

**THIRTEENTH ANNUAL REPORT OF THE
ATTORNEY GENERAL TO THE GENERAL ASSEMBLY
PURSUANT TO SECTION 318 OF ACT 38 OF 2005
AGRICULTURE, COMMUNITIES AND RURAL ENVIRONMENT - “ACRE”**

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I. INTRODUCTION

Promoting agriculture is an important state policy. The Commonwealth is home to approximately 58,000 farms, covering 7,630,000 acres, with an average farm size of 132 acres, across Pennsylvania's 2561 distinct municipalities (townships, cities, boroughs).¹ On a yearly basis, the market value of Pennsylvania agricultural products generates a total of \$7.4 to \$7.5 billion in cash receipts with international sales of agricultural, food and wood products accounting for \$3.2 billion of that amount. The overall economic impact of agriculture in the Commonwealth is \$75 billion a year.² Additionally, 1 in 7 jobs in Pennsylvania is in some way related to agriculture.³

The Right to Farm Act ("RTFA") declares that it is the "policy of the Commonwealth to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products [and] [i]t is the purpose of this act to reduce [loss of] agricultural resources by limiting the circumstances under which agricultural operations may be the subject matter of...ordinances." 3 P.S. § 951 (1982). Similarly, the Municipalities Planning Code ("MPC") requires that zoning ordinances "shall encourage the continuity, development and viability of agriculture operations." 53 P.S. § 10603(h) (2000). The MPC exists "to accomplish coordinated development," "promote the preservation of...prime agricultural land," and ensure that zoning ordinances "facilitate the present and future economic viability of existing agricultural operations in this Commonwealth and do not prevent or impede the owner or operator's need to change or expand their operations in the future in order to remain viable..." 53 P.S. § 10105.

¹ USDA, National Agricultural Statistics Services ("NASS"); and the 2017 State Agricultural Overview for Pennsylvania. https://nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=PENNSYLVANIA

² Figures are taken from USDA/NASS Overview noted in footnote 1 and the latest Pennsylvania Department of Agriculture statistics from 2012-2013 which are based on the latest U.S. Agricultural Census of 2012.

³ *Ibid.*

The General Assembly’s Historical and Statutory Notes to ACRE are consistent with the policies articulated in the RTFA and the MPC. They affirm the vitality of a strong agricultural community to the Commonwealth, declaring that the Commonwealth has a “vested and sincere interest in ensuring the long-term sustainability of agriculture and normal agricultural operations.” 3 Pa.C.S. § 311, *Historical and Statutory Notes*. “In furtherance of this goal,” the Legislature stated, it “has enacted statutes to protect and preserve agricultural operations for the production of food and agricultural products.” *Id.*

II. ACRE

Mixing billions of dollars, millions of acres, tens of thousands of farms, and several thousand municipalities inevitably results in disagreements, misunderstandings, and friction. ACRE, also referred to as Act 38, took effect on July 6, 2005. The ACRE statute helps balance the dynamic nature and impact of Commonwealth agricultural operations, while at the same time furthering the Legislature’s explicit goal of promoting agriculture.

The central purpose of ACRE is to protect “normal agricultural operations” (“NAO”) from unauthorized local regulation.⁴ Under ACRE, a local ordinance that exceeds, conflicts with, or duplicates state law is “unauthorized,” and enforcement is prohibited. ACRE also confers upon the Office of Attorney General (“OAG”): (1) the power and duty to review local ordinances for compliance with State law upon the request of an owner or operator of an NAO; and (2) the authority, to sue a local government to invalidate or enjoin enforcement of an unauthorized local ordinance. 3 Pa.C.S. §314.

⁴ The RTFA defines an NAO as an agricultural activity that is “not less than ten contiguous acres in area,” or if less than ten contiguous acres, then an agricultural activity that has “an anticipated yearly gross income of at least \$10,000.” 3 P.S. § 952, *Definitions*.

