

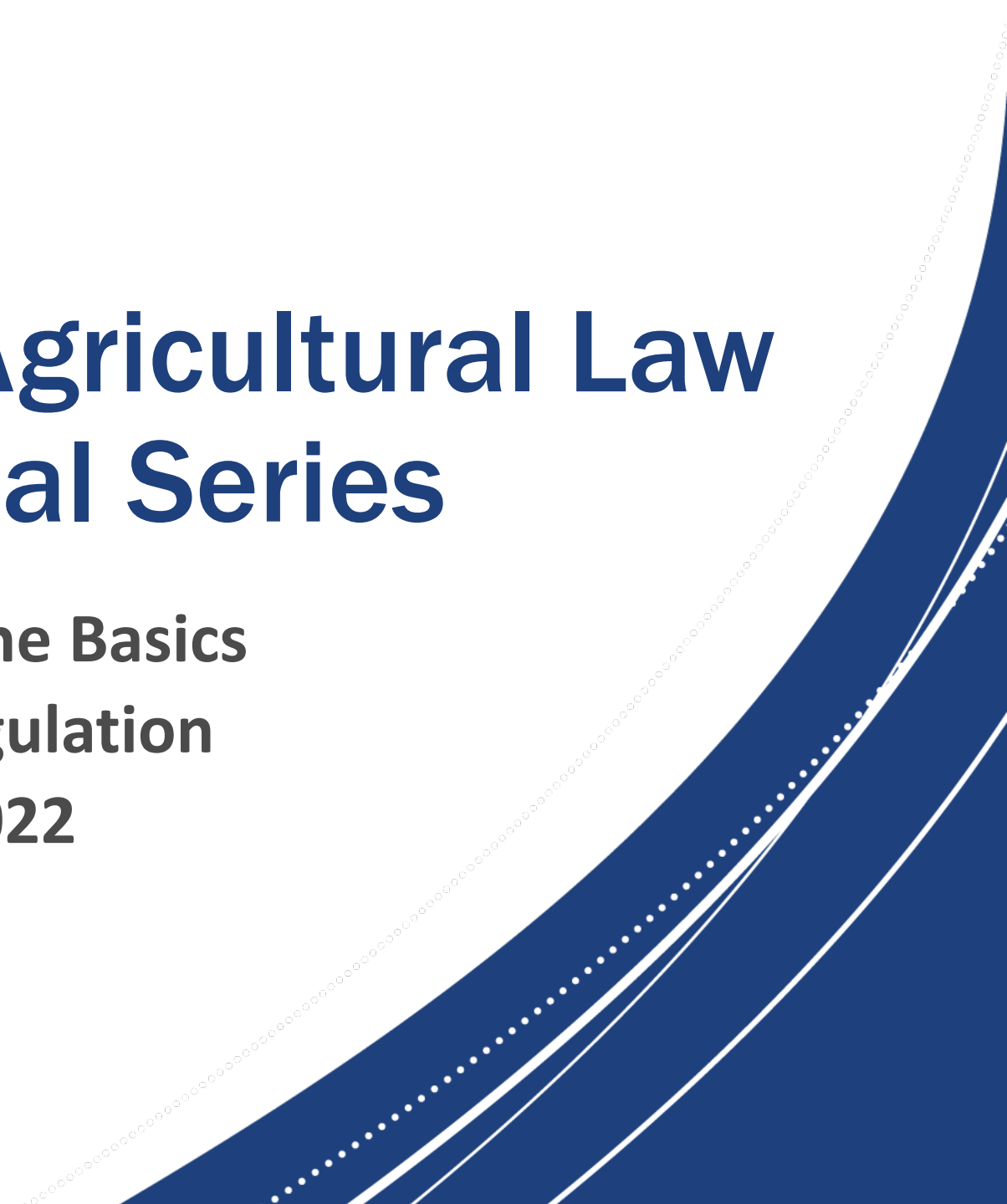


PennState Law

Center for Agricultural
and Shale Law

Understanding Agricultural Law Educational Series

**Understanding the Basics
of Land Use Regulation
June 24, 2022**





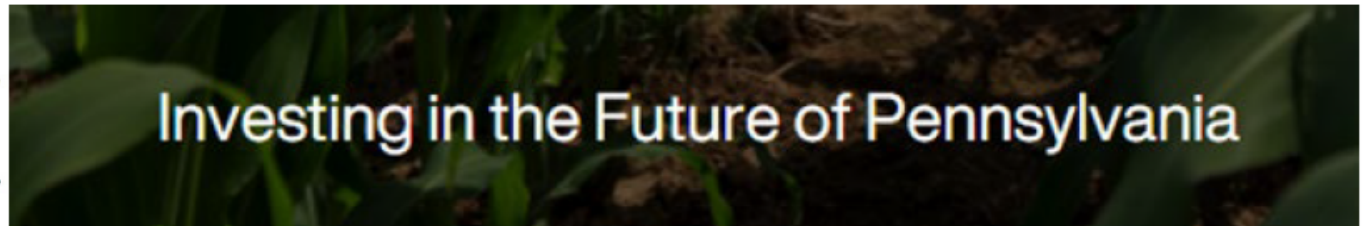
Understanding Agricultural Law

A Legal Educational Series for General Practice Attorneys and Business Advisors Representing Agricultural and Rural Clients

This webinar series is specifically tailored to create subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.



Understanding Agricultural Law Webinar Series



Established as part of the 2019 Pennsylvania Farm Bill, the [Agricultural Business Development Center](#) supports [Farm Transitions](#), linking farmers to the next phase of their life and their farm's future; [Beginning Farmers](#), providing advice and counsel to the next generation of agricultural producers; [Risk Management](#), providing information on crop insurance and other opportunities for risk management; and [Financial Assistance](#), connecting farmers with low-interest loan options and reimbursable grant programs. This initiative seeks to build the "ag literacy" and competency of the existing network of legal, engineering, accounting, and other disciplines of business advisors available to farmers.



Understanding Agricultural Law Webinar Series

April 29, 2022, 12 noon – 1 pm ET.

Understanding the Basics of Agricultural Labor Laws – Every area of labor and employment law seems to have its own unique rules for agricultural workers. Learn about them in one webinar session that better prepares you to advise your clients competently about what they need to know. Increase your understanding of the Fair Labor Standards Act, OSHA, child, migrant and seasonal labor laws, the H-2A program, and much more.

May 20, 2022, 12 noon – 1 pm ET.

Understanding the Basics of Leasing Farmland for Energy Development - The present and future will see many agricultural/rural landowners faced with tough decisions about land use and income opportunities presented by energy transitions. Gain an understanding of the ins and outs of leasing for gas and solar development to better serve current clients and build your skill set to take advantage of a growing market for professional advice in this area.

