

**SIXTEENTH 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 52,700 farms, covering 7,300,000 acres, with an average farm size of 139 acres,¹ across Pennsylvania’s 2561 distinct municipalities (townships, cities, boroughs).² The Pennsylvania Department of Agriculture and Team Pennsylvania³ commissioned an analysis of the economic value of Pennsylvania agriculture, concluding that its direct and indirect economic impact within the Commonwealth results in an agriculture industry generating \$132.5 billion in total economic revenue each year and supporting 593,600 jobs with \$32.8 billion in earnings.⁴

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

¹ USDA, National Agricultural Statistics Services (“NASS”); and the 2020 State Agricultural Overview for Pennsylvania. https://nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=PENNSYLVANIA

² 959 Boroughs; 1,546 Townships; 56 Cities. <https://whyy.org/articles/explainer-cities-boroughs-and-townships-oh-my-pa-municipalities-clarified/>

³ “Team Pennsylvania is a non-partisan, 501(c)(3) nonprofit established in 1997 to connect private and public sector leaders to achieve and sustain progress for Pennsylvania.” <https://teampa.com/about/>

⁴ *The Economic Impact of Agriculture in Pennsylvania: 2021 Update*, p. 9. https://teampa.com/wp-content/uploads/2021/04/TeamPA_Agriculture2020EISUpdate_FINAL-1.pdf

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.

The General Assembly's Historical and Statutory Notes to ACRE coincide 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*. The Legislature acknowledged that to further this goal 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.⁵ Under ACRE, a local ordinance that exceeds, conflicts with, or duplicates state law is “unauthorized,” and its 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,

⁵ The RTFA defines a 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*.

in the Attorney General’s discretion, to sue a local government to invalidate or enjoin enforcement of an unauthorized local ordinance. 3 Pa.C.S. §314.

The OAG has a process by which it receives requests to review ordinances and brings legal action when warranted. That process is set forth on its website at www.attorneygeneral.gov.⁶ When the OAG receives a request to review an ordinance, it sends an acknowledgement of receipt to both the complainant and the municipality whose ordinance is the subject of the review. After completing its review, the OAG advises the parties, in writing, whether the ordinance is legally deficient, and identifies what changes should occur to bring the ordinance into compliance with state law. Where the OAG does not accept the case, 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 accepts the case, it affords the municipality an opportunity to discuss and voluntarily correct the legal problems identified in its review. The goal of this interactive process is two-fold. First, to resolve the immediate problem so the ACRE complainant can proceed with their farming plans without further delay.⁷ Second, the OAG wants to work cooperatively with the

⁶ 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.

⁷ This practical, problem solving approach has worked in the past. *See e.g. the following cases on the OAG ACRE website:* Wayne Township, Schuylkill County; Codorus Township #1, York County; Longswamp Township, Berks County; Pennsbury Township, Chester County; Lower Milford Township #1, Lehigh County; Clay Township, Lancaster County; Todd Township, Huntingdon County; Salem Township, Luzerne County; Pocono Township, Monroe County; Kidder Township, Carbon County; Upper Milford Township #1, Lehigh County; Upper Milford Township #2, Lehigh County; Upper Macungie Township, Lehigh County; East Nottingham Township, Chester County; Middletown Township, Delaware County; East Earl Township, Lancaster County; Upper Saucon Township, Lehigh County; Willistown Township, Chester County; Lower Milford Township #2, Lehigh County; Providence Township, Lancaster County; South Strabane Township, Washington County; and East Cocalico Township, Lancaster County.

This proactive problem solving approach has continued to work during this reporting period. *See e.g. the following cases on the OAG ACRE website:* Industry Borough, Washington County; Salisbury Township, Lehigh County; Municipality of Monroeville, Allegheny County; and Canton Township, Washington County.

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 consider filing suit in the Commonwealth Court.

The OAG added a second attorney to the ACRE section due to an increase in the number of cases over the past several years. With the addition of the second attorney, the processing time to review and ability to complete ACRE cases improved. Eight of the fourteen cases received during this reporting period were either settled to the satisfaction of the parties or denied. The OAG also settled or denied eleven of the cases listed in last year's Annual Report.

The OAG provides easy and transparent access to its ACRE program resources on its public website at www.attorneygeneral.gov, as noted above. 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. This "docket" includes copies of all ACRE complaints, the municipalities' responses, and the ordinance(s) in question, as well as the status of the OAG's review for cases filed from 2017 to the present. The website also provides a U.S. mail address and email link through which users can initiate their own complaints.