The OAG has a process by which it receives requests to review ordinances under ACRE and brings legal action when warranted. That process is set forth on its website at www.attorneygeneral.gov.⁵

When the OAG receives a request to review an ordinance, it sends an acknowledgement of receipt to both the requestor and the municipality whose ordinance is the subject of the review. After completing its review, the OAG advises them, in writing, whether it intends to bring legal action. Where the OAG does not bring its own legal action, the Office informs the ACRE complainant that he /she may bring a private action under ACRE, if desired. 3 Pa. C.S. §315(b). The OAG also directs the complainant to other government resources that may be of assistance (*e.g.* the State Conservation Commission, Conservation Districts, Pennsylvania State University Extension).

Where the OAG intends to bring its own legal action, it first affords the municipality an opportunity to discuss the legal problems the OAG identified in its review and correct them voluntarily before legal action commences. The goal of this interactive process is two-fold. First, to resolve the immediate problem so the ACRE complainant can proceed with the farming plans without further delay.⁶ Second, the OAG wants to work cooperatively with the municipality to bring its ordinances into compliance with state law. While the OAG hopes to resolve these disputes through a cooperative and interactive process with the municipalities, if the dispute cannot be resolved amicably, the OAG will file suit in the Commonwealth Court.

⁵ Click on the “Resources” tab to see the link for “Agricultural Communities and Rural Environment/ACRE.” Click on that link to proceed to the ACRE Resources Center.

⁶ This practical, problem solving approach is working. *See e.g.* Woodward Township, Clinton County; Maxatawny Township, Berks County; Ferguson Township, Centre County; Lower Milford Township, Lehigh County; Clay Township, Lancaster County. Where the OAG intends to bring legal action, it sends to the municipality an “Acceptance Letter” explaining the legal problems with the ordinance. The Woodward, Maxatawny, Ferguson, Lower Milford, and Clay Townships Acceptance Letters are found at the ACRE Resources Center on the OAG website.

The OAG provides easy and transparent access to its ACRE program resources on its public website at <https://www.attorneygeneral.gov/resources/acre/>. This resource center includes a description of the ACRE law, a link to a printable ACRE brochure, and a list of all ACRE cases received by the OAG since 2017. This “docket” includes copies of all ACRE complaints, municipalities’ responses, and ordinance(s) in question, as well as the status of the OAG’s review. The website also provides a U.S. mail address and email link through which users can initiate their own complaints.

Since the 2017 ACRE Annual Report, the OAG has added a section on the website that includes all of the Acceptance Letters the OAG has sent to municipalities since the inception of the ACRE program in 2005. “Accepted” cases are those in which the OAG determines there are legal problems with the local ordinances. An “Acceptance Letter” is a letter brief notifying the municipality of the manner in which its ordinance violates state law and identifying the specific steps needed to bring the ordinance into compliance with it. Letters are listed by year, township, and major agricultural issues addressed. These letters serve as a public resource to educate and guide citizens and municipalities as to how the OAG has previously handled ACRE issues.

The OAG is committed to educating the public about the ACRE program. In addition to its website, the OAG has implemented a community program through which it gives presentations about ACRE throughout the Commonwealth to people and organizations involved in Pennsylvania agriculture. To request such a presentation one can contact the OAG via email or U.S. mail at addresses found on the ACRE website.

III. ANNUAL DATA

Between July 6, 2017, and July 6, 2018, the OAG has:

- Received 8 new requests for review of local ordinances;

- Completed review of 13 ordinances;
- Sent 5 responses to owners/operators advising that no legal action would be filed; and
- In 6 cases, has either sent to the municipality an ACRE Acceptance Letter or is in the process of drafting Acceptance Letters, for municipal review, comment, and action.

IV. AGGREGATE DATA

Between July 6, 2005, when ACRE went into effect, and July 6, 2018, the OAG has:

- Received 155 requests for review of local ordinances;
- Completed review of 136 ordinances;
- Sent 73 responses to owners/operators advising that no legal action would be filed;
- Sent 63 Acceptance Letters to municipalities advising of legal problems with ordinances;
- Brought 7 legal actions against municipalities to invalidate or enjoin enforcement of unauthorized local ordinances;
- Resolved 51 matters through negotiation with the parties;
- Received 8 requests for reconsideration from OAG's denial of a request for review; and,
- Denied 7 of those 8 requests for reconsideration.