June 24, 2022, 12 noon – 1 pm ET.

Understanding the Basics of Local Land Use Regulation of Agriculture – To properly represent agricultural clients in land use regulation matters requires more specialized knowledge every year about ag structures and operations and the soil, stormwater and nutrient management requirements that apply. There are also some unique laws in Pennsylvania protective of agricultural uses, the understanding of which can make you invaluable to your clients.



Understanding Agricultural Law Webinar Series

July 22, 2022, noon – 1:00 ET

Statutory Protections for Agricultural Operations

Pennsylvania has several statutes that provide various protections to agricultural operations and rural landowners. This webinar will address the Pennsylvania Right to Farm Act, the Agricultural Area Security Act, Clean and Green, and ACRE's municipal ordinance review.



Center for Agricultural and Shale Law

<https://aglaw.psu.edu>

- Agricultural Law Weekly Review
- Shale Law Weekly Review
- Agricultural Law Virtual Resource Rooms
- Shale Law Virtual Resource Rooms
- Agricultural Law Issue Tracker
- Shale Law Issue Tracker
- Agricultural Law Podcast
- Social Media
 - Twitter, Facebook, LinkedIn
- Presentations
- PA Ag Mediation Program



Our Website



The screenshot shows the website for the Center for Agricultural and Shale Law. The browser address bar displays `aglaw.psu.edu`. The website header includes the Penn State Law logo, the center's name, a "SUBSCRIBE FOR UPDATES" button, and a search bar. A navigation menu contains links for HOME, ABOUT THE CENTER, EVENTS, PUBLICATIONS, RESEARCH BY TOPIC, WATCH OR LISTEN, MEDIATION, and LEGAL CLINIC. The main content area features a large image of a golden field with a path, overlaid with the text "Welcome to the Center for Agricultural and Shale Law". Below this, there are sections for "Agricultural Law Weekly Review" with sub-sections for "Week Ending April 16, 2021" and "Week Ending April 9, 2021". The right sidebar contains a "Tweets by @AgShaleLaw" section with two tweets and a "Penn State Center for Agricultural and Shale Law" social media widget.

Center for Agricultural and Shale Law

aglaw.psu.edu

PennState Law CENTER FOR AGRICULTURAL AND SHALE LAW

SUBSCRIBE FOR UPDATES SEARCH

HOME ABOUT THE CENTER EVENTS PUBLICATIONS RESEARCH BY TOPIC WATCH OR LISTEN MEDIATION LEGAL CLINIC

Welcome to the Center for Agricultural and Shale Law

Agricultural Law Weekly Review [SEE ALL AGRICULTURAL LAW WEEKLY REVIEWS »](#)

Agricultural Law Weekly Review – Week Ending April 16, 2021

COVID-19: Farmer to Families Food Box Program Ends; Fresh Produce Box Purchases and Dairy Donation Program Planned 🌱 According to statements made by Secretary Vilsack posted to USDA's website on April 14, 2021, the Farmer to Families Food Box Program will be terminated at the close of April 2021 when the current funded vendor contracts end. On April 14, 2021, Reuters reported that USDA Communications Director Matt Herrick stated USDA is focused on different hunger initiatives, including expanding food stamp benefits and increasing food purchases through existing government food distribution programs. On April 9, 2021, USDA released a Pre-Solicitation Announcement [...]

April 21st, 2021 [Read More >](#)

Agricultural Law Weekly Review – Week Ending April 9, 2021

Antitrust: Court Approves \$58 Settlement in Peanut Class Action Suit 🌱 On April 5, 2021, the U.S. District Court for the Eastern District of Virginia approved a \$58 million settlement agreement between the plaintiff peanut farmer Settlement Class and defendant peanut shellers Birdsong Corporation and Olam Peanut Shelling Company, Inc. in a civil antitrust class action suit alleging that the defendant companies over- and under-reported peanut inventories to the U.S. Department of Agriculture (USDA) to manipulate prices. In re Peanut Farmers Antitrust Litigation, No. 2:19-cv-00463. The approval follows the court's March 2021 back-to-back orders, absent accompanying explanatory opinions, approving the [...]

Tweets by @AgShaleLaw

PSU Ag & Shale Law @AgShaleLaw
#ShaleLaw HotLink: "Unrestrained shale growth could trigger another price war" buff.ly/3xg9fF3 @APIenergy @BNNBloomberg #APISmartBrief #shale #oilandgas #shaleoil #OPEC

PSU Ag & Shale Law @AgShaleLaw
#AgLaw HotLink: "Tyson Fresh Meats to join US CattleTrace" buff.ly/3eoxq7H @MeatPoultry #tyson #meats #freshmeat

Penn State Center for Agricultural and Shale Law 163 likes

Penn State Center for Agricultural and Shale Law



HOME » LIBRARY GUIDES » AG LAW LIBRARY GUIDES » PENNSYLVANIA RIGHT TO FARM ACT

PENNSYLVANIA RIGHT TO FARM ACT

LIBRARY GUIDE NAVIGATION

HOME

STATUTES AND REGULATIONS

CASE LAW

RELATED PUBLICATIONS

CONTACT PERSON:

Brook Duer
Staff Attorney

PHONE:

EMAIL:

dhd5103@psu.edu



Case Law

The following resources represent a collection of court filings and judicial opinions regarding the Pennsylvania Right to Farm Act. Furthermore, the decisions may be viewed via an online legal database using the mentioned docket number.

This list of cases is not exhaustive.

Branton v. Nicholas Meat, LLC

Superior Court of Pennsylvania, No. 536 MDA 2016

- **Opinion** (Apr. 4, 2017) (holding that RTFA's "lawful" requirement under § 954(a) is satisfied if an agricultural operation "substantially complies with relevant federal, state, and local laws." The court stated that "a lawful use is not rendered unlawful simply because an owner may have been cited for an infraction for noncompliance in connection with the use." Nevertheless, the court ruled that while the application and storage of food processing waste are normal agricultural operations under RTFA, the construction of a 2,400,000-gallon storage tank was a "substantial change" to the agricultural operation. As a result, because the suit was brought within one year of the change, the case was not barred under RTFA)

Burlingame v. Dagostin

Luzerne County Court of Common Pleas, No. 2015-02092



HOME » ISSUE TRACKERS » AGRICULTURAL LAW ISSUE TRACKERS

Agricultural Law Issue Trackers

Penn State Law's Center for Agricultural and Shale Law is making available a research tool – the Issue Tracker – aimed at simplifying the historical developments relevant to selected agricultural legal topics by documenting relevant federal and state legislative, regulatory and litigation/judicial proceedings in a reverse chronological timeline format. The Issue Tracker also supplements legal developments, as appropriate, with relevant actions and statements of stakeholders directly involved.



