



PennState Law

Center for Agricultural
and Shale Law

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series

Understanding Agricultural Law Webinar Series

Understanding the Basics of Federal & State Conservation Programs

November 18, 2022





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, YouTube
- Presentations
- PA Ag Mediation Program





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.



Pennsylvania Department of Agriculture's *Agricultural Business Development Center*



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: *Past Topics*

Understanding the Basics of

- Agricultural Labor Laws (April 29, 2022)
- Leasing Farmland for Energy Development (May 20, 2022)
- Local Land Use Regulation of Agriculture (June 24, 2022)
- Statutory Protections for Ag Operations (July 22, 2022)
- Agricultural Cooperatives (Aug. 26, 2022)
- Livestock Market Regulation (Sept. 23, 2022)
- Crop Insurance (Oct. 21, 2022)



Understanding Agricultural Law Webinar Series: **Upcoming Topics**

Friday, December 16, 2022, noon–1:00 ET

•*Understanding the Basics of*

Licensing & Regulation of Direct Agricultural Product Sales

Friday, January 27, 2023, noon–1:00 ET

•*Understanding the Basics of*

Agricultural Finance

Friday, February 24, 2023, noon–1:00 ET

•*Understanding the Basics of*

Pennsylvania's "Clean & Green" Preferential Tax Assessment Program



Housekeeping

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



Understanding the Basics of Federal & State Conservation Programs

November 18, 2022

Presenters: Ross Pifer & Brook Duer
Center for Agricultural and Shale Law

This session will summarize the *history, progression, and current implementation* of the leading federal and state soil conservation programs, which greatly impact water quality, and the *entities that administer them*: USDA's Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), Pennsylvania's State Conservation Commission (SCC), and SCC's county Conservation Districts.

The recent *Inflation Reduction Act* appropriated more than **\$20 billion** for conservation programs, signaling the importance of soil conservation and anticipated water quality improvement to agricultural policy and law nationwide, only to increase in the coming years.

Learn or refamiliarize yourself with the details of these programs—which primarily work through *voluntary participation*—and how they impact the operations and planning of agricultural and rural landowners.



Overview of Today's Presentation

- Conservation programs generally
- Federal conservation programs
- State conservation programs
- Inflation Reduction Act developments