Since 2005, the OAG has accepted almost 50% of cases in which the ordinance review was finalized. Of the accepted cases, approximately 81% have been successfully resolved to the satisfaction of the municipality, the ACRE complainants, and the OAG without litigation. In this way, the ACRE program furthers the Commonwealth's declared policy of supporting agriculture while at the same time saving the Commonwealth, local governments, and individual farmers millions of dollars by working together to solve complex issues related to agriculture, communities, and rural environments.

V. REQUESTS FOR REVIEW, NATURE OF COMPLAINTS AND ACTION TAKEN

A. Status of Current Legal Actions

1. Locust Township, Columbia County

In 2006, the farmer requested review of Ordinance No. 4-2001, which regulates “intensive animal agriculture.” The OAG accepted the case and offered the Township an opportunity to discuss and correct the ordinance. The Township declined and the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the ordinance’s enforcement. The Commonwealth Court initially ruled against the OAG because the ordinance had yet to be enforced, but on appeal the Pennsylvania Supreme Court held that the Attorney General is explicitly empowered to bring action to invalidate enacted local ordinances without regard to enforcement. The case was remanded to the Commonwealth Court, which on July 17, 2012, issued an en banc decision granting in part and denying in part the OAG’s summary judgment. The Court held that the Township cannot require smaller animal operations to comply with the Nutrient and Odor Management Act (“NOMA”) because compliance for these operations is voluntary under the Act. The Court also held the NOMA preempted the Township’s setback requirements which exceeded those under the Act and also exceeded the Township’s authority under the MPC. In addition, the Court held that the requirements for a water impact study, water usage monitoring and recording were preempted by the Water Resources Planning Act. Finally, the Court held that a requirement for a site plan for a proposed operation was not preempted by the NOMA. This case remains ongoing.

B. Pending Legal Actions

1. Woodward Township, Clinton County

A farmer engaged in both crop and animal operations requested review of Woodward Township's zoning ordinance provisions regulating animal agriculture in a zoning district that allowed other forms of agricultural operations. He also complained about impermissible set-back requirements. The OAG notified the Township of legal issues with the ordinance. The Township agreed to accept and enact the OAG's proposed amendments, thereby resolving the immediate problem and allowing the farmer to proceed with his swine operation. In light of the OAG's ACRE activity, the parties discontinued a related case in the Clinton County Court of Common Pleas.

As of September 2018, however, the Township has not provided proof that it had, in fact, amended the offending ordinances. If and when the OAG receives proof new ordinances that comply with the requirements listed in the OAG's Acceptance Letters, the OAG will close the case. If not, it will litigate the matter.

2. Montour Township, Columbia County

The farmer requested review of ordinances requiring a special exception for a proposed swine operation located in an agricultural zoning district and on a property included in the Township's Agricultural Security Area which is neither a Concentrated Animal Operation ("CAO") nor a Concentrated Animal Feeding Operation ("CAFO"). The farmer requested review of the Township's conditions for the special exception, including well testing at the owner's expense, annual reports to prove that the Animal Equivalent Units ("AEUs") on the operation remain below 2 AEUs, and setback and odor control requirements. The OAG accepted the case and sent the Township a detailed Acceptance Letter. In response, the Township proposed amendments which were deficient.

Concurrent with the ACRE request, the Township had been litigating this matter against the farmer in state court. That case is currently before the Pennsylvania Supreme Court and the OAG filed an amicus curiae (“friend of the court”) brief with the Supreme Court supporting the farmer.