Agricultural Antitrust



Bioengineered Food Disclosure



Cell-Cultured Food Regulations



CERCLA / EPCRA Reporting



COVID-19



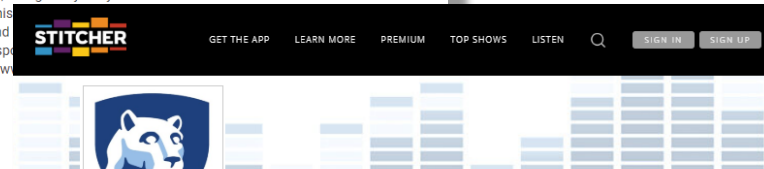
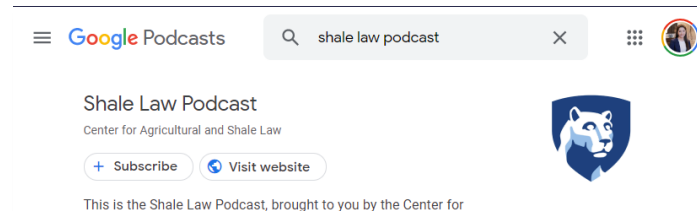
Dicamba





Our Podcasts are also Available on:

- Apple Podcasts
- Spotify
- Google Podcasts
- Stitcher



Available episodes

5 days ago
130. EPA's Final Rule on Permit...
This week's Shale Law Podcas...
from the EPA revising the agency

8 min

Jul 30, 2020
129. Natural Gas Venting Rule, C...
This week the Shale Law Podcas...
natural gas venting and flaring r...

8 min

Jul 22, 2020
128. Court Issues Pause on Dak...
The Shale Law Podcast for this v...
shutdown of the Dakota Access



Agricultural Law Podcast

★★★★★

Share This Show

About This Show:

The Center for Agricultural and Shale Law's podcast Agricultural Law Podcast provides content from its blog at pennstateglaw.com packaged in audiotape form for your convenience.

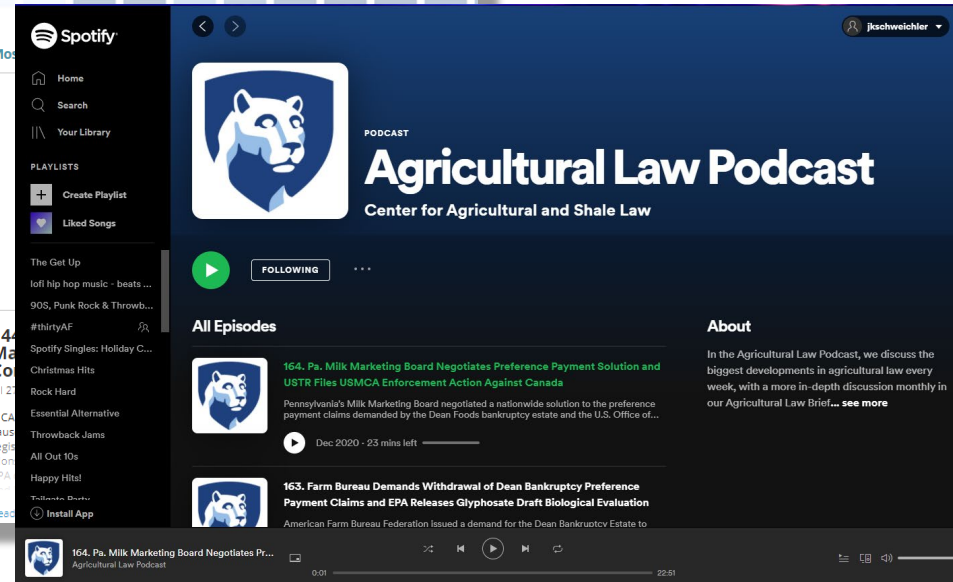
@agshalelaw
/AgShaleLaw

Listen Whenever:

- iOS
- Android
- Web Player

Related Shows:

The Future of Work





Pennsylvania Agricultural Mediation Program

Contact us:

Jackie Schweichler, Program Coordinator

329 Innovation Blvd.

University Park, PA 16802

(814) 746-4619

AgMediation@PennStateLaw.psu.edu

Website: www.PAAgMediation.com



Understanding Agricultural Law

- **This webinar will be recorded.**
- Use the Q&A feature for questions.
- CLE credits:
 - Link will be posted in the chat
 - Please fill out form
 - Listen for code word
 - Questions?
 - Email: jks251@psu.edu



Overview of Today's Presentation

- Part I – Brook Duer (approx. 30 minutes)
 - **Municipalities Planning Code and Agricultural Uses**
 - **Ag-Relevant Provisions in Generally Applicable Laws**
 - **Uniform Construction Code**
 - **Erosion & Sediment Controls**
 - **Storm Water Management**
 - **Land Development Plans**
- Part II – Ross Pifer (approx. 15 minutes)
 - **Nutrient Management Act**
 - **Odor Management**



PennState Law

Center for Agricultural
and Shale Law



AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series

Understanding the Basics of Land Use Regulation of Agriculture

June 23, 2022

A Legal Educational Series for General Practice Attorneys and Business Advisors Representing Agricultural and Rural Clients.



AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series

This webinar series is specifically tailored to creating subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.

Established as part of the 2019 Pennsylvania Farm Bill, the [Agricultural Business Development Center](#) supports [Farm Transitions](#), linking farmers to the next phase of their life and their farm's future; [Beginning Farmers](#), providing advice and counsel to the next generation of agricultural producers; [Risk Management](#), providing information on crop insurance and other opportunities for risk management; and [Financial Assistance](#), connecting farmers with low-interest loan options and reimbursable grant programs. This initiative seeks to build the "ag literacy" and competency of the existing network of legal, engineering, accounting, and other disciplines of business advisors available to farmers.



Past Webinars in the Series

May 20, 2022, **Understanding the Basics of Leasing Farmland for Energy Development**

The present and future will see many agricultural/rural landowners faced with tough decisions about land use and income opportunities presented by energy transitions. Gain an understanding of the ins and outs of leasing for gas and solar development to better serve current clients and build your skill set to take advantage of a growing market for professional advice in this area.

- [PowerPoint: Understanding the Basics of Leasing Farmland for Energy Development – Part 1](#)
- [PowerPoint: Understanding the Basics of Leasing Farmland for Energy Development – Part 2](#)
- [Recording: Understanding the Basics of Leasing Farmland for Energy Development](#)

April 29, 2022, **Understanding the Basics of Agricultural Labor Laws**

Every area of labor and employment law seems to have its own unique rules for agricultural workers. Increase your understanding of the Fair Labor Standards Act, OSHA, child, migrant and seasonal labor laws, the H-2A program, and much more.