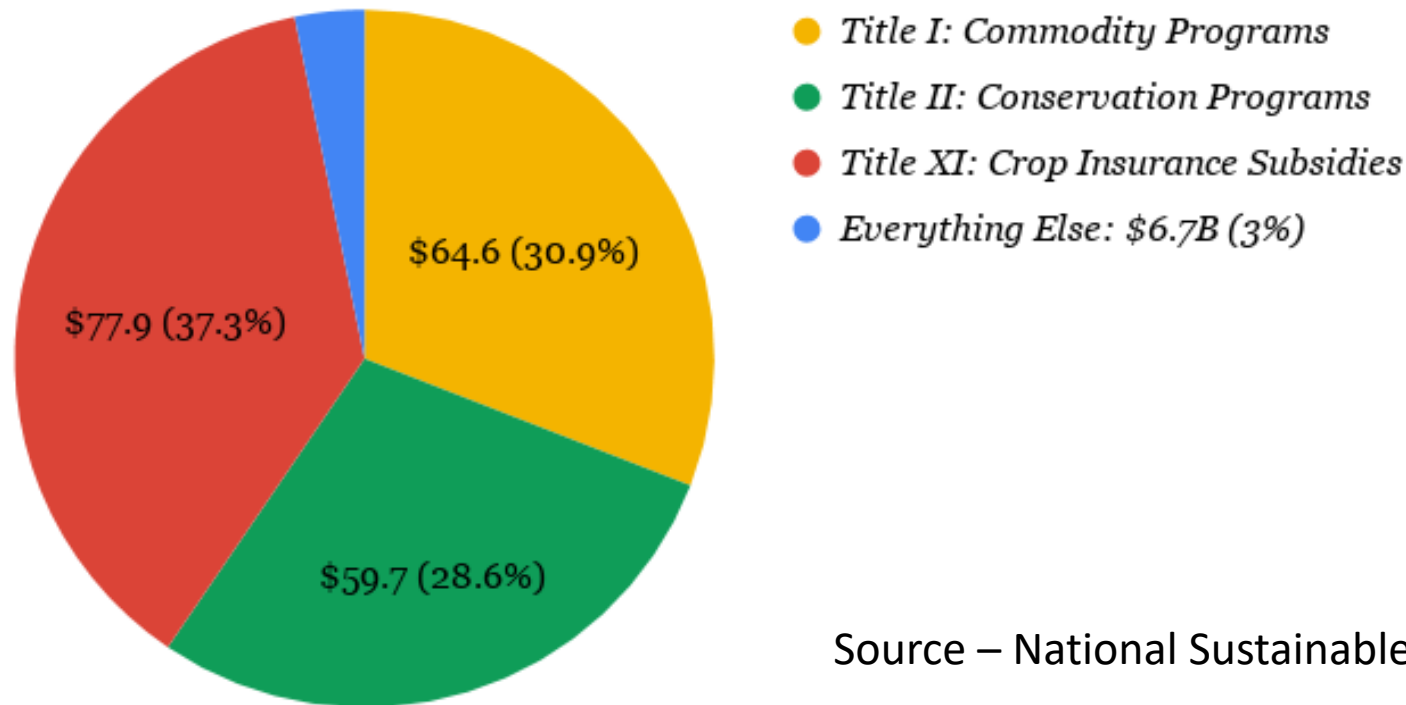
Environmental Regulation

- Carrot or stick:
 - Carrot rewards good behavior.
 - Stick punishes bad behavior.
- How to address small farms—problem of regulating non-point sources.
- Traditional role of USDA vs. role of EPA.



USDA Payments to Agricultural Producers

*Projected 10 Year Farm Bill Spending in Billions; excluding
Nutrition*



Source – National Sustainable Agriculture Coalition



Green Payments

- Title I—Commodity Programs
 - Enhance incomes of agricultural producers
- Title II—Conservation Programs
 - Encourage change in land use or production practices to effectuate environmental benefits
- Green Payments—merger of Title I and Title II goals



Why Green Payments?

- To receive environmental benefits / remedy environmental problems
- Lack of effective market for environmental goods and services
- Income support
- International trade concerns



USDA Conservation Programs

- USDA Agencies—www.usda.gov
- Natural Resources Conservation Service—provide technical service
- Farm Service Agency—provide administrative service
- Commodity Credit Corporation—provide financial support



USDA Conservation Programs

- Conservation compliance
- Land retirement
- Working-land
- Easements



History of Conservation Programs

- Role of agricultural practices in Dust Bowl
- Establishment of soil conservation programs following Dust Bowl
- Compare early set-aside programs (supply control) with today's land retirement programs (conservation benefits)



History of Conservation Programs

- Dust Bowl video resources:
 - The Dust Bowl by Ken Burns—<https://www.pbs.org/show/dust-bowl/>
 - American Experience: Surviving the Dust Bowl—<https://www.pbs.org/wgbh/americanexperience/films/dustbowl/>
 - Dust Bowl: A 1950s Documentary



Conservation Compliance

- Implemented in 1985 and 1990 Farm Bills
- Eligibility requirement for commodity program payments
- All commodity program payments denied (or must be repaid) if producer violates Sodbuster or Swampbuster provisions



Conservation Compliance

- Sodbuster (applies to highly erodible land)
 - Fail to maintain conservation plan on HEL cropped before 1985
 - Convert HEL without approved conservation plan
- Swampbuster (applies to wetlands)
 - Produce a crop on a wetland after 1985
 - Convert a wetland after 1990 that allows for production of agricultural commodity