The website 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 why its ordinance violates state law, as well as the specific steps the municipality must take to cure the violation and bring the ordinance into compliance with state law. 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 implemented a community program through which it gives presentations about ACRE to people and organizations involved in Pennsylvania agriculture. To request such a presentation, contact the OAG via email or U.S. mail at the addresses found on the ACRE website.

III. ANNUAL DATA

Between July 6, 2020, and July 5, 2021, the OAG:

- Received 14 new ACRE requests;
- Closed (*i.e.* Denied, Settled, Withdrew) 8 of the cases received during this reporting period;⁸ and
- Continued working on 6 of the cases received during this reporting period (*i.e.* Accepted, Negotiating, Ordinance Review Ongoing);⁹

IV. AGGREGATE DATA

Between July 6, 2005, when ACRE went into effect, and July 5, 2021, the OAG:

- Received 208 requests for review of local ordinances;
- Closed (*i.e.* Denied, Settled, Withdrawn) 162 cases; and
- Continued work on 46 cases (*i.e.* Accepted, Negotiating, Ordinance Review Ongoing);
- Brought 7 legal actions against municipalities to invalidate or enjoin enforcement of unauthorized local ordinances;

Historically, most of the cases accepted by the ACRE program have been successfully resolved to the satisfaction of the municipality, the ACRE complainants, and the OAG without

⁸ These 8 cases are: Unity Township, Westmoreland County; Maiden Creek Township, Berks County; Industry Borough, Beaver County; Salisbury Township, Lehigh County; Chanceford Township, York County; Municipality of Monroeville, Allegheny County; Canton Township, Washington County; Lamar Township, Clinton County.

⁹ These 6 cases are: East Rockhill Township, Bucks County; East Marlborough Township, Chester County; West Rockhill Township, Bucks County; Unity Township, Westmoreland County; Pine Township, Allegheny County; and Little Britain Township, Lancaster County.

litigation. As noted above, just 7 cases have gone to 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 the rural environment.

V. STATUS OF CASES

A. Cases Received During the Sixteenth Annual Report Time Frame (July 6, 2020 through July 5, 2021)

-East Rockhill Township, Bucks County – ACRE Complainant challenges the Township's Erosion and Sedimentation Plan ("E&S Plan")¹⁰ requirements as well as its permit fee and escrow amounts. The OAG accepted the case. Most of the issues raised in the ACRE complaint have been resolved; discussions with the Township pertaining to County Conservation District approval of E&S Plans and the party responsible for the cost of a forestry expert continue. **Status – In Negotiations.**

-Unity Township, Westmoreland County – Township cited a citizen with improperly storing unused, excess construction material on his property. The OAG denied the ACRE complaint as the matter did not involve a NAO. **Status – Closed.**

-East Marlborough Township, Chester County – ACRE Complainant challenged various sections of the Township's timber harvesting ordinance. The OAG accepted the case and negotiations with the Township continue. The OAG has offered its assistance in helping the parties resolve their differences concerning timber harvesting on slopes and in flood plains, escrow

¹⁰ An E&S Plan is a "site-specific plan consisting of both drawings and a narrative that identifies [best management practices] to minimize accelerated erosion and sedimentation before, during and after earth disturbance activities. 25 Pa.Code §102.1, *Definitions*."

requirements, and what actually constitutes a “timber harvest.” The OAG is awaiting a response from the parties. **Status – In Negotiations.**

-West Rockhill Township, Bucks County - Timber harvesting company filed an ACRE complaint contending that the Township’s forestry ordinance violated ACRE. Ordinance review continues. **Status – Open.**

-Maidencreek Township, Berks County – Landowner expressed concerns that the Township would interfere with sheep and lambs on her property based on Animal Equivalent Units (“AEUs”)¹¹ limitations. The OAG denied the ACRE complaint as the Township had not taken any action against the landowner; upon review, the OAG determined the case involved a prior non-conforming use under the zoning law, which did not implicate ACRE. **Status – Closed.**

-Unity Township, Westmoreland County – ACRE complainant challenges the Township’s requirements pertaining to E&S plans and timber harvesting, in addition to the charging of an undefined “administrative fee,” and the payment of \$1,000 for engineering and inspection expenses. The OAG accepted the case and negotiations with the Township continue. **Status – In Negotiations.**

-Industry Borough, Beaver County – ACRE complainant challenged the Borough’s \$50.00 per acre fee required to secure a timber harvesting permit. The OAG accepted the case, informing the Borough that a per acre fee violated ACRE. The Borough agreed thereby saving the ACRE complainant approximately \$8,000.00. The Township rescinded its \$50 per acre fee and replaced it with a \$300 flat fee. **Status-Closed.**

-Salisbury Township, Lehigh County – A consulting forester filed an ACRE complaint contending that various provisions of the Township’s logging ordinances violated ACRE. After the

¹¹ An AEU is “[o]ne thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit.” 5 Pa.C.S. §503, **Definitions**, *Animal Equivalent Unit*.