- [PowerPoint: Understanding the Basics of Agricultural Labor Part 1](#)
- [PowerPoint: Understanding the Basics of Agricultural Labor Part 2](#)
- [Recording: Understanding the Basics of Agricultural Labor Laws](#)

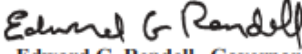


But first . . . Executive Order 2003-2

4 Pa. Code 7.301 –308

”The provisions of this Subchapter W adopted by **Executive Order No. 1982-3**, dated **October 29, 1982**, 12 Pa.B. 3804; amended by **Executive Order No. 1994-3**, dated May 9, 1994, 24 Pa.B. 2789; amended by **Executive Order No. 1997-6**, dated October 14, 1997, 28 Pa.B. 356; amended by **Executive Order No. 2003-2**, dated March 20, 2003, 33 Pa.B. 3483, unless otherwise noted.“

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
EXECUTIVE ORDER

Subject:	Agricultural Land Preservation Policy	Number:	2003-2
Date:	March 20, 2003	By Direction of:	 Edward G. Rendell, Governor

WHEREAS, Pennsylvania is the most productive agricultural state in the Northeast with more than 50,000 farms and 7.7 million acres of crop and pasture land; and

WHEREAS, the Commonwealth's abundant supply of agricultural land has sustained farm families, farm operations, and rural communities in Pennsylvania for generations; and

WHEREAS, Pennsylvania farmers are a vital component of the Commonwealth's economy, a leading economic enterprise in the Commonwealth, generating over \$4.5 billion annually in cash receipts, supporting a \$45 billion a year economic activity and employing nearly one-fifth of Pennsylvania's workforce; and

WHEREAS, increased land development and farm costs have caused Pennsylvania to lose more than 46 percent of its farmland since 1950; and

WHEREAS, Pennsylvania's future generations need to be assured a reliable source of food and fiber; and

WHEREAS, federal, state, and local governments, along with individual landowners, are valuable partners in the effort to identify and preserve critical farmlands; and

WHEREAS, from 1988 through 2003, the Commonwealth of Pennsylvania and participating counties have invested over \$510 million, and preserved almost 250,000 acres of agricultural land under the Agricultural Conservation Easement Purchase Program; and

WHEREAS, part of the Commonwealth's continuing efforts is to conserve its farmland, assist farm operations, and preserve the quality of life in rural communities, it is in the best interest of all Pennsylvanians that the Commonwealth continue its Agricultural Land Preservation Policy; and

WHEREAS, all state agencies under the Governor's jurisdiction should work together to preserve agricultural lands with a common definition of **prime** agricultural land and a common vision.

NOW, THEREFORE, be it resolved that I, Edward G. Rendell, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby order and direct all agencies under my jurisdiction seek to mitigate and protect against the conversion of prime agricultural land and adopt policies herewith.

1. It shall be the policy of the Commonwealth to protect through the administration of all agency programs and regulations, the Commonwealth's "prime agricultural land" from irreversible conversion to uses that result in its loss as an environmental and essential food and fiber resource.

2. Commonwealth funds and Commonwealth-administered federal funds shall not be used to encourage the conversion of "prime agricultural land" to other uses when feasible alternatives are available.

3. The "prime agricultural land" to be protected under this *Executive Order* shall include lands:

a. in active agricultural use (not including the growing timber);

b. lands devoted to active agricultural use the preceding three years; and

c. fall into at least one of the categories of agricultural land described below. State agencies shall provide protection to "prime agricultural land" under this *Executive Order* based upon the following levels of priority:

(1) Preserved Farmland (Highest Priority). Preserved farmland includes lands that fit into either of the following categories:

(a) Farmland that is restricted to agricultural use by an agricultural conservation easement that has been recorded in the appropriate county land records office. Such easements include:

1 easements owned by the Commonwealth and/or county and township under the authority of *Act 43 of 1981, as amended, the Agricultural Area Security Law*, and

2 easements owned by any other "qualified conservation organization," as that term is defined at *Section 170 (h) (3) of the Internal Revenue Code*. Qualified conservation organizations can include private nonprofit land conservation organizations, in addition to local governments and state governments.

(b) Farmland that is restricted to agricultural use by deed restrictions that have been imposed under the authority of *Act 442 of 1968* and that have been recorded in the appropriate county land records office.

(2) Farmland in Agricultural Security Areas (Second Highest Priority). Farmland approved by local government units after public review and comment according to the procedures in *Act 43 of 1981, as amended*.

(3) Farmland Enrolled in Act 319 of 1974, As Amended (Clean and Green) or Act 515 of 1996, As Amended (Third Highest Priority). Farmland enrolled for preferential tax assessments as land in "agriculture use" (Act 319) or "farmland" (Act 515).



(4) Farmland Planned for Agriculture Use and Subject to Effective Agricultural Zoning (Fourth Highest Priority). Farmland designated for agricultural use in a comprehensive plan and zoning ordinance adopted pursuant to Act 247 of 1968, as amended, the *Municipalities Planning Code* that delineates an area of agriculturally valuable soils and existing farms.



(5) Land Capability Classes I, II, III, and IV Farmland and Unique Farmland (Fifth Highest Priority). Land Capability Classes I, II, III, and IV Farmland is mapped by the U. S. Department of Agriculture (USDA) Natural Resources Conservation Service (formerly Soil Conservation Service) and published in county soil surveys. "Unique Farmland" is defined by the USDA Natural Resources Conservation Service as land other than prime farmland that is used for the production of specific high value food and fiber crops. The USDA Natural Resources Conservation Service has established a mechanism under which Unique Farmland is identified and mapped by interested county committees.



4. The Agricultural Land Condemnation Approval Board (ALCAB) shall consider this policy in its review of agricultural lands proposed for condemnation authorized under Act 100 of 1979, and Act 43 of 1981, as amended. Act 100 requires ALCAB's approval for the condemnation of agricultural lands for highways and solid and liquid waste disposal facilities. Act 43 of 1981, as amended, requires ALCAB's approval for condemnation of land in Agricultural Security Areas and land protected by Agricultural Conservation Easements.

5. All agencies under the Governor's jurisdiction shall amend their individual documents titled *Guidance for Implementation of the Agricultural Land Preservation Policy* within six months of the date of this order. The amended guidance document shall be submitted to the Governor's Policy Office and the Department of Agriculture. This guidance document shall include:

a. A listing of agency actions including land acquisitions, planning, construction, permit review, and financial assistance that may directly or indirectly impact prime agricultural lands.

b. A statement of agency guidelines and procedures, which have been or will be instituted to eliminate or minimize impacts detrimental to the continued use of prime agricultural lands.

c. A description of any changes in statutes or regulations needed to implement the intent of this order.

