by reference as the NJBA's comments on the misunderstandings of honey bee biology and behavior expressed in the draft regulations;
 - c. Because New Jersey's State Apiarist is a nationally known expert in beekeeping who would not have made such glaring gaffes about honey bee behavior and biology, it is self-evident, in light of Professor Gilley's criticisms of the draft regulations, that our State Apiarist was not closely involved (if involved at all) in drafting the proposed regulations;
 - d. In addition to being an embarrassment to the Department, the lack of understanding of honey bees expressed in the draft regulations contributes significantly to their irrationality and unworkability.
21. The draft regulations are internally inconsistent about privacy concerns and destroy privacy protections of the current apiary registration system:
- a. The summary that accompanies the draft regulation's publication acknowledges that "...theft or intentional damage to hives is likely if beekeeper and beeyard information is made public[,]” and that “[r]egistration participation is likely to be lost without the privacy protection that has been in place for many years[;]”
 - b. Nevertheless, the draft regulations would require as a condition of registration that beekeepers have “...provided written notice to neighbors who share a property line about the presence and location on the property of the beekeeper's hives[;]”
 - c. Similarly, the waiver provisions require that beekeepers provide public notice “...to all property owners within 200 feet of the applicant's property[,]” that specifies the number and location of the proposed hives.
 - d. Additionally, the waiver provisions necessarily involve a public hearing at which any attendee can learn the location of the beekeeper's hives, and hive locations will be in hearing minutes that must be produced to any inquirer under the Open Public Records Act and will likely be made available online;
 - e. The notice provisions in the draft regulations are in direct conflict with the privacy concerns that motivate apiary registration confidentiality, and this conflict well illustrates the incoherence of the draft regulations generally.

22. There are numerous confusing, vague or inconsistent uses of words and phrases in addition to those that have already been discussed in preceding paragraphs. Some examples include:
- a. "Apiary site" has been deleted from the definitions section, but the phrase still is used in substantive provisions;
 - b. The definition of "Commercial beekeeper" appears to include woodworking shops or retailers of beekeeping equipment;
 - c. Under proposed N.J.A.C. 2:24-7.2a(3)i., beekeepers are required to remove nuc boxes that are used in the event of swarming to a "...non-adjacent tract within 45 days...", but under proposed N.J.A.C. 2:24-7.2b(2) in the event of swarming the "...beekeeper shall move each such nucleus colony to another tract within 34 days...". There is no apparent reason or rationale for the differing use of "nuc" vs. "nucleus colony" (itself not a defined term), or "non-adjacent tract" vs. "another tract". The differing time frames of 45 vs. 34 days in these two sections seem arbitrary as well.

D. Incorrect Assertions of Impact Statements

1. The Social Impact Statement preceding the rule proposal fails to acknowledge the social benefits of beekeeping anywhere outside of commercial agriculture and claims erroneously that the proposed limits on beekeeping in residential settings will have a positive social impact.
 - a. Pollination by honey bees is important to home gardeners in all settings: rural, suburban and urban;
 - b. Interaction with honey bees, often in neighbors' backyards, provides important social and educational benefits to people of all ages, especially young people;
 - c. Beekeeping provides a positive outlet for the energies and interests of thousands of beekeepers throughout the State;
 - d. Pollination by honey bees provides economic and environmental benefits in a wide variety of land use areas, including residential areas;
 - e. Pollination by honey bees benefits migratory and native bird species that rely upon seed forage that results from that pollination;
 - f. Local honey and the presence of local beekeepers (many of whom are not based on farms) at local farmers' markets promotes local community spirit and well-being;
 - g. Local beekeepers provide educational and awareness outreach to the public at 4-H Fairs, Agricultural Fairs and the State Fair
 - h. The proposed regulations extreme limits on the permitted locations and densities of honey bee colonies will have a negative social impact by making all of these benefits of beekeeping less available.
2. The Economic Impact Statement preceding the rule proposal erroneously claims that the proposed rules will have a positive economic impact:
 - a. The proposed rules will injure bee health by discouraging apiary registration and therefore making it harder to control outbreaks of bee diseases;