C. Completed Legal Actions Since 2005

1. Lower Oxford Township, Chester County – completed July 2011

The farmer requested review of Ordinance No. 2004-1, which regulates composting activities. He complained that the ordinance unlawfully restricts mushroom compost preparation. The OAG accepted the case and offered the Township an opportunity to discuss and correct the ordinance. The Township declined this offer and the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance just as it had in the *Locust Township* case. The Commonwealth Court once again ruled against the OAG and the Office appealed that decision to the Pennsylvania Supreme Court. The Supreme Court issued a per curiam order affirming the Commonwealth Court’s ruling, and the OAG filed a Petition for Reargument, which the Court ordered held pending the outcome of *Locust Township*. The Supreme Court granted the petition and vacated its per curiam order based on its reversal of the Commonwealth Court’s decision in *Locust Township*. Following negotiations, Lower Oxford Township enacted ordinance amendments to resolve the legal problems with the ordinance and the OAG withdrew the lawsuit

2. Heidelberg Township, North Heidelberg Township, Robesonia Borough, Womelsdorf Borough, Berks County – completed September 2016

A citizen requested review of the Joint Municipal Ordinance, which regulates “intensive raising of livestock or poultry” in four municipalities. The OAG accepted the case and offered the Townships an opportunity to discuss and correct the ordinance. The Townships declined this offer and the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the ordinance’s

enforcement. The same litigation that occurred in the *Locust* and *Lower Oxford Townships* cases occurred here: the Commonwealth Court ruled against the OAG, the OAG appealed, and the Supreme Court ultimately ruled consistent with its *Locust Township* opinion.

Following negotiations, the four municipalities enacted joint ordinance amendments to resolve the legal problems with the ordinance and the OAG withdrew the lawsuit in September 2016.

3. Richmond Township, Berks County – completed January 2012

The farmer requested review of Ordinance No. 81-2000, which regulates “intensive agricultural activity.” The OAG accepted the case and offered the Township an opportunity to discuss and correct the problems with the ordinance. The Township declined this offer and the OAG filed a lawsuit in Commonwealth Court. The Court denied the Township’s Motion for Judgment on the Pleadings but did grant in its entirety the OAG’s Motion for Summary Judgment. Following the Commonwealth Court’s grant of summary judgment, the OAG negotiated with Richmond Township on amendments to the ordinance to resolve the legal problems. The OAG approved Richmond Township’s proposed ordinance amendments and they were enacted.

4. East Brunswick Township, Schuylkill County – completed November 2009

A tree farmer requested review of Ordinance No. 1 of 2006, which generally regulated land application of biosolids and specifically prohibited land application of biosolids by corporations. The OAG accepted the case and offered the Township an opportunity to discuss and correct the problems with the ordinance. The Township declined this offer and the OAG filed a lawsuit in Commonwealth Court. The parties filed various cross motions.

During the pendency of the litigation, the OAG negotiated with the Township on amendments to the Ordinance to resolve the legal problems. The Township enacted the

amendments and the OAG withdrew the lawsuit. These amendments are being utilized throughout the Commonwealth as a model biosolids ordinance.

5. Peach Bottom Township, York County – completed January 2011

Two farmers wanted to start a CAFO. The Township required a special exception and denied the request. The farmers requested review of an existing ordinance regulating CAOs and CAFOs, a proposed amendment to the existing CAO/CAFO ordinance, and an ordinance regulating below ground manure storage facilities. The OAG accepted the case and offered the Township an opportunity to discuss and correct the problems with the ordinance. The Township declined this offer and the OAG filed a lawsuit in Commonwealth Court.

During the pendency of the litigation, several years of extensive negotiations resulted in Peach Bottom Township enacting amendments to bring the ordinance in compliance with state law. The OAG withdrew the lawsuit.

6. Packer Township, Carbon County – completed February 2013

The farmer requested review of the Packer Township Local Control, Sewage Sludge and Chemical Trespass Ordinance, which generally regulated biosolid land application and specifically prohibited biosolid land application by corporations. The OAG accepted the case and offered the Township an opportunity to discuss and correct the problems with the ordinance. The Townships declined this offer and the OAG filed a lawsuit in Commonwealth Court.

The Court denied both parties' pretrial motions and scheduled a trial date. Prior to trial, Packer Township repealed the ordinance. The Court held that the lawsuit was moot and dismissed the case for want of jurisdiction.

