

**STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS**

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In the Matter of Compelling Compliance  
with the Provisions of Section 305-a(1)  
of the Agriculture and Markets Law by:

The Town of Wilson  
375 Lake Street  
P.O. Box 537  
Wilson, NY 14172-0537  
Harold Mosher, Supervisor

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**DETERMINATION**

**AND**

**ORDER**

**PRELIMINARY STATEMENT**

Upon receiving a complaint concerning the administration of the Town of Wilson's Zoning Ordinance and Local Law Number 1 with respect to the Danielewicz Dairy Farm, located at 3071 Youngstown Road in Wilson, New York in Niagara County Agricultural District #8, the Department of Agriculture and Markets investigated the complaint to determine whether the Town of Wilson had administered its laws in a manner consistent with the provisions of Section 305-a(1) of the Agriculture and Markets Law. Section 305-a(1) prohibits local governments from administering their local land use laws, ordinances, rules or regulations in a manner which unreasonably restricts or regulates farm operations within agricultural districts unless it can be shown that the public health and safety is threatened. Section 301(11) of the Agriculture and Markets Law defines "farm operation" to include farm buildings. The Department investigation included site visits to the farm, interviews with the farm owners, interviews with Town of Wilson officials, and consultation with the Department of Environmental Conservation, the College of Agricultural and Life Sciences at Cornell University, Cornell Cooperative Extension, the United States Department of Agriculture Soil Conservation Service, the State Advisory Council on Agriculture, and the Niagara County Health Department.

Based upon this investigation, I hereby make the following findings and conclusions in support of the determination that the Town of Wilson has violated Section 305-a(1) of the Agriculture and Markets Law and order compelling compliance with such law.

## FINDINGS

1. On November 15, 1993, the Town of Wilson received from Mr. Flevie Danielewicz, 5432 Bear Road, Sanborn, New York 14132, an application for a permit to construct a pole barn at 3071 Wilson-Youngstown Road, Wilson, New York. The application stated that the barn would be situated on a 210 acre lot and would be used to house cows.

2. On December 3, 1993, Mr. John High, Town of Wilson Building Inspector, stated in a letter to Mr. Danielewicz that because it appeared that the manure produced by the cows to be housed in the new barn "would ultimately be stored in the existing manure pit, into which manure from 500 cows is already being stored ... it is necessary that an environmental impact study be conducted."

3. On January 18, 1994, during the course of an on-site investigation of the Danielewicz farm by Department staff conducted pursuant to a request for a "sound agricultural practices opinion" under Section 308 of the Agriculture and Markets Law, Mr. Danielewicz requested that the Department investigate the Town of Wilson's refusal to take action on his request for a building permit.

4. In a letter dated February 23, 1994 and received by the Town of Wilson on March 2, 1994, the Department informed the Town that it was investigating the Town's refusal to act on Mr. Danielewicz's application for a building permit until a Full Environmental Assessment Form ("EAF") had been completed. The Department stated that it appeared that this refusal unreasonably restricted Mr. Danielewicz's farm operation in contravention of Section 305-a of the Agriculture and Markets Law, and requested that the Town confirm whether it believed that the construction of the barn posed a threat to the public health and safety, and, if so, the basis for that belief.

5. Part 617.13(d)(3) of Title 6 of the New York Official Compilation of Rules and Regulations lists "agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming" as actions which have been determined not to have a significant effect on the environment, and do not require environmental impact statements or any other determination or procedure under the State Environmental Quality Review ("SEQR") Regulations.

6. Chapter 67 of the Code of the Town of Wilson adopted as Local Law #1 in 1977, states that, consistent with SEQR regulations, all actions listed in the State regulations as Type II actions are deemed not to have a significant effect on the environment.

7. The Town of Wilson responded to the Department's February 23, 1994 letter on March 22, 1994, stating that, in its view, "[t]o permit the addition of a barn which will house an additional 325-350 more heads of cattle, without regulatory measures, and to permit the existing operation to continue, without full

knowledge of its [a manure storage lagoon] construction and suitability, would be total disregard of the health, welfare and safety of our community and its residents." The Town further alleged that the manure produced by the additional cows would be "washed into the same manure pond as presently exists on the Danielewicz farm, which is totally inappropriate to the recommendation made by the Soil and Conservation Service which designed the manure pond for Mr. Danielewicz. A much more serious problem could result from improper manure management or farm management practice. Our objective is to prevent any exasperation of the problem which now exists." The Town also asserted general health and safety concerns related to odors from the landspreading of liquid manure on the farm.

8. The Department informed the Town in a letter dated April 7, 1994 and received April 13, 1994 that it had concluded that the Town had violated Section 305-a(1) because it found the requirement that Mr. Danielewicz prepare an EAF as a condition of processing the building permit application unreasonable, and the Town had failed to demonstrate that the public health and safety is threatened by the construction of the barn which is the subject of the permit application. The Department requested that the Town withdraw its requirement that Mr. Danielewicz complete a full EAF and process the building permit request within thirty days.

9. In a letter dated April 19, 1994 and received April 27, 1994, the Town requested a one week extension of the thirty day timeframe, which the Department denied by telephone on May 6, 1994 and in a letter dated May 11, 1994.

10. The SCS specifications for the Danielewicz manure storage lagoon indicate that the lagoon is designed to hold the manure of 500 cows for a period of one year. SCS manure design specifications do not require full year storage capacity. The specifications recommend emptying the lagoon at least two times per year as weather and other conditions permit.

11. The Danielewicz farm has been inspected on several occasions by the Niagara County Health Department and the regional office of the Department of Environmental Conservation, but it has never been cited for violations of either the New York State Public Health or Environmental Conservation Laws.

12. At the request of the Niagara County Health Department, the Commissioner of Agriculture and Markets issued an opinion dated April 17, 1994 pursuant to Section 308 of the Agriculture and Markets Law, stating that the waste management practices as observed in the free-stall barn and milk house on the Danielewicz farm, and the liquid manure storage practices as observed on the farm, are sound. The Commissioner concluded that certain landspreading of liquid manure occurring on the farm in August, 1993 was not sound.

## CONCLUSIONS

Based upon the above findings, I conclude the following:

1. The Town's refusal to process Mr. Danielewicz's request for a building permit until he provides a completed Full EAF unreasonably restricts a farm operation in an agricultural district, since the restriction results from the Town's failure to adhere to the requirements of State Environmental Quality Review regulations and its own Local Law #1.

2. The Town's contention that its withholding of the permit is justified on the basis of concerns expressed about manure odor from landspreading activities and the safety of another structure on the farm is without merit since these concerns are not relevant to a determination of whether construction of a barn meets the criteria set forth in the Code of the Town of Wilson for issuance of a building permit. Even if such concerns were deemed relevant, the unsubstantiated reports of illness attributed to odors from landspreading activities and expression of concerns and speculation relied upon by the Town regarding manure management at Mr. Danielewicz's farm do not show that the construction of a barn on the premises would threaten the public health and safety.

## DETERMINATION AND ORDER

Now, therefore, in consideration of the above-stated findings and conclusions, it is hereby determined that the Town of Wilson has violated Section 305-a(1) of the Agriculture and Markets Law and it is hereby

ORDERED, pursuant to the provisions of Section 36 of the Agriculture and Markets Law, that the Town of Wilson immediately comply with the provisions of Section 305-a(1) by processing Mr. Flevie Danielewicz's application for a building permit to construct a barn within Niagara County Agricultural District #8.



RICHARD T. MCGUIRE  
Commissioner of  
Agriculture and Markets

Dated and Sealed this 26th  
day of May, 1994 at  
Colonie, New York