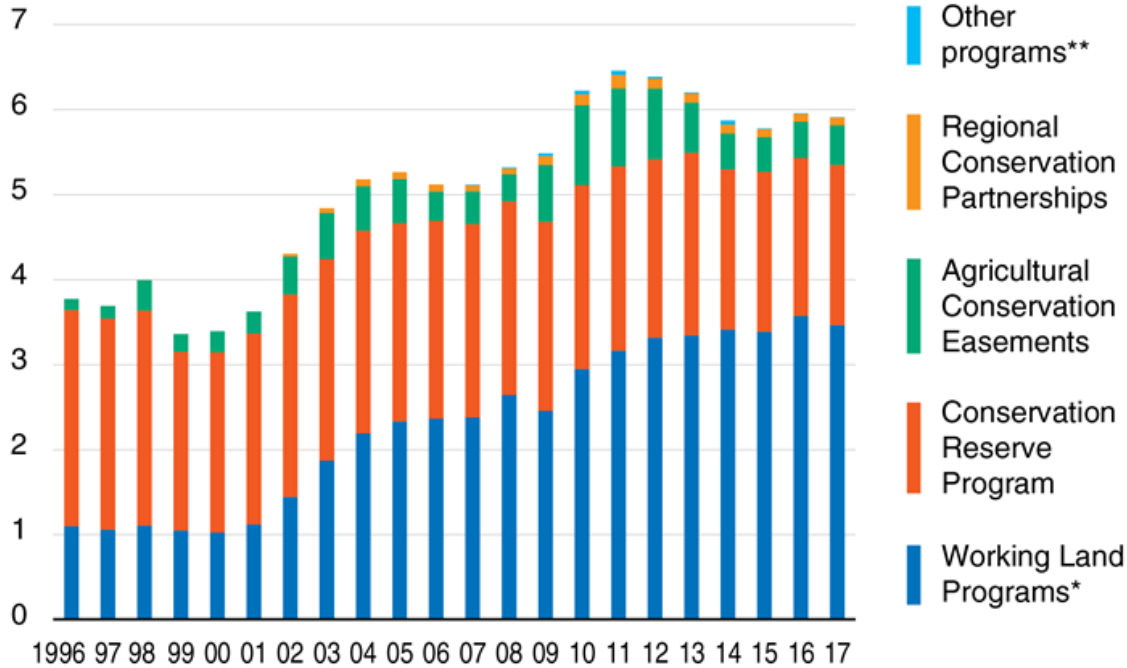
Types of Conservation Programs

- **Land retirement programs**—taking environmentally sensitive land out of agricultural production
- **Working lands conservation programs**—support ongoing stewardship on agriculturally productive land
- **Easement programs**—impose restrictions upon land that may or may not be in agricultural production



USDA conservation program spending, 1996-2017

Billion dollars (2017)



Note: Data expressed in 2017 dollars to adjust for inflation. "Working Land Programs" include the Environmental Quality Incentives Program, Conservation Stewardship Program, and Conservation Technical Assistance. "Other programs" include Agricultural Management Assistance, Voluntary Public Access, and Healthy Forest Reserve Programs. All programs (and categories) include predecessor programs.
 Source: USDA, Economic Research Service analysis of annual budget summaries from the Office of Budget and Policy Analysis (OBPA).

Selected Farm Bill Conservation Programs

Working lands programs allow private land to remain in production while implementing various conservation practices to address natural resource concerns specific to the area.

- Environmental Quality Incentives Program, Conservation Stewardship Program, and Agricultural Management Assistance

Land retirement programs provide payments to private agricultural landowners for temporary changes in land use and management to achieve environmental benefits.

- Conservation Reserve Program—including Conservation Reserve Enhancement Program, Farmable Wetland Program, Clean Lakes Estuaries and Rivers Pilot (CLEAR30), Soil Health and Income Protection Program, and Transition Incentives Program

Easement programs voluntarily impose a permanent or long-term restriction on land use in exchange for a payment.

- Agricultural Conservation Easement Program and Healthy Forests Reserve Program

Partnership and grant programs use partnership agreements and grants to leverage program funding with nonfederal funding.