D. Matters Listed in Previous Reports that Remain Unresolved

The following is a list of cases included in previous Annual Reports that remain unresolved:

1. Heidelberg Township, Lebanon County

Two citizens requested review of the Township ordinance provisions regulating CAOs. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. The Township is working with the OAG to resolve this matter.

2. Buffalo Township, Union County

The farmer requested review of the Township's interpretation of the ordinance definition for "Agricultural Operation." The definition excludes the practice of processing biosolids through the addition of lime to produce agricultural lime for application to farm fields. The ordinance review is pending.⁷

3. Wayne Township, Schuylkill County

The farmer requested review of the Township's zoning ordinance provisions regulating "intensive agriculture." The OAG notified the Township of legal problems with the zoning ordinance provisions and offered the Township an opportunity to discuss and correct them. A new township solicitor is in the process of gaining familiarity with the case. Negotiations with the Township will resume shortly.

4. East Nantmeal Township, Chester County

A landowner requested review of the Township's zoning ordinance provisions for forestry activities. The OAG notified the Township of legal problems with the zoning ordinance and offered the Township an opportunity to discuss and correct them. The Township has drafted various ordinance amendments and the parties are in negotiations seeking to resolve the matter.

⁷ The OAG's model biosolids ordinance generated out of the East Brunswick case is the primary resource in biosolids cases.

5. Maxatawny Township, Berks County

A chicken farmer requested review of the Township's ordinances regulating agricultural operations and the requirement of a conditional use approval to engage in "intensive agriculture." The OAG accepted the case and outlined for the Township the legal deficiencies in the ordinances. The Township initially declined the OAG's offer to engage in negotiations but has since changed course. The Township and the OAG are currently negotiating to resolve the case.

6. Hamilton Township, Adams County

The owner of a 120 acre crop and animal farm requested review of the Township's zoning ordinance provisions regulating animal production operations and requiring a special exception. He also requested review of the Township's ordinance requirements for greenhouses and agricultural roadside stands. The ordinance review is pending.

7. Hereford Township, Berks County

A livestock farmer requested review of the Township's zoning ordinance provisions regarding fencing for agricultural operations. The ordinance review is pending.

8. Upper Saucon Township, Lehigh County

The complainant, who has horses and chickens on her property, requested review of the Township's denial of a permit to build a barn to house her animals. The ordinance review is pending.

9. Codorus Township, York County

A CAFO farmer requested review of the Township's zoning, land development, and health ordinance provisions regulating CAFO's. In a new development, she has decided to place the farm up for sale. The OAG is in the process of reviewing the challenged ordinances, and now, in light

of the fact that farm is up for sale, the OAG is also looking into issues raised by placing the property on the market.

10. Ferguson Township, Centre County

A landowner requested review of the Township's zoning ordinance provision prohibiting livestock on parcels less than 50 acres and requiring conditional use approval for riding stables. The OAG accepted the case and outlined for the Township the legal deficiencies in the ordinances. The OAG and Township are in negotiations; as a result, the Township has stayed the action it intended to bring against the farmer.

11. Longswamp Township, Berks County

A crop farmer requested review of the Township's application of its subdivision, land development and well drilling ordinances to the farmer's installation of a crop irrigation system. The OAG accepted the case, sent the Township an Acceptance Letter explaining how its ordinances violate ACRE, and the Township's response is forthcoming.

12. East Brandywine Township, Chester County

A land owner challenges the Township's ordinances as they apply to selling lumber harvested from her property, including the removal of tops/slash that remain after harvesting. The OAG accepted this case and will be sending the acceptance letter in November 2018.

13. Walker Township, Schuylkill County

A poultry farmer sought to expand egg-laying operations and challenges the Township's restrictions on what it defines as "intensive agriculture." The OAG sent an Acceptance Letter to the Township as well as to the farmer's lawyer. The farmer and the Township are also litigating this case in the state courts.

14. Lower Saucon, Northampton County

Landowners and a timber harvesting company challenge the Township's ordinances as they apply to timber harvesting; specifically the right to charge consultant fees, the role of an "Environmental Advisory Committee" in the permitting process, erosion and sedimentation control requirements, the required intervals on USGS maps and the appropriateness of certain identified silvicultural⁸ methods. The OAG has accepted this case and is in the process of drafting an Acceptance Letter.