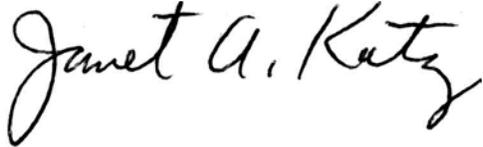
- b. The proposed rules will injure the beekeeping industry because the proposed extreme limitations on hive location and density will reduce the number of hobbyist and small commercial beekeepers in the State. This will reduce the sales of nucleus colonies and queens by local producers, and make bee supply and support businesses less viable;
 - c. Reductions in the number of hives and beekeepers within New Jersey will reduce business at commercial bee supply houses that serve hobbyist and commercial beekeepers in New Jersey. This will increase costs and reduce availability of bee supplies for commercial beekeepers who serve commercial agriculture;
 - d. The standards of care for bee colonies set forth in the proposed rules are either impractical, un-informed or will have such a broad effect as barriers to beekeeping that any marginal benefits to bee health that could result from such standards will not be realized;
 - e. The beekeeper education requirements will have more significant impacts as barriers to beekeeping than as a ways to improve bee health, especially as there is no curriculum, syllabus, or statement of basic competencies in the draft regulations;
 - f. The extreme limitations on hive location and density, and related requirements to move colonies to other locations to keep hive numbers below regulatory thresholds will directly increase costs to beekeepers through moving expenses and/or reduce the number of hives kept by that beekeeper.
 - g. A reduction in the number of hives or beekeepers will reduce economic activity and have a negative economic impact that is much larger than any perceivable benefits from the proposed extreme limitations on hive location and density;
 - h. The waiver process will create unreasonable new cost burdens for beekeepers and for towns that accept enforcement authority.
3. The Jobs Impact Statement preceding the rule proposal erroneously claims that the proposed rules will not result in the loss of any jobs in New Jersey:
- a. Reductions in the number of hives and beekeepers are the likely result of the extreme limitations on hive location and density in the draft regulations and will result in a reduction in sales of locally produced queens, nucleus hives and bee equipment. This local production employs people. They will have less to do. Some will lose their jobs.
 - b. Reductions in the number of hives and beekeepers within New Jersey will reduce business at commercial bee supply houses that serve hobbyist and commercial beekeepers in New Jersey and increase costs for commercial beekeepers who serve commercial agriculture. This will make commercial beekeeping and agriculture less viable in New Jersey and less likely to keep or add jobs;
 - c. Reductions in the numbers of beekeepers will result in fewer attendees at beekeeping meetings and educational events within the State (including revenue producing events hosted by Rutgers). Those events are hosted at facilities that employ people to keep the doors open, schedule events, clean the facilities, make and prepare food, etc. Those employees will have less to do. Some may lose their jobs, or lose overtime or work hours.

4. For the reasons discussed above concerning the Social, Economic and Jobs Impact Statements, the proposed rules will have a negative impact on the Agriculture Industry.
5. The assertion in the Regulatory Flexibility Analysis that “...no differing or lesser standards can be applied to small businesses[,]” is wrong.
 - a. The assertion in the Flexibility Analysis that because the proposed new rules deal with disease control and prevention no differing or lesser standards can be applied to small businesses is inconsistent with the justification for the hive location and density standards in the regulations summary. The hive location and density limitations of new N.J.A.C. 2:24-7.2 are the most significant standards in the draft regulations. The summary that precedes the draft text states that those standards “incorporate prior independent (unrelated honey bees or beekeeping) land use evaluations...” In other words, bee behavior and biology (bee health) were not considered in setting density and location standards;
 - b. Similarly, the summary statement concerning proposed N.J.A.C. 2:24-3.1 acknowledges that the proposed amendments concerning beekeeper registration (which formerly had as its primary purpose sustaining bee health are intended “...to expand the required information to administratively manage the greater number ofbeekeepers whose hives have affected or may affect citizens who are not beekeepers...”. In other words, the second significantly burdensome innovation in the draft regulations is also not about bee health, but about controlling beekeepers whose bees may interact with the non-beekeeping public;
6. The assertion in the Regulatory Flexibility Analysis that “...no capital expenditures or professional services are required to comply with the proposed amendments and new rules[,]” ignores significant likely expenses:
 - a. The regulations drastically reduce the number of colonies that may be kept in existing individual apiaries;
 - b. Beekeepers that are wish to maintain current hive numbers are required to disperse bees into new apiaries;
 - c. Development of new apiaries, especially in the northern counties often requires installation of new infrastructure such as flyway barriers and expensive electrified fences to protect the apiaries from bears;
 - d. The waiver process necessary for most beekeepers to keep the hives they now have is much like a zoning variance application and it is likely that beekeepers will incur costs for professional services such as surveys, legal assistance and expert hearing testimony.