- Regional Conservation Partnership Program, Conservation Innovation Grants, On-Farm Conservation Innovation Trials, Feral Swine Eradication and Control Pilot Program, Voluntary Public Access, and Habitat Incentive Program

Conservation compliance prohibits a producer from receiving selected federal farm program benefits (including crop insurance premium subsidies) when conservation program requirements for highly erodible lands and wetlands are not met.

- Highly erodible land conservation (Sodbuster), wetland conservation (Swampbuster), and Sodsaver



Conservation Reserve Program (CRP)

- Established in 1985 Farm Bill
- Goal—Take environmentally sensitive land out of agricultural production
- Voluntary program with 10-to-15-year contract
- Annual payment roughly equal to market rental rate
- Sign-up during established time at local FSA office



Conservation Reserve Program (CRP)

- Eligibility
 - Generally, must have owned land for one year
 - Generally, land must have been planted with agricultural crop for 4 years between 2012–17



Conservation Reserve Program (CRP)

- Environmental Benefits Index
 - Wildlife habitat
 - Water quality benefits—reduced runoff and erosion
 - On-farm benefits from reduced erosion
 - Benefits that will accrue beyond contract period
 - Air quality benefits from reduced wind erosion
 - Cost



Conservation Reserve Program (CRP)

- Criticisms
 - Raises farmland rental rates
 - USDA essentially competes with farmers for agricultural land



Environmental Quality Incentive Program (EQIP)

- Established in 1996 Farm Bill
- Provides farmers with technical and financial assistance to implement conservation practices
- Applications submitted to NRCS
- Cost share provided at state-specific rates



Environmental Quality Incentive Program (EQIP)

- Advance payment available for some producers
- Targeted Initiatives
 - High Tunnels
 - Organic
 - Landscape Conservation
 - On-farm Energy



Conservation Stewardship Program (CSP)

- Established in 2002 Farm Bill as Conservation Security Program
- Five-year contracts with option for five-year renewal
- Eligibility
 - Meet or exceed conservation thresholds in at least two areas
 - Agree to meet or exceed conservation threshold in third area



Conservation Stewardship Program (CSP)

- Program is based on entire farm operation
- Payment amount is up to \$40,000 annually per farm
- Resource:
 - [Farmers' Guide to the Conservation Stewardship Program, National Sustainable Agriculture Coalition \(Nov. 2020 edition\)](#)



Participation in USDA Conservation Programs

Figure 1. Conservation Reserve Program Acreage as a Percent of Total Agricultural Land