15. Pennsbury Township, Chester County

The farmer challenges ordinances concerning Natural Resource Protection Standards and Stormwater Management as they pertain to timber harvesting. The OAG accepted this case and sent a detailed letter to the Township explaining why its ordinances violated ACRE and how to bring those ordinances into compliance. Negotiations to resolve the case continue.

16. Little Britain Township, Lancaster County

An animal farmer filed an ACRE complaint questioning the Township's stocking rates and types of animals permitted on the land. The Township sent a response to the OAG. The farmer and Township are also litigating the case in the state courts. The ordinance review is pending.

E. Prior Reported Matters Concluded Since 2017 Report Without Litigation

1. Lower Milford Township, Lehigh County

The landowner believed that the Township was placing overly restrictive and illegal requirements on his harvesting of timber. Specifically, the issue causing direct harm was the Township's fee and escrow requirements. The OAG accepted the case and informed the Township

⁸ "Silviculture is defined as the art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis." USDA Forest Service, White Paper, F14-SO-WP-SILV-34, p.2.

that its escrow requirements violated ACRE. The Township eliminated the escrow fee from its fee schedule, returned the several thousand-dollar escrow fee back to the landowner, and he proceeded to harvest the timber. With the resolution of the immediate problem, the OAG continues to review other sections of the Township's timber ordinances.

2. Salem Township, Luzerne County

Two separate farmers requested review of the Township's ordinance provisions regulating CAFOs. The OAG notified the Township of legal problems with the zoning ordinance and offered the Township an opportunity to discuss and correct them. The OAG approved the Township's proposed amendments and they have been enacted.

3. North Cornwall Township, Lebanon County.

Operator of a winery complained that the Township had a minimum 10 acre requirement⁹ in addition to mandating he make his wine from 100% of the grapes produced on the property¹⁰ – both in violation of the RTFA. The winemaker also complained that the Township was unlawfully trying to regulate his agritainment activities.¹¹ The OAG informed the Township that *to the extent* it was regulating the winery based on the 10 acre and 100% farm production requirements it could not do so; however, it could regulate the agritainment matters.¹² In the latest amendments to its ordinances, the Township did not require 10 acres or 100% farm production; rather, the actions

⁹ As noted above in footnote 4, a normal agricultural operation is one that is “not less than ten contiguous acres in area.” The definition also includes property less than ten contiguous acres if the property “has an anticipated yearly gross income of at least \$10,000.” 3 P.S. § 952, *Definitions*.

¹⁰ An owner/operator can engage in direct commercial sales of agricultural commodities from his/her property as long as at least 50% of those commodities are produced on-site. 3 P.S. § 953, *Limitations on Local Ordinances*.

¹¹ “Agritainment activities are defined as farm-related tourism or farm-related entertainment activities that are permitted or authorized in return for a fee on agricultural land for recreational or educational purposes.” *Agritainment - Penn State Extension*. <https://extension.psu.edu/agritainment>.

¹² Such as the amount of surface to be paved for parking; noise levels after a certain time; amusement taxes; food preparation and storage; appropriate seating and tables; appropriate shelters; sanitation and a system to deal with trash and food waste; and adequate restroom facilities.

against the owner were based on the agritainment activities. The OAG denied the case and denied reconsideration.

4. Westtown Township, Chester County

A landowner complained that the Township was not permitting her to have roosters on her property. The OAG denied this case because the ordinance did not ban roosters for commercial purposes, but rather, was designed for and applicable to people who kept chickens for pets and egg production in the residential zoning district.

5. Hamilton Township, Adams County

The farmer filed an ACRE complaint concerning ordinances as they pertain to water management and the grading of his property. The OAG denied this case. Agricultural activities were specifically exempted from the stormwater provisions of the Ordinances and there was no ACRE violation.