E. Conclusion

For these reasons, we ask that the Recommendations set forth in Section B. above be implemented by the Department and the State Board.

Respectfully,

A handwritten signature in black ink that reads "Janet A. Katz". The signature is written in a cursive, flowing style.

Janet A. Katz
President, New Jersey Beekeepers Association
460 Route 24
Chester, NJ 07930-2903

cc: State Board of Agriculture
Hon. Douglas H. Fisher
Assemblyman Ronald S. Dancer
Assemblyman Parker Space
Assemblyman Bob Andrzejczak
Assemblywoman Nilsa Cruz-Perez



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January 12, 2018

Joseph Zoltowski, Director
Division of Plant Industry
NJ Department of Agriculture
P.O. Box 330
Trenton, NJ 08625-0330

Dear Director Zoltowski,

Please find below my comments regarding the proposed new regulations for beekeeping in New Jersey. These comments reflect both my concern as a citizen of our state and my professional assessment as a scientist specializing in honey bee biology with 20 years of bee research experience and authorship of numerous research articles on honey bee swarming and foraging behavior.

Thank you for considering my comments on these proposed regulations.

Sincerely,

Dr. David C. Gilley
Associate Professor of Biology
William Paterson University
Wayne, NJ 07470
973-720-2549
Email: gilleyd@wpunj.edu

Comments on proposed amendments and rules for beekeeping in New Jersey (NJReg112017_V49_22.pdf)

1. Throughout the proposed regulations, swarming seems to be considered in an oversimplified way as a consequence of overcrowding and mismanagement by the beekeeper, and with the implication that swarming is a threat to public good without citing factual support. The definition of swarming as colony propagation “when a colony is allowed to become too crowded” ignores much of our scientific knowledge of swarming as a complex biological process involving many causal stimuli including not only worker density but also pollen availability, queen rearing, colony genetics, season, and weather patterns. This oversimplification leads to the conclusion that departure of a swarm from a managed colony is always negligence on the part of the beekeeper. In fact, the unpredictability of these many factors, plus time lag between any management intervention and its effect in reducing the chance of swarming, makes swarm prevention a challenge even for experienced and conscientious beekeepers. Providing an empty bait hive (confusingly referred to as a “nucleus”) does not solve this problem. Bait

hives have some chance of capturing a departing swarm, but most often swarms will only temporarily cluster near their hive before departing to fly to a cavity several kilometers distant. A single bait hive would have difficulty achieving a success rate that would meaningfully reduce the rate of swarm escape. To establish unrealistic standards and then hold beekeepers accountable for their failure is neither fair nor in the public interest.

Furthermore, the regulations do not take into account that a certain level of swarming provides a public good for New Jersey citizens (see comment about feral bee populations below). This public good should be considered in balance with factual evidence regarding the public costs of swarming, which are not well described in the current proposal. If the public cost is primarily personal contact with swarms, then regulations aimed at swarm prevention are largely redundant with other regulations concerning colony density, setbacks, and flight paths. Redundant because the swarm cluster (or “bivouac”), which is the phase most likely to be encountered by the public, typically occurs near the parent hive (before departing after several hours or days for their chosen new nest site).