OAG communicated with the Township, it repealed the offending ordinances in their entirety.

Status-Closed.

-Chanceford Township, York County – Landowners operated a dog kennel in the agricultural zoning district. The Township informed the owners that they needed a special exception to run a kennel in that particular district. The OAG denied the ACRE complaint as dog kennels are not a NAO. **Status-Closed.**

-Municipality of Monroeville, Allegheny County – Landowner complained of excessive permit fees required for agriculture activities that include major land disturbances. Through negotiations with the Municipality, the OAG successfully had the fee reduced from \$2,000 per parcel of land to \$200 per parcel. The Municipality changed its ordinances to indicate the new fee. **Status-Closed.**

-Pine Township, Allegheny County – Resident wanted to harvest timber on his property, primarily to improve the land for beagle training and hunting. This matter involves a NAO because the proposed harvest was on more than ten acres of land and the lumber sale would gross more than \$10,000. The OAG accepted the case. The OAG, the ACRE complainant, and the Township are working together to have the harvest proceed. The OAG and the Township are concurrently working to amend the ordinance. Negotiations continue. **Status-In Negotiations.**

-Canton Township, Washington County – ACRE complainant challenged the Township’s unwritten practice of requiring that the local County Conservation District (“CCD”) approve the E&S Plan prior to the issuance of a timber harvesting permit. He also contended that the Township was exceeding state road posting and bonding requirements. After the filing of the ACRE complaint, the Township allowed the harvest to proceed. The OAG closed the matter with the proviso that the

Township no longer require CCD preapproval of E&S Plans and that it follow all state laws and regulations governing road posting and bonding. **Status-Closed.**

-Lamar Township, Clinton County – Landowner filed an ACRE complaint expressing concerns over the Township possibly removing Nubian goats from her property. The OAG denied the complaint as it did not involve a NAO. **Status-Closed.**

-Little Britain Township, Lancaster County – Farmer utilizes a refrigerated freight trailer on his property to cool freshly picked produce. The Township cited him for improperly using a freight trailer as an accessory storage structure. The Township denied the farmer’s request for a variance and the review of the relevant ordinances is ongoing. **Status-Open.**

B. Cases Listed as Open in Last Year’s Fifteenth Annual Report (July 6, 2019 through July 5, 2020)

-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; this particular operation is neither a Concentrated Animal Operation (“CAO”) nor a Concentrated Animal Feeding Operation (“CAFO”).¹² 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 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

¹² A CAO is an agricultural operation with eight or more AEUs where the animal density exceeds two AEUs per acre on an annualized basis. 25 Pa.Code §§ 83.201, 262. A CAFO is a CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, or any agricultural operation defined as a large CAFO under 40 CFR § 122.23. 25 Pa.Code § 92a.2. An Animal Equivalent Unit (“AEU”) is “1,000 pounds of live weight of any animal on an annualized basis.” *Agronomy Facts 54, Pennsylvania’s Nutrient Management Act (Act 38): Who is Affected?*, p. 1; See 3 Pa.C.S. § 503, *Definitions*; 25 Pa.Code § 83.201, *Definitions*.

deficient; however, the Township and the farmer reached agreement on proceeding with the project and the Township issued the applicable permits.

Concurrent with the ACRE matter, a private citizens' group has been litigating this matter against the farmer and the Township in state court. That case was before the Pennsylvania Supreme Court and the OAG filed an amicus curiae ("friend of the court") brief with the Supreme Court supporting the farmer. The Court ruled in the farmer's favor, holding that the Nutrient Management Act¹³ preempts local regulation of agricultural operations not subject to the Act's requirements to the extent that the local regulation is more stringent than, inconsistent with, or in conflict with those requirements. Now that the state court litigation has ended, the OAG has restarted negotiations based on the ordinance amendments the Township previously proposed.

Status – In Negotiations.