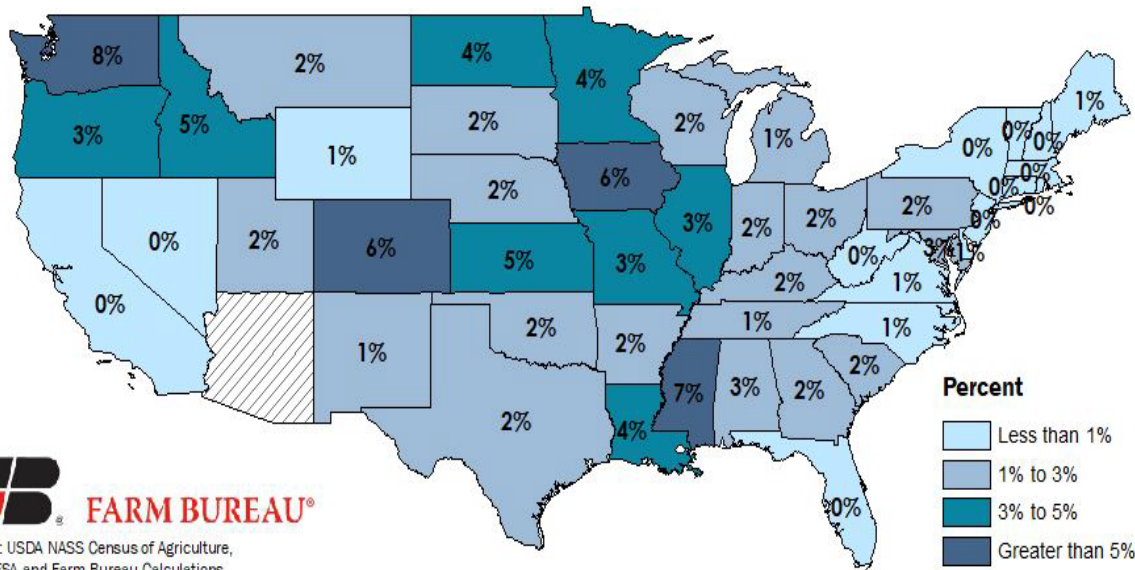
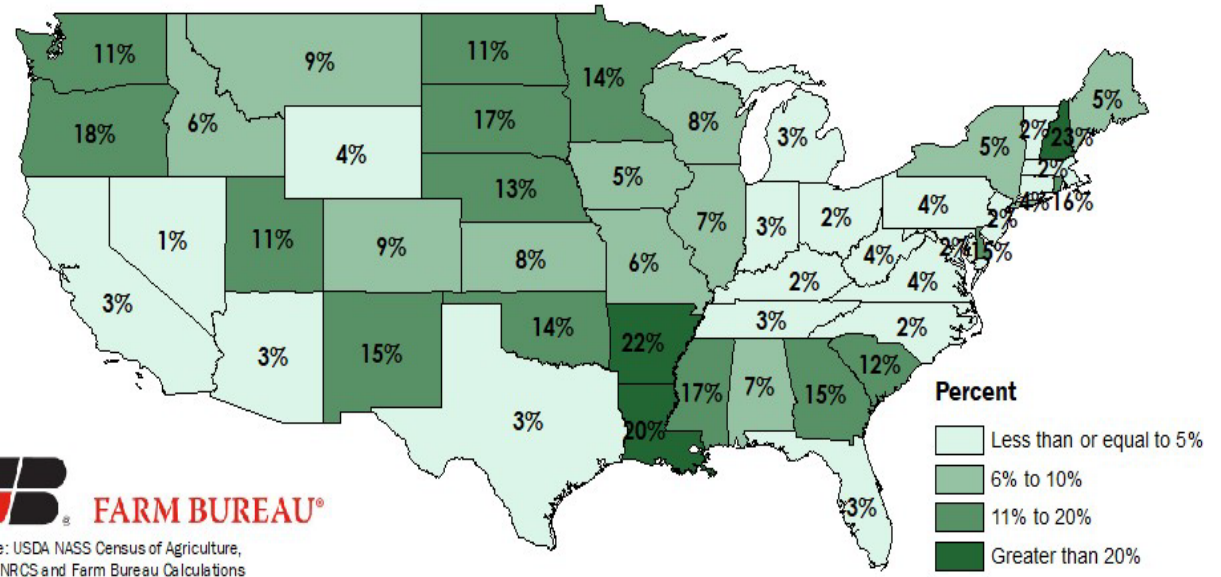


Figure 2. Conservation Stewardship Program Active and Completed Acreage as a Percent of Total Agricultural Land



Source: USDA NASS Census of Agriculture, USDA FSA and Farm Bureau Calculations



Source: USDA NASS Census of Agriculture, USDA NRCS and Farm Bureau Calculations



State Conservation Programs

- Pennsylvania Department of Agriculture (PDA)
 - ***State Agricultural Lands Preservation Board*** & PDA staffing via ***Bureau of Farmland Preservation***—purchase of agricultural conservation easements (ACE)
- ***State Conservation Commission*** (SCC)—shared PDA/Pa. Dept. Environmental Protection (DEP)
 - Administratively housed at PDA with staffing
 - Subject matter expertise from DEP
 - “Executive Secretary” —day to day CEO is part of PDA
 - Commission chairperson rotates yearly between DEP and PDA