2. The proposed regulations as a whole seem to ignore the existence of a feral (wild-living) honey bee population in New Jersey. While honey bees are not native to the US, they are well-adapted to the temperate climate throughout most of the country and they live almost everywhere, occupying cavities in trees, rocks, and human structures. As generalist pollinators, they play an important role in the ecosystems of areas in which they live and have done so for hundreds of years. Given the general worldwide problem of pollinator decline (see Potts et al. 2010), supporting our feral populations of honey bees would be good for New Jersey, the Garden State, and its citizens. This would suggest regulations that attempt to balance the benefits to citizens of a prosperous honey bee population with well-documented costs; it would not best serve the citizens to enact regulations that effectively reduce the number of honey bee colonies in NJ in order to avoid any and all citizen complaints. Existence of a feral bee population also has implications for practical enforcement of the proposed regulations in that beekeepers cannot be held individually accountable for problems created by feral bees. Foraging bees can fly approximately 10 km from the hive and swarms can travel quite far in search of a new nest cavity. How do the proposed regulations determine if reports of bees drinking from a pool, or stinging, or swarming are in whole or part caused by feral bees? “Credible evidence” to rebut culpability may be difficult to obtain for standards such as “maintenance of stock bred for gentleness and non-swarming behavior” and “careful management ... to keep honey and related materials off the ground”. Assumptions of culpability in areas like these could be a significant deterrent to beekeeping without significant positive benefit. The feral bee issue needs to be addressed in both the rationale and practical implementation of beekeeping regulations.
3. The proposed regulations misrepresent honey bee biology in discussing the public health concerns on roadsides, sidewalks, paths, and public places: “even accidental injury or conflict with the honey bee causing a sting ... causes release of hormones signaling fear of destruction of the hive such that the usually docile honey bee, because of the threat, will sting in self-defense”. Alarm pheromones that increase the readiness of bees to sting are a real part of honey bee biology, but only at the hive in the context of an intruder such as a bear or beekeeper, where the pheromone causes other guard bees to target the intruder. This is not the context encountered by citizens on sidewalks, where alarm pheromones will nearly never result in additional stings because any nearby bees are not only likely out of range of the pheromone, but also are forager bees simply trying to gather food and return to the hive. Instead of this incorrect rationale, real information about the danger of insect stings for the public, including how managed bee colonies increase the danger over and above feral bee population, should be included in the proposed regulations and considered in the decision to adopt such regulations.

4. The proposed regulations for apiary standards in populated areas focus on restricting colony density, but the problems cited as arising from higher density are actually problems arising from high number of colonies per beekeeper, rather than per unit area of land. These cited problems are: “poor swarm management”, “excess of honey production with no outlet”, and “stress on adequate source of water”. The first two would be most directly addressed by limiting the number of colonies per beekeeper, as the size of the beekeeper’s lot plays no role in causing them. Water stress under the proposed regulations will also not be density dependent because adequate water source is already defined by the regulations on a per-colony basis. Furthermore, the benefit of lot-size restrictions for minimizing public contact with bees are redundant with other proposed regulations such as set-backs and flyway barriers (which themselves could be scaled for different land uses). So it is not clear what benefit the lot-size restrictions provide for the citizens of NJ. In fact they will be costly, as limiting beekeeping on a colony density basis will unnecessarily decrease the benefits honeybees provide as generalist pollinators in healthy rural, suburban, and urban environments (see comments about feral bees, above). The best authority for defining the maximum number of colonies a hobbyist beekeeper can reasonably keep without making mistakes in management is the NJBA, and realistically scales with beekeeper experience, but would seem to me to be more than two.
5. In justifying the proposed regulations only “anecdotal experience and observation” are cited as sources for the problems to be corrected by the regulations. An “increase in complaints” is mentioned but not supported with statistics, attributed to a source, or elaborated upon. A more authoritative and comprehensive analysis of the current problem would be in the best interest of the citizens of the state, as a poorly defined or supported problem will likely lead to a poorly defined and ineffective solution. Additional contributions by academics from MAAREC and the New Jersey Beekeepers Association could help address this issue.
6. The economic impact statement suggests that the proposed regulations for hobbyists serve the interests of the “biological needs” of the bees but this idea is poorly supported. The regulations mention only 1) “new hive spaces to limit swarming”, and 2) “water”. Regarding the first, limiting swarming is not in the bees’ biological interests. Hive density is in no way parallel to say, density of chickens in a cage; crowding does not decrease the quality of life for these highly social insects. Regarding the second, the bees’ natural foraging range allows them to find water adequately on their own in most of our state. These proposed regulations primarily reduce public contact regarding water collection behavior rather than nurturing honey bee health. If the health of bees in New Jersey is an important positive impact of these regulations, then these points should be more strongly supported. In fact, the counter-argument might be made that the proposed regulations, by reducing the number of bee colonies in populated areas (also stated as an impact), would exacerbate the trend of pollinator decline in the state of New Jersey.

In summary, the rationale for these proposed regulations is poorly supported, seemingly based on fear more than fact, the regulations in their current form confound distinct problems, contain problematic redundancies, will be difficult to fairly enforce, and are not consistent in many ways with honey bee biology. Such regulations will likely cause more harm than good to the citizens of New Jersey, and I do not recommend their adoption.