-Heidelberg Township, Lebanon County

Two citizens requested review of the Township ordinance provisions regulating CAOs. The Township issued the necessary permits to the farmers, thereby resolving the immediate problem. The OAG and the Township's solicitor and engineer continue to review the ordinances and negotiate matters relating to issues including AEUs, impervious coverage, setbacks, and buffers. **Status – In Negotiations.**

-Wayne Township, Schuylkill County

The farmer requested review of the Township's zoning ordinance provisions regulating "intensive agriculture." There are no current issues with the farmer and the immediate situation has been resolved. The OAG advocated on the farmer's behalf and he is continuing to operate. OAG research into this matter shows that the Township has a good mix of small, CAO, and CAFO

¹³ 3 Pa.C.S. §§ 501-522.

farms and is supportive of agriculture in general. The Township solicitor and Township officials are working cooperatively with the OAG to guarantee that its ordinances comply with state law.

Status – In Negotiations.

-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 the parties are currently working together to draft a mutually acceptable ordinance. Negotiations will continue. **Status – In Negotiations.**

- 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 agreed to allow the farmer to proceed with his agricultural expansion resolving the immediate problem. The Township and the OAG exchanged extensive proposed amendments; negotiations reached a successful conclusion with the Township enacting new ordinances. **Status – Closed.**

-Upper Saucon Township #1, Lehigh County

The complainant, who has horses and chickens on her property, requested ACRE review of the Township’s denial of a permit to build a barn to house her animals. Here, the issue lay not with the ordinance itself, but rather with how the Township chose to enforce it against the complainant. The complainant also challenged the Township’s denial in both the Court of Common Pleas of Lehigh County and the Commonwealth Court of Pennsylvania. The Lehigh County Court remanded the matter back the Upper Saucon Zoning Hearing Board. After the

remand, the Township issued the necessary permit authorizing the complainant to build the barn.

Status – Closed.

-Codorus Township #'s 1 & 2 York County

Various farmers have filed separate ACRE cases with the OAG. Case #1 requested review of the Township's zoning, land development, and health ordinance provisions regulating CAFO's.

The farmer in Case #1 litigated the matter in the York County Court of Common Pleas. Subsequent to the ACRE complaint, the farmer and the Township arrived at an accommodation. The farmer submitted the requisite plans for the proposed expansion, which the Township approved resolving the immediate problem.

The farmer in Case #2 raised issues similar to those in Case #1, and also challenged the Township's water feasibility study requirements for CAOs/CAFOs. OAG review of the CAO/CAFO ordinances continues. **Status - Open.**

-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. During the pendency of the ACRE matter, the landowner sold her land rendering this particular case moot. However, the OAG and the Township continue to negotiate over potential amendments to its ordinances. **Status – In Negotiations.**

-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, sending the Township an Acceptance Letter explaining how its

ordinances violate ACRE. Pursuant to this letter, the Township permitted the farmer to drill his wells and irrigate his crops, solving the immediate problem. Through negotiations, the Township has agreed to amend its Subdivision and Land Development Ordinance consistent with the OAG's requirements; disagreement remains on the issue of the well provisions ordinances. Negotiations over this well provision part of the ACRE case continue. **Status – In Negotiations.**

-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 the tops/slash¹⁴ that remain after harvesting. The OAG accepted this case and sent to the Township an extensive Acceptance Letter, including 100 pages of exhibits outlining in detail the deficiencies in its ordinances. The Township informed the OAG that it was amending its ordinances to come into compliance with state law. The OAG has contacted the township manner inquiring about the status of the amendments and is awaiting a response. **Status – In Negotiations.**

-Walker Township, Schuylkill County

A poultry farmer sought to expand egg-laying operations and challenged 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 explaining why the ordinance violated ACRE.

The Township, along with several other municipalities, enacted a comprehensive joint municipal ordinance (the "new ordinance") covering all aspects of local governance, including agriculture, despite the unresolved ACRE matter and the fact that there was ongoing litigation in the

¹⁴ "Top' means the upper portion of a felled tree that is not merchantable because of small size, taper, or defect." "Slash' means the woody debris left in the woods after logging, including logs, chunks, bark, branches, uprooted stumps, and broken or uprooted trees or shrubs." *Forest Management and Timber Harvesting in Pennsylvania-Information for Citizens and Local Government Officials*, PSU College of Agricultural Sciences, 2019, p. 13.

state courts. The OAG reviewed the new ordinance finding several problems. The OAG and the Township have agreed to work together to review the CAO/CAFO provisions and revise any sections that violate state law. While the Township is committed to these negotiations, the other municipalities have indicated that they may want to add additional amendments to the new ordinance which could delay the process; the Township cannot make any changes to the ordinance alone and remain part of the joint zoning group. The OAG will prompt the other municipalities to submit their proposed amendments to move negotiations along. **Status – In Negotiations.**