6. The following Commonwealth agencies shall participate in an interagency committee, chaired by the Department of Agriculture, to solve mutual problems in meeting the objectives of this order:

a. Governor's Policy Office.

b. Governor's Budget Office.

c. Department of Agriculture.

d. Department of Community and Economic Development.

e. Department of Conservation and Natural Resources.

f. Department of Corrections.

g. Department of Education.

h. Department of Environmental Protection.

i. Department of General Services.

j. Department of Transportation.

k. Pennsylvania Infrastructure Investment Authority.

7. **Cooperation by State Agencies.** The Department of Agriculture shall be the lead agency for implementing this policy. All agencies under the Governor's jurisdiction shall fully support this agricultural land preservation policy and shall cooperate with the Secretary of Agriculture by providing assistance and information, as necessary, to carry out the function and responsibilities hereunder.

8. **Effective Date.** This order shall take effect immediately.

9. **Rescission.** *Executive Order 1997-6.*





Search

Area of Interest

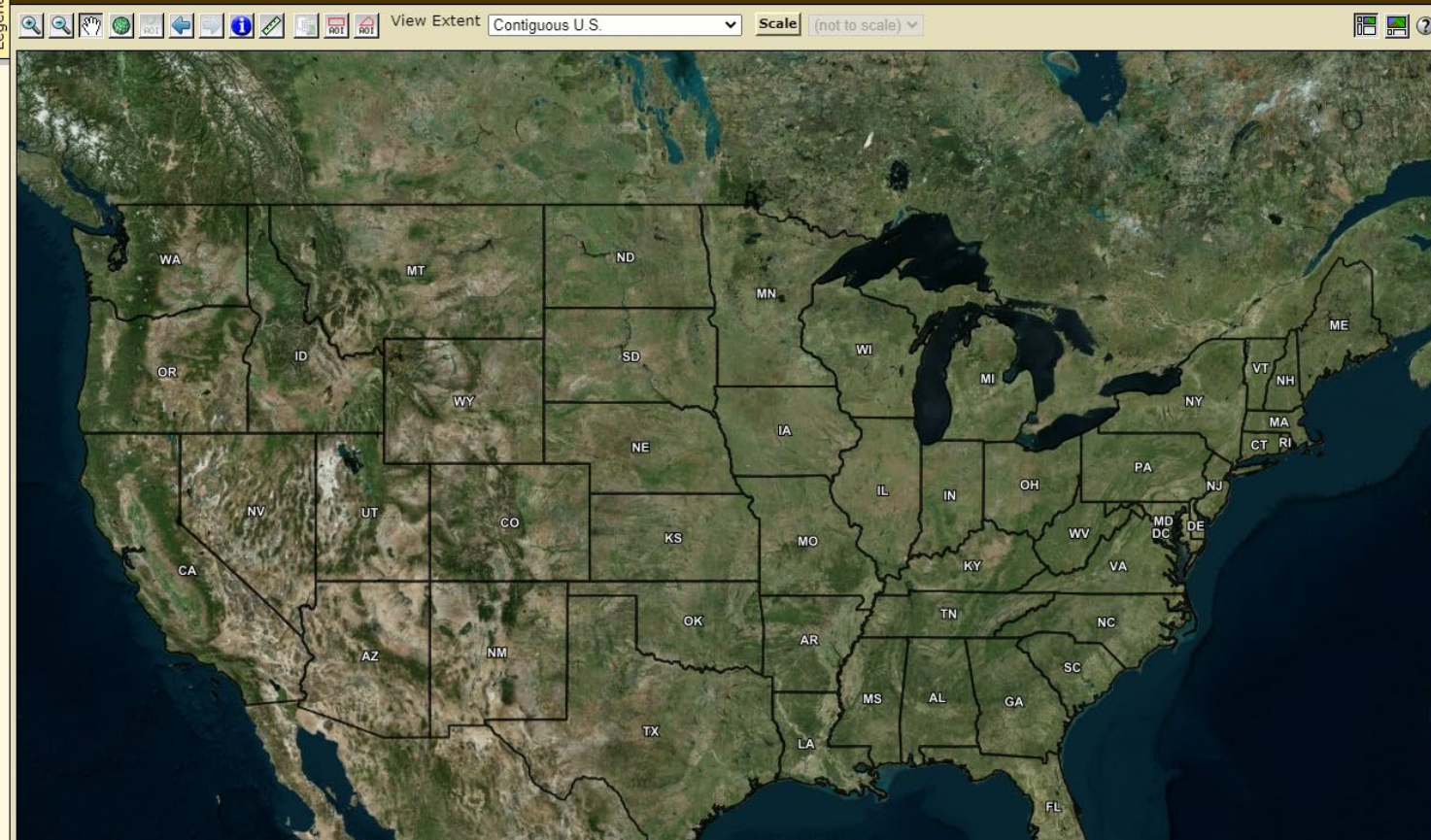
Import AOI

- Create AOI from Shapefile
- Create AOI from Zipped Shapefile

Quick Navigation

- Address
- State and County
- Soil Survey Area
- Latitude and Longitude or Current Location
- PLSS (Section, Township, Range)
- Bureau of Land Management
- Department of Defense
- Forest Service
- National Park Service
- Hydrologic Unit

Area of Interest Interactive Map



I Want To...

- Start Web Soil Survey (WSS)
- Know Web Soil Survey Requirements
- Know Web Soil Survey operation hours
- Find what areas of the U.S. have soil data
- Find information by topic
- Know how to hyperlink from other documents to Web Soil Survey
- Know the SSURGO data structure
- Use Web Soil Survey on a mobile device

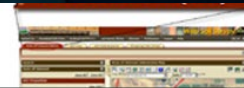
WSS
 Web Soil Survey (WSS) provides information on the National Soil Survey. It is the USDA Natural Resources Conservation Service's largest natural resource survey in the world. NRCS is online for more counties and in the near future. Web Soil Survey is the largest natural resource survey in the world.

General farm, local, and regional investigation is available. For more information on soil quality and related services, visit the [USDA Service Scientist](#) at the [USDA Service Scientist](#).

Announcements/Events

- Web Soil Survey 3.4.0 has been released! [View Web Soil Survey release history](#)
- [Sign up for e-mail updates via GovDelivery](#)

Area of Interest tab to define your area of interest.



I Want Help With...

Another little tip **DCED Publications**

LOCAL GOVERNMENT SERVICES

THE GOVERNOR'S CENTER FOR LOCAL GOVERNMENT SERVICES (GCLGS)

All publications are [downloadable](#).