Resource Enhancement & Protection (REAP)

- REAP was first enacted into law on July 25, 2007
- Tax credits to incentivize conservation
- Every annual budget provides yearly amount available (~10M)
- Farmers and businesses earn state income tax credits in exchange for Best Management Practices (BMPs) and other conservation implementation



REAP Program Participation

- Self—Farmer receives tax credit
- Sell—Farmer sells tax credit to another taxpayer
- Sponsor—Sponsor finances BMPs and receives tax credit

- Or Landowner finances themselves and recoups cost via direct use of the tax credit and/or sells the tax credit.
Challenge: Development of robust market for the tax credits.



REAP General Eligibility (continued)

- Agricultural operations with animal concentration area must implement BMPs to address:
 - Storm water runoff
 - Loss of sediment
 - Loss of nutrients
 - Runoff of other pollutants



REAP General Eligibility

- Agricultural operation must have and be in compliance with or develop as part of project:
 - Current conservation plan
 - Current agricultural erosion and sediment control plan, if applicable
 - Current nutrient management plan, if required



REAP: Amount of Tax Credits

- Eligible applicant can receive up to \$150,000 in state income tax credits
- Projects can qualify for tax credits equal to 75%, 50%, or 25% of eligible project costs
- Tax credits can be carried over for up to 15 years



REAP: Process of Awarding Tax Credits

- Farmer submits application to State Conservation Commission (SCC)
- SCC notifies applicant whether project is approved to receive tax credit
- Farmer completes eligible project
- Nothing prohibits the project from being completed prior to tax credit completion—at own risk that not approved



REAP: Process (continued)

- Farmer certifies to SCC that project has been completed
- SCC notifies Department of Revenue that project has been completed
- PA Department of Revenue issues notice of award of tax credit



Latest Update on REAP SCC Mtg. Mins. 10/11/22

REAP Tax Credit Program (J. Semke) – In FY 2022-23, the REAP Tax Credit Program received \$13 million in funding. The program has been funded at this level since the enactment of the 2019 Pennsylvania Farm Bill when annual funding was increased from \$10 million to \$13 million. The Commission began accepting new applications on August 1, 2022 and has received approximately 285 new applications to date. In addition, 154 eligible but unfunded applications were rolled over from FY 2021-22 into the FY 2022-23. These applications were received after the REAP Program committed its FY 2021 funds in December 2021. As of October 3, 2022, we are approaching \$13 million in approved REAP applications and anticipate shutting down the application period for this fiscal year in mid-October.



State Conservation Commission (SCC)

- Recap: PDA staff / some “subject matter expertise” DEP staff
- Enabling Legislation: Conservation District Law (1945)
- Commission: “selects and employs” Executive Secretary
- D/N confuse with *Department of Conservation and Natural Resources* (DCNR)—manages PA parks & forests, etc.



SCC authority evolves

- “To provide for the **conservation of the soil, water** and related resources of this Commonwealth, and for the **control and prevention of soil erosion . . .**”
- “To **designate conservation districts** as a primary local government unit responsible for the conservation of natural resources in this Commonwealth and **to be responsible for implementing programs, projects and activities to quantify, prevent and control nonpoint sources of pollution.**”
- “To **approve and coordinate the programs of the conservation districts** or projects; to **apportion among the several districts** or to any agency of the Commonwealth, the United States or cooperating organizations **any funds allotted from State, Federal or other sources; to be responsible for the expenditures of such funds by the districts . . .**” *[Counties initiate creation of a CD; Counties “may” also appropriate their own funding]*
- “To develop, implement and enforce programs which meet the purposes of this act, including **nutrient management and odor management** under 3 Pa.C.S. Ch. 5 (relating to nutrient management and odor management) and **resource enhancement and protection tax credits** under *[the Tax Code]*.” - *1986 & 2008*
- “The commission shall have the power to administer **grant, loan and tax credit programs for landowners to implement non-point source and other best management practices** on their properties.” - *2008*



County Conservation Districts (CDs