-Pennsbury Township, Chester County

Landowners challenged the applicability of the Township's ordinances regarding Natural Resource Protection Standards and Stormwater Management to timber harvesting on their property. The OAG accepted this case and sent a detailed letter to the Township explaining why its ordinances violated ACRE and describing how to bring them into compliance with state law. The Township agreed to allow the landowners to proceed with the timber harvest, resolving the immediate issue. The OAG awaits proof that the Township has amended and enacted its ordinances. **Status – In Negotiations.**

-Little Britain Township #2, Lancaster County

A landowner 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 owner and Township are also litigating the case in the state courts. After a review of all relevant facts, the OAG denied the ACRE request. The property in question is located in the Township's Rural Residential District (R-1) and not the Agricultural Zoning District (AG). The keeping of livestock in the R-1 district is permitted only by special exception. The Township granted an earlier special exception

and its denial of a subsequent special exception request to add more livestock on the R-1 property is not an ACRE violation.

After the OAG denied the case, the farmer requested reconsideration of its denial. The reconsideration is ongoing. **Status – Open.**

-Lower Milford Township #1, Lehigh County

The landowner believes that the Township is placing overly restrictive and illegal requirements on his harvesting of timber - specifically, the Township's fee and escrow requirements. The OAG accepted the case and informed the Township that its escrow requirements violated ACRE. The Township eliminated the escrow fee from its fee schedule, returned the several thousand-dollar fee to the landowner, and the timber harvest occurred. With the resolution of the immediate problem, the OAG continues to review other sections of the Township's timber ordinances. **Status - Open.**

- 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 extensive Acceptance Letter concluding that an ACRE violation had occurred. Concurrent with the ACRE case, the Township and the farmers litigated matters in the Court of Common Pleas of Carbon County. The parties appealed that lawsuit to the Commonwealth Court of Pennsylvania. The OAG filed an *amicus curiae* ("friend of the court") brief with the Commonwealth Court supporting the farmer.

After the OAG filed its amicus brief, the farmers and East Penn settled the Commonwealth Court case. The Township also amended its biosolids ordinance so that it complied with state law. **Status – Closed.**

-Eldred Township, Monroe County

Landowner requested ACRE review of the Township’s timber harvesting ordinances. The OAG accepted the case, and sent a detailed Acceptance Letter explaining why the ordinances were flawed and the measures the Township should take to bring them into compliance with ACRE. Negotiations pertaining to certain E&S requirements, what should be included in plot plans, and water source buffer areas are ongoing. **Status – In Negotiations.**

- Clay Township, Lancaster County

A timber harvester challenged the Township’s forestry ordinances. After the filing of the ACRE complaint, the Township issued the harvesting permit allowing the complainant to commence harvesting, solving the immediate problem. Pursuant to the OAG’s request, the Township also enacted a new ordinance in conformity with the Pennsylvania State University (“PSU”) Extension’s Model Ordinance and is now in compliance with state law. **Status – Closed.**

-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 a “Community Bill of Rights” (“CBR”)¹⁵ which sought to regulate what it characterized as “industrial farming.” Such CBRs violate state law and as a result, the OAG’s Acceptance Letter indicated that the CBR had to be repealed. After receipt of the OAG’s letter, the Township took action to repeal the CBR. **Status – Closed.**

-Windsor Township, York County

Timber harvesting company filed an ACRE complaint contending that the Township’s forestry ordinance violated ACRE. The Windsor Township Zoning Officer provided to the OAG the

¹⁵ CBRs are locally drafted and enacted ordinances that seek to invalidate certain property rights. CBRs have been routinely invalidated by the courts. *See e.g. Pennsylvania Gen. Energy Co., LLC v. Grant Twp.*, 2018 WL 306679 at 10 (W.D. Pa. 2018) and cases listed therein.

Definitions and Section 322, Timber Harvesting Operations portions of its ordinances. Ordinance review continues. **Status – Open.**

-Kidder Township, Carbon County

Logger challenges the Township’s timber harvesting ordinance and expresses particular concern with regard to the requirements applicable to E&S Plans. The OAG explained in an Acceptance Letter that the Township’s ordinance provisions concerning E&S requirements, permit fees, silvicultural standards, insurance matters, and penalties violated ACRE. After receiving the OAG’s letter, the Township permitted the harvest to proceed. The harvest is finished and the site retired.