Administering Police Services in Small Communities, 7th Ed. Feb. 2015

Auditors Guide, 13th Ed. Feb. 2019

Borough Council Handbook, 12th Ed. Aug. 2019

Borough Mayors Manual, 16th Ed. Feb. 2016

Boundary Change Procedures, 7th Ed. May 2014

Chart of Accounts, 5th Ed. July 2014

Citizen's Guide to PA Local Government, 11th Ed. Mar. 2018

City Government in PA Handbook, 4th Ed. Jan. 2017

Council of Governments Director's Handbook, 4th Ed. Mar. 2016

Debt Management Handbook, 7th Ed. Jun. 2020

Elective Office in Local Government, 13th Ed. May 2022

Financial Monitoring Workbook, 3rd Ed. Mar. 2011

Fiscal Management Handbook, 10th Ed. Jan. 2016

Home Rule in PA, 11th Ed. Mar. 2020

Insurance Primer for Municipal Secretaries, 4th Ed. Feb. 2003

Intergovernmental Cooperation Handbook, 7th Ed. Jul. 2018

Local Government Regulation of Wireless Telecommunications Facilities, 3rd Ed. Mar. 2016

Manual for County Chief Clerks/Administrators, 5th Ed. Aug. 2010

Manual for County Commissioners, 4th Ed. Aug. 2015

Manual for Local Taxpayers Bill of Rights and Real Property Tax Payer Programs, 3rd Ed. Jul. 2017

Manual for Municipal Secretaries, 14th Ed. Sep. 2018

Municipal Authorities in PA, 11th Ed. Apr. 2020

Municipal Pension Handbook, 3rd Ed. Oct. 2019

Municipalities Financial Recovery Act, 4th Ed. Jun. 2013

Open Meetings, The Sunshine Act, 4th Ed. Jun. 2015

Municipalities Financial Recovery Act, 4th Ed. Jun. 2013

Open Meetings, The Sunshine Act, 4th Ed. Jun. 2015

PA Municipalities Planning Code, 24th Ed. Feb. 2022

Planning for Agriculture, 3rd Ed. Nov. 2014

Public Works Manual, 2nd Ed. Jan. 2016

Purchasing Handbook, 13th Ed. Feb. 2019

Referendum Handbook, 11th Ed. Aug. 2019

Regional Police Services in PA, 10th Ed. June 2011

Risk Manager's Insurance Guide, 5th Ed. Nov. 2019

Solicitor's Handbook, 4th Ed. Feb. 2019

Tax Collector's Manual, 19th Ed. Oct. 2018

Taxation Manual, 10th Ed. Feb. 2019

The Civil Service Guide for PA Municipalities, 5th Ed. May 2017

Township Commissioner's Handbook, 5th Ed. Apr. 2018

Township Supervisor's Handbook, 12th Ed. Mar. 2018

PS #1 - Local Land Use Controls in PA, 6th Ed. Oct. 2020

PS #2 - The Planning Commission, 12th Ed. Sep. 2017

PS #3 - The Comprehensive Plan, 8th Ed. Sep. 2020

PS #4 - Zoning, 10th Ed. Apr. 2015

PS #5 - Currently Unavailable

PS #6 - The Zoning Hearing Board, 11th Ed. Apr. 2015

PS #7 - Special Exceptions, Conditional Uses and Variances, 9th Ed. Aug. 2014

PS #8 - Subdivision and Land Development in PA, 6th Ed. Feb. 2015

PS #9 - The Zoning Officer, 13th Ed. Nov. 2014

PS #10 - Reducing Land Use Barriers to Affordable Housing, 4th Ed. Jan. 2015



Planning for Agriculture

PSSTTT



PLANNING FOR AGRICULTURE

Third Edition | November 2014



Harrisburg, PA

Table of Contents

I. Introduction	1	VI. The Municipalities Planning Code (MPC) and Agricultural Zoning	20
II. Pennsylvania Right to Farm Act	2	Municipalities Planning Code (MPC)	20
Background and Legislative Policy	2	Agricultural Zoning	23
Protections Granted	3	VII. Pennsylvania Clean and Green Program	28
Exceptions to Applicability of Right to Farm	4	Background and Legislative Policy	28
Selected Case Law	4	What is the Clean and Green Program?	28
III. Agricultural Area Security Law	6	What Land is Eligible for Clean and Green?	28
Background and Legislative Policy	6	How is Land Enrolled in the Clean and Green Program?	30
Description	6	Determining Land Use Values	31
Protections Granted	6	Farmstead Assessment	31
Creating a New Agricultural Security Area	7	Removing Land from Clean and Green	31
Eligibility for Conservation Easement	9	Dividing Property Enrolled in Clean and Green	32
Selected Case Law	9	Civil Penalty for Clean and Green Violations	33
IV. State and Local Environmental Regulation of Agriculture	10	Recent Legislative Amendments to Clean and Green	33
Nutrient Management Act	10	Selected Case Law	34
Nutrient Trading Program	12	Appendix A	38
Water Resources Planning Act	12	Appendix B	40
Agriculture Erosion and Sedimentation Contacts	13	Appendix C	42
Manure Management	13	Appendix D	45
Odor Management	15	Appendix E	59
V. ACRE/Act 38 of 2005 (Local Regulation of Normal Agricultural Operations)	16		
Background and Legislative Policy	16		
Description and Definitions	16		
Protections Granted	17		
Attorney General's Annual ACRE Reports	18		
Selected Case Law	18		



MPC - Municipalities Planning Code & Agriculture

- Enabling legislation for municipal regulation of land uses.

Section 105. Purpose of Act: “. . . to promote the preservation of this Commonwealth’s natural resources and prime agricultural land . . . to encourage the preservation of prime agricultural land . . . *to ensure that municipalities enact zoning ordinances that 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 . . .*”

- **Tools:** (1) Comprehensive Plan; (2) Zoning Ordinance; (3) Subdivision and Land Development Ordinance
- We’ll stick to discussing **zoning** and later in this presentation touch upon land development authority.
- **Quote from DCED’s “Planning for Agriculture” publication:** “The purpose of agricultural zoning is to protect farmland from incompatible uses that would adversely affect the long-term economic viability of the area within the region. Zoning accomplishes this purpose in three ways:
 - (1) by protecting prime agricultural soil;
 - (2) by maintaining large areas of agricultural land; and
 - (3) by minimizing land use conflicts.”



MPC Section 603. Ordinance Provisions.

(b) *Zoning ordinances, . . . may permit, prohibit, regulate, restrict and determine:*

- (1) *Uses of land*, watercourses and other bodies of water.
- (2) *Size, height, bulk, location, erection, construction, repair, maintenance, alteration, razing, removal and use of structures.*
- (3) *Areas and dimensions* of land and bodies of water ***to be occupied by uses and structures***, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures.
- (4) Density of population and ***intensity of use***.
- (5) ***Protection and preservation*** of natural and historic resources and ***prime agricultural land and activities***.