6. Newlin Township, Chester County

A large group of horse and stable owners requested review of the Township's zoning ordinance provisions regulating equine operations, including mandatory horse stocking rates and special exception requirements. The OAG notified the Township of legal problems with the zoning ordinance and offered the Township an opportunity to discuss and correct them. After extensive negotiations, the Township has passed and enacted new ordinances.

7. Union Township, Adams County

An alpaca farmer requested review of the Township's zoning ordinance provisions regulating direct commercial sales of agricultural commodities. The OAG notified the Township that the manner in which it was applying its "farm-related business" ordinance violated ACRE. The Township did not challenge the OAG's determinations. As a result, the farmer sells the alpaca

products without undue interference and the Township monitors compliance with the RTFA's 50% requirement.

8. Salem Township, Wayne County

A citizen complained of eminent domain and biosecurity issues. There were no local agricultural ordinances involved in the matters that he raised. The OAG denied the case.

9. Fayette County

A farmer requested review of the application of a County sign ordinance to require the removal of truck trailers used for storage on a farm. As the County's ordinance did not rise to the level of an unauthorized local regulation adversely affecting a normal agricultural operation, the OAG denied the case.

10. Fairview Township, Erie County

Farmers requested review of Fairview Township's ordinance and actions in re-zoning an agricultural zone to a residential zone and precluding a pre-existing agricultural operation. They complained that the ordinance prohibits or limits normal agricultural operations. The OAG notified them and the Township that it would not file a lawsuit and subsequently denied the farmers' request for reconsideration. The Township provided documentation that called into question the claim that there was a pre-existing agricultural operation on the property.

11. Centerville Borough, Washington County

The farmer requested review of a Borough ordinance defining commercial and non-commercial agriculture, requiring a permit for a private non-commercial use in the Agricultural Zoning Area, and imposing a fine for non-compliance. The OAG denied the case as well as a reconsideration request after concluding that the ordinances in question concerning the number of

animals and the manner in which they were to be kept on the property did not exceed, duplicate, or conflict with state standards.

F. Unresolved Matters Received Between July 6, 2017 and July 6, 2018

The following is a list of cases that were received during the term of this report that remain unresolved:

1. Lamar Township, Clinton County

Farmer challenges ordinances concerning set-backs for poultry barns. The ordinance review is pending.

2. East Penn Township, Carbon County

Farmers contend that the Township's Ordinance #77, which controls the agricultural use of biosolids, violates ACRE. The OAG issued an interim acceptance letter to place the parties on notice that its initial review leads the OAG to conclude the ordinance does violate ACRE, but that the full review of the ordinance is ongoing.

3. Oley Township, Berks County

Landowner farms 65 acres. He requests that the OAG review the Township's wellhead ordinances for compliance with ACRE. The ordinance review is pending.

4. Eldred Township, Monroe County

Landowner asks for ACRE review of the Township's timber harvesting ordinances. The ordinance review is pending.

5. Clay Township, Lancaster County

A timber harvester challenges the township's forestry ordinances. After the filing of the ACRE complaint, the Township issued the harvesting permit and the harvest is proceeding. The ordinance review is pending.

6. Todd Township, Huntingdon County

A township supervisor who is also a farmer filed an ACRE complaint concerning the Township's enactment of an ordinance entitled "Community Bill of Rights" which seeks to regulate what is characterized in the ordinance as "industrial farming." The ordinance review is pending.

G. Active Re-Opened Matters and Requests for Reconsideration

1. Lehigh Township, Northampton County

The OAG accepted a request for review of an ordinance that regulated "commercial livestock operations." The Township enacted amendments resolving the legal problems with the ordinance; however, the OAG received notification that the Township enacted new ordinances to regulate CAFOs. Negotiations seeking to resolve the matter without resorting to litigation are ongoing.

VI. CONCLUSION

Agriculture is vitally important to the Commonwealth's way of life and economy. The OAG's ACRE program furthers the declared state policy of conserving, encouraging, and growing agriculture throughout the Commonwealth. Through this program, the OAG has been able to successfully resolve individual farmers' specific concerns while at the same time effectively addressing legal issues that have far-reaching, statewide implications.