The Township changed solicitors while this case was still pending. The OAG sent the new solicitor all previous letters and emails concerning this ACRE case and now awaits the Township’s formal response. **Status – In Negotiations.**

-Upper Milford Township #1, Lehigh County

Farmer challenged the Township’s stormwater management ordinances. All issues raised in the ACRE complaint have been resolved. The Township changed the stormwater ordinance to increase the square footage of impervious areas, which allowed the farmer to proceed with constructing the covered animal heavy use area and removed the need for an operations and management agreement. **Status – Closed.**

-Upper Milford Township #2, Lehigh County

Farmer contends that the Township’s ordinances concerning minimum acreage, various setback distances, requirements for “farm-based businesses,” and what constitutes “agricultural products” violates ACRE. The Township has agreed to amend its ordinances to reflect the RTFA’s definition of a NAO; to change the distance of its setbacks to comply with state law; to more

specifically delineate the applicability of NAOs to “farm-based businesses;” and to add a definition of “agricultural products” in the Definition portion of the ordinances. Once the Township provides proof of the amendment this case will be closed. **Status – In Negotiations.**

-Pocono Township, Monroe County

Timber harvesting company filed an ACRE complaint contending that the Township’s forestry ordinance violated ACRE. The OAG accepted the case informing the Township that the ordinances related to mandatory buffer zones, basal area¹⁶ to remain after a harvest, times of harvest, fees and escrow, and E&S requirements violated ACRE. In light of the OAG Acceptance Letter, the Township permitted the harvest to proceed. The harvest is finished and the site retired. The OAG recommended that the Township enact the PSU Model Timber Harvesting ordinance and awaits a response. **Status – In Negotiations.**

-Middle Smithfield Township, Monroe County

Timber harvesting company complains of the Township’s requirements with respect to E&S Plans, no cut buffer zones around water bodies, disposal of tops and slash, and remaining canopy minimums. The OAG accepted the case and sent the Township an Acceptance Letter. The Township agreed with the OAG’s position pertaining to Conservation District approval of E&S Plans, 25 feet buffer zone from streams, and tops/slash setbacks. Negotiations concerning who pays for E&S Plan review and canopy minimum requirements are ongoing. **Status – In Negotiations.**

-Upper Macungie Township, Lehigh County

Farmers filed an ACRE complaint challenging the Township’s ordinances regulating direct commercial sales of agricultural commodities. The Township agreed that its ordinances were in

¹⁶ “Basal area is the common term used to describe the average amount of an area (usually an acre) occupied by tree stems. It is defined as the total cross-sectional area of all stems in a stand measured at breast height, and expressed as per unit of land area (typically square feet per acre).” *Basal Area: A Guide for Understanding the Relationships Between Pine Forests and Wildlife Habitat*, p. 1, [basal_area_guide.pdf\(mdwfp.com\)](http://basal_area_guide.pdf(mdwfp.com))

conflict with state law and issued all necessary permits to the farmers for the operation of their business, solving the immediate problem. The Township agreed to amend its improper ordinances; as a cost saving measure, when amending its ordinances the Township typically waits until there are several amendments to various ordinances in order to process one comprehensive ordinance. As soon as the Township provides proof that it has amended its ordinances, the OAG will close the case.

Status – In Negotiations.

-Rice Township, Luzerne County

Logger challenges the Township's professional licensure requirements for foresters, the prohibitions on clear cutting, and the mandate that certain percentages of the forest canopy remain after the harvest. After notifying the Township of the ACRE complaint, it issued the timber harvesting permit thereby resolving the immediate problem. The Township, however, disagrees that its timber harvesting ordinances are preempted by state law. The OAG continues to review the Township's response. **Status – Open.**

-Fairview Township, Luzerne County

Timber company challenges the Township's E&S and timber harvesting plan requirements, the necessity of a written service agreement, and road posting and bonding costs, in addition to the insurance and workers' compensation mandates. After notifying the Township of the ACRE complaint, the Township issued the timber harvesting permit, thereby resolving the immediate issue.