“ . . . except to the extent that . . . regulation of activities related to commercial agricultural production would exceed the requirements imposed under

- Nutrient Management Act (“*regardless of whether any agricultural operation within the area to be affected by the ordinance would be a concentrated animal operation*”)
- Agricultural Area Security Law
- Right to Farm Law
- ***“or that regulation of other activities are preempted by other federal or state laws.”***



MPC Definition of “Agricultural Operation”

"Agricultural operation," an enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock and livestock products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry.

Compare to Right to Farm Law (which has become somewhat of a standard):

“Normal agricultural operation.” The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is: (1) not less than ten contiguous acres in area; or (2) less than ten contiguous acres in area but has an anticipated yearly gross income of at least \$10,000.

The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including, but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items of agricultural equipment and machinery defined by the . . . Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice.

Note: Neither includes on-farm “marketing” of commodities, a recurring omission except in the Ag Area Security Law.



PA's Uniform Construction Code (UCC) - 2004

Existing exemptions from UCC applicability:

- **“Agricultural building”** A structure utilized to store farm implements, hay, feed, grain or other agricultural or horticultural products or to house poultry, livestock or other farm animals, a milk house and a structure used to grow mushrooms, agricultural or horticultural products. The term includes a carriage house owned and used by members of a recognized religious sect for the purposes of housing horses and storing buggies. The term includes a structure that is less than 1,000 square feet in size which is utilized to process maple sap. **The term shall not include habitable space or spaces in which agricultural products are processed, treated or packaged and shall not be construed to mean a place of occupancy by the general public.**
- **“3-sided farm market”**
 - No more than **one structure per parcel** of land which meets all of the following requirements:
 - i. The structure is used for the direct, **seasonal** sale of agricultural commodities.
 - ii. The structure is **open on at least 25%** of the perimeter of the structure when in operation.
 - iii. The structure is operated by a producer whose products make up not less than **50%** of the agricultural commodities being sold.
 - iv. If **not located on the producer's property, the structure is erected for less than 180 days** of a calendar year.
 - v. The structure has an area of **not more than 1,000 square feet.**



Erosion & Sedimentation Control Plans (E&S)

- **Resources:** PA DEP [Agricultural Erosion and Sediment Control](#) webpage, which includes Ag E&S plan template which may be landowner/operator-executable (if possess correct data and knowledge to complete competently). Contact County Conservation District for assistance. Also includes a [Soil Erosion and Sediment Control Manual for Agricultural Operations](#).
- PA Clean Streams Law (35 P.S. 691.5 - 402) provide authority; details are in DEP's 25 Pa. Code "[Chapter 102 Regulations](#)."
- **BMP implementation required:** any agricultural plowing or tilling activities or Animal Heavy Use Areas (AHUAs)
 - *Best Management Practices* (BMPs) are sourced from [PA NRCS Field Office Technical Guide](#).
- **Ag E&S Plan required:** agricultural plowing or tilling activities or Animal Heavy Use Areas (AHUAs) that **disturb \geq 5000 sq. ft.** (approx. size of a basketball court).
 - NRCS implements a "NRCS Conservation Plan" for their programs, which may satisfy PA's Ag E&S Plan requirement in individual cases.
 - Must be "Readily available for review and inspection."
- All CAFOS need an Ag E&S Plan, if for no other reason than the mandatory NPDES permit requires it. All CAOs need an Ag E&S Plan because NMP requires it. (NPDES, CAOs and CAFOS are a topic for another webinar)
- A Construction E&S Plan is not an Ag E&S Plan.



Chapter 102 definitions

Earth disturbance activity—A construction or other human activity which disturbs the surface of the land, including land clearing and grubbing, grading, excavations, embankments, land development, agricultural plowing or tilling, operation of animal heavy use areas, timber harvesting activities, road maintenance activities, oil and gas activities, well drilling, mineral extraction, and the moving, depositing, stockpiling, or storing of soil, rock or earth materials.

Agricultural plowing or tilling activity—

- (i) Earth disturbance activity involving the preparation and maintenance of soil for the production of agricultural crops.
- (ii) The term includes no-till cropping methods, the practice of planting crops with minimal mechanical tillage.

Animal heavy use area—

- (i) Barnyard, feedlot, loafing area, exercise lot, or other similar area on an agricultural operation where due to the concentration of animals it is not possible to establish and maintain vegetative cover of a density capable of minimizing accelerated erosion and sedimentation by usual planting methods.
- (ii) The term does not include entrances, pathways and walkways between areas where animals are housed or kept in concentration.



Stormwater Management Act (1978)

- Any exemptions for agriculture have gone away.
- Obviously, stormwater management is at the heart of the efforts to reduce nitrogen, phosphorus and sediment contributions to the Chesapeake Bay and is too large an issue to cover in this webinar.
- Stormwater Management Ordinances vary by municipality.
- But one stormwater management issue re: agriculture use of land is small enough to address here.



High Tunnel Exemption from Storm Water Management Plan Requirement (2018)





A high tunnel shall be **exempted from the provisions of this act** if:

1. the high tunnel or its flooring **does not result in an impervious area exceeding 25% of all structures located on the owner's total contiguous land area**; and
2. the high tunnel meets one of the following:
 - i. The high tunnel is located at least 100 feet from any perennial stream or watercourse, public road or neighboring property line.
 - ii. The high tunnel is located at least 35 feet from any perennial stream or watercourse, public road or neighboring property line and located on land with a slope not greater than 7%.
 - iii. The high tunnel is supported with a buffer or diversion system that does not directly drain into a stream or other watercourse by managing storm water runoff in a manner consistent with requirements of this act.

Note: Unclear if each high tunnel can be up to 25% of the impervious surface, or if the sum of all high tunnels must be $\leq 25\%$.

"High tunnel." A structure which meets the following:

1. Is used for the production, processing, keeping, storing, sale or shelter of an agricultural commodity . . . or for the storage of agricultural equipment or supplies.
2. Is constructed consistent with all of the following:
 - i. Has a metal, wood or plastic frame.
 - ii. When covered, has a plastic, woven textile or other flexible covering.
 - iii. Has a floor made of soil, crushed stone, matting, **pavers or a floating concrete slab**.

Note: Same definition is used for an exemption to property tax assessment in Act 114 of 2013 and Act 130 of 2013.



**Instead of an
exemption for this:**



**The exemption also
includes this:**





SALDO & Land Development Plans

(SALDO = Subdivision and Land Development Ordinance)

- Each SALDO's terms vary by municipality. Very few universals.
- Consult the applicable ordinance, but the MPC does have some provisions relevant to ag uses. How these resolve can have significant financial implications.
- The threshold question of “**what qualifies as land development?**” requiring plan preparation/submission is the universal question with agricultural clients.
- But first, there is also a smaller threshold question of “**what qualifies as subdivision?**” regarding leases.
- “Subdivision,” the division or redivision of a lot, tract or parcel of land **by any means** into two or more lots, tracts, parcels or other **divisions of land including changes in existing lot lines for the purpose**, whether immediate or future, **of lease**, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development: **Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.**



What Qualifies as Land Development?