The Township responded to the ACRE complaint agreeing that it will remove from its ordinances the prior E&S/Conservation District approval mandate, the requirement of proof of workers' compensation and liability insurance, the blanket prohibition against clear cutting, and the requirement that 30% of the canopy cover remain. The Township disagrees with the OAG position

concerning when a timber harvesting permit must be obtained and whether the permit applicant must pay for damage claims. OAG review of the Township's response is ongoing. **Status – Open.**

-South Londonderry Township, Lebanon County

Forestry company filed an ACRE complaint challenging numerous portions of the Township's timber harvesting ordinance. The Township responded that it was in the process of reviewing its ordinances and intended to amend certain sections in the near future. The OAG provided the Township with resources to assist it in amending its ordinances. The Township has been preparing a comprehensive Zoning Ordinance amendment that will remedy any potential issues with ACRE. Once the Zoning Ordinance amendment is in a form that is ready for the Board of Supervisors to review and potentially adopt, the Township will forward the same to the OAG for review. **Status – In Negotiations.**

-North Middleton Township, Cumberland County

Landowners disagree with the Township's actions as it pertains to their winery and proposed agritainment activities. Since receipt of the ACRE complaint, the Cumberland County Court of Common Pleas found in favor of the landowners' making and selling wine in the Rural Resource Zoning District. Lot access, setback, screening/buffering and parking requirements remain unresolved concerning the landowners' intent to operate a private party/special event facility in the rural Resource Zoning District. OAG ordinance review is ongoing. **Status – Open.**

-Salem Township, Luzerne County

Farmer challenged the Township's requirement that all farmers had to connect to the municipal water system. After the filing of the ACRE complaint, the Township did not make the farmer connect to the public water, having determined that the ordinance did not apply. **Status-Closed.**

-Elk Township, Chester County

Farmer wanted to build a poultry barn housing approximately 3,200 chickens. The Township denied his permit application based on its “intensive agriculture” ordinance. The OAG accepted the case, informing the Township that the use of the term “intensive agriculture” must comply with state standards concerning CAOs and CAFOs and that the various acreage requirements also violated state law. In light of the OAG’s Acceptance Letter, the Township allowed the farmer to build his poultry barn, solving the immediate problem. The Township and the OAG continue negotiations on amending the ordinance provisions concerning acreage requirements and annual gross income.

Status – In Negotiations.

-Middletown Township, Delaware County

Lumber company and landowner filed an ACRE complaint challenging the Township’s timber harvesting ordinance. The Township agreed to return all escrow and professional fees charged, totaling over a thousand dollars, and committed to charging no further escrow or fees. The timber harvest is completed. The OAG is working with the Township to draft a legally sufficient ordinance. **Status – In Negotiations.**

-The City of Philadelphia

This case involves urban farming. City resident filed an ACRE complaint challenging Philadelphia’s requirements to engage in urban farming. Progress has been made in that the City issued the complainant the Market or Community Supported Farm Permit, but there is still disagreement concerning on premise sales. OAG review continues. **Status – Open.**

-North Coventry Township, Chester County

Landowner filed an ACRE complaint concerning timber harvesting on his land as well as road posting and bonding issues. The OAG sent an Acceptance Letter identifying problems with

the Township's ordinances. During negotiations, the Township and landowner suggested they draft proposed amendments to the already existing ordinances for the OAG's review. The OAG received and reviewed some proposed amendments. The landowner subsequently filed another ACRE complaint which raised supplemental arguments in support of his earlier claims. While the OAG rejected the landowner's supplemental arguments, it continues to negotiate with the Township to amend the timber harvesting ordinances so that they comply with state law. Negotiations are ongoing. **Status – In Negotiations.**

-East Earl Township, Lancaster County

Timber harvester challenged various requirements of the Township's timber harvesting ordinance. The OAG accepted the case recommending that the Township enact the PSU Extension's model timber harvesting ordinance. The Township did so, thereby bringing its timber harvesting ordinance into compliance with state law. **Status-Closed.**

-Upper Saucon Township #2, Lehigh County

Timber company filed an ACRE complaint challenging the legality of the Township's requirement that a forestry stewardship plan be submitted prior to issuance of a harvesting permit. The complainant also argued that mandatory, blanket buffer zones and setbacks applicable to all situations violated ACRE. The OAG accepted the case. After receipt of the OAG Acceptance Letter, the Township issued the timber harvesting permit and the harvest proceeded. The Township has also agreed to amend its ordinances. Once the Township provides proof that it has amended its ordinances the OAG will close the case. **Status – In Negotiations.**

-Lower Milford Township #2, Lehigh County

Landowner hoping to start a winery challenged the Township's ordinance requiring a minimum of five acres in which to operate a winery. The OAG accepted the case, informing the

Township that property in an agricultural zoning district can meet the requirements for a NAO under the RTFA without consideration of an acreage requirement if the anticipated yearly gross income from the property is \$10,000 or more. The Township has amended its ordinance to bring it into compliance with the RTFA. **Status-Closed.**

-Providence Township, Lancaster County

A forestry company filed an ACRE complaint wherein it challenged the Township's requirement that an already completed, and Department of Environmental Protection ("DEP") approved, E&S Plan must also be reviewed and approved by the local County Conservation District before issuing a timber harvesting permit. Furthermore, the complainant challenged ordinance provisions concerning mandatory setbacks/buffer zones applicable in all circumstances as well as several stream crossing requirements. The OAG accepted the case. Upon receipt of the OAG's Acceptance Letter, the Township agreed to amend its ordinances to bring them into compliance with state law. Once the Township provides proof that it has amended its ordinances the OAG will close the case. **Status-In Negotiation**

-Hopewell Township, Beaver County

Farmer filed an ACRE complaint concerning various ordinances dealing with CAOs/CAFOs and what the Township refers to as "intensive agriculture." The OAG accepted the case. The Township agreed to amend its setback requirements, but issues remain, including numerous concerns about how the Township's defines "intensive agriculture," acreage requirements, and wellhead protection. The OAG continues to work on a proposal to resolve the remaining concerns. **Status – In Negotiations.**

-East Cocalico Township, Lancaster County

Timber harvester challenged the Township's forestry ordinance provisions concerning wetland certification, forest regeneration and stewardship plans, stormwater management, E&S requirements, no cut buffers, and road posting and bonding. The OAG directed the Township's attention to the various timber harvesting cases found on the OAG's ACRE website. After reviewing those cases, the Township enacted the PSU Model Ordinance thereby bringing its ordinance into compliance with state law. **Status – Closed**

-Upper Oxford Township, Chester County

Farmers grow aloe and lavender that they use in making skincare products, soaps, lotions, and hand sanitizer; some of these products are manufactured on site, using the aloe and lavender. The Township has closed the business, contending that the farmers are improperly manufacturing in an agricultural zoning district. The OAG sent an Acceptance Letter noting that the Township's cease and desist order violated ACRE. The OAG has offered to negotiate this matter, but the Township has been unreceptive. An OAG attorney toured the farm to gather further information as it decides the appropriate course of action to resolve the case. **Status-Open.**

-Butler Township, Luzerne County

Hemp grower claims that the Township's ordinance "To Regulate the Growing, Processing, and Production of Hemp" is too restrictive, in that it unfairly targets hemp growers, effectively ending the grower's operation. Township officials and the OAG are working together to draft a legally sufficient hemp ordinance. The OAG has enlisted the PSU School of Agriculture, the School of Law, and the Pennsylvania Department of Agriculture in helping draft the ordinance. Hemp cultivation is a new and growing sector of the agriculture industry. For example, in 2021 alone, the

Pennsylvania Department of Agriculture issued 426 hemp growing permits and 64 hemp processing permits. https://www.agriculture.pa.gov/Plants_Land_Water/hemp. **Status-In Negotiations.**

-Hellam Township, York County

ACRE complainant contended that the Township's application of road posting and bonding ordinances to agriculture products violate state law. He also challenged provisions of the Township's timber ordinances. The OAG accepted the case and sent an Acceptance Letter to the Township. Subsequently, the Township has enacted the PSU Model Ordinance bringing its ordinance into compliance with state law. **Status-Closed.**

C. Completed Legal Actions Since 2005

-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.

-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.

-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.

-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.

-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.

-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.

-Locust Township, Columbia County – completed July 2012.

Both the Pennsylvania Supreme Court and the Commonwealth Court accepted almost in their entirety the OAG's arguments concerning state law preempting local ordinances. The Supreme Court case, *Commonwealth v. Locust Township*, 968 A.2d 1263 (Pa. 2009), has been cited 147 times in various legal resources (trial court orders, administrative decisions, secondary sources, appellate court dockets, and trial court documents). On remand from the Supreme Court, the Commonwealth Court issued a favorable ruling in the case at *Commonwealth v. Locust Township*, 49 A.3d 502 (Pa.Cmwlt. 2012) wherein the Courts once again accepted most of the OAG's preemption arguments. The Commonwealth Court's *Locust Township* opinion has been cited a total of 26 times in various legal resources (cases, secondary sources, appellate court documents). *Locust Township* is one of the seminal cases in the ACRE law area. The Court closed the case *sua sponte* after ruling on the OAG's motion for summary judgment.

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 the ACRE program, the OAG has been able to resolve the individual farmer's specific concerns while at the same time addressing legal issues that have far-reaching, statewide implications.