Section 107. Definitions.

“Land development,” any of the following activities:

- (1) The **improvement** of one lot or two or more contiguous lots, tracts or parcels of land **for any purpose** involving:
 - * * *
 - (ii) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, . . . leaseholds.
 - * * *
- (3) Development in accordance with section 503(1.1)

Section 503. Contents of Subdivision and Land Development Ordinance. The subdivision and land development ordinance may include, but need not be limited to:

- (1.1) Provisions for the exclusion of certain land development from the definition of land development contained in section 107 only when such land development involves:
 - (ii) the addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building; . . .



THANK YOU!

Brook Duer

Staff Attorney

Center for Agricultural and Shale Law

Penn State Law

329 Innovation Boulevard, Suite 118

University Park, PA 16802

(814) 863-3396

dhd5103@psu.edu





Pen



PennState Law



PENN STATE CENTER FOR AGRICULTURAL AND SHALE LAW

329 Innovation Blvd., Suite 118
University Park, PA 16802
Phone: 814-865-4290
Fax: 814-865-3851
Website: AgLaw.psu.edu

PROFESSIONAL STAFF

Center Director
Ross H. Pifer
rpifer@psu.edu

Staff Attorney
Brook Duer
dhd5103@psu.edu

Staff Attorney
Jackie Schweichler
jks251@psu.edu

Research Specialist
Chloe Marie, LL.M.
cjm445@psu.edu

CENTER MISSION AND BACKGROUND

The Center for Agricultural and Shale Law conducts research and educational programs to serve a wide variety of stakeholders including agricultural producers, landowners, mineral interest and royalty owners, business professionals, judges, attorneys, legislators, government officials, community groups, and the general public. Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information.

This publication is available in alternative media upon request. Penn State is committed to affirmative action, equal opportunity, and the diversity of its workforce.



PennState Law



National Agricultural Library

UNITED STATES DEPARTMENT OF AGRICULTURE





PennState Law

CENTER FOR AGRICULTURAL
AND SHALE LAW

SUBSCRIBE FOR UPDATES

SEARCH...



HOME

ABOUT THE CENTER

EVENTS

PUBLICATIONS

RESEARCH BY TOPIC

WATCH OR LISTEN

MEDIATION

LEGAL CLINIC

Welcome to the Center for Agricultural and Shale Law

aglaw.psu.edu



Pennsylvania Agricultural Mediation Program

- Who can request mediation?
 - USDA-related issues:
 - Agricultural Loans
 - Wetlands determinations
 - Compliance with farm programs, including conservation programs
 - National organic program established under the Organic Foods Production Act of 1990
 - Agricultural Credit
 - Rural water loan programs
 - Grazing on National Forest System land
 - Pesticides
 - Non-USDA issues:
 - Land and Equipment Lease issues.
 - Family farm transition.
 - Farmer-neighbor disputes.
 - As approved by PA Secretary of Agriculture



Contact us:

Jackie Schweichler, Program Coordinator

329 Innovation Blvd.

University Park, PA 16802

(814) 746-4619

AgMediation@PennStateLaw.psu.edu

Website: www.PAAgMediation.com₃₉



Nutrient Management – Legislative History

- Act 6 of 1993 – Nutrient Management Act
 - One listed purpose is “[to] establish criteria nutrient management planning requirements and an implementation schedule for the application of nutrient management measures on certain agricultural operations which generate or utilize animal manure.”
- Act 38 of 2005



Nutrient Management – Legislative History

- Act 6 of 1993 – Nutrient Management Act
- Act 38 of 2005 – “ACRE”
 - “An Act . . . consolidating the Nutrient Management Act; further providing for scope, for legislative purpose, for definitions and for administration; providing for manure application; further providing for nutrient management and odor management certification; providing for odor management plans; further providing for the Nutrient Management Advisory Board. . . .”



Relevant Legal Authorities

- Nutrient and Odor Management
 - 3 Pa.C.S. §§ 501 – 522
- Nutrient Management
 - 25 Pa. Code §§ 83.201 – 83.381
- Facility Odor Management
 - 25 Pa. Code §§ 83.701 – 83.812
- Manure Management
 - Within 25 Pa. Code, Chapter 91



Nutrient and Odor Management – Resources

- Pennsylvania Nutrient Management Program
 - <https://extension.psu.edu/programs/nutrient-management>
- Odor Management Program
 - www.agriculture.pa.gov
- Pennsylvania Nutrient Management and Manure Management Program – Administrative Manual (Oct. 2021)
- Planning for Agriculture, PA Department of Community & Economic Development, Third Edition (Nov. 2014)



Nutrient Management Plans

- Operator of Concentrated Animal Operation (CAO) required to develop and implement NMP.
 - CAO = animal density exceeds 2 Animal Equivalent Units (AEUs) per acre of land suitable for the application of manure
 - AEU = based on 1000 pounds per animal using standard animal weights



CAO Calculation – 25 Pa. Code 83.262(b)

- 10,000 medium broilers @ 2.3 lbs = 23,000 lbs.
- 23,000 lbs. x 258 days/365 days = 16,257 lbs.
- 16,257 lbs. / 1,000 lbs. = 16.25 AEUs
- 16.25 AEUs / 7 acres of suitable land = 2.32 AEUs/acre



Nutrient Management Plans

- Not required for operations with less than 8 AEUs
- Non-CAO operator can prepare plan on a voluntary basis.
- NMP must be prepared by Nutrient Management Specialist.
- NMP must be approved by local Conservation District.



Nutrient Management Act – Preemption

- 3 Pa.C.S. § 519 – Preemption of local ordinances that conflict with statute, regulation, or guidelines
 - (b) Nutrient management – “practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for the storage of animal manure or nutrients . . .”
 - (c) Odor management – “management of odors generated from animal housing or manure management facilities. . .”



Odor Management Plans

- Required for new CAOs or CAFOs
- Required for existing CAOs or CAFOs planning to construct or expand **manure storage or animal housing** facilities
- Voluntary plans authorized
- Must be prepared by Odor Management Specialist
- Must be approved by State Conservation Commission



Odor Management Plans – Contents

- Evaluation of potential off-site odor impacts
- Include necessary Odor BMPs to address potential off-site odors
- Goal is to minimize not eliminate odors



Manure Management Plans

- All farms that land apply manure must prepare and implement Manure Management Plan.
- All farms that have an Animal Concentration Area or pasture are required to prepare and implement MMP.
- Plan can be prepared by farmer and maintained on-site.
- See 25 Pa. Code § 91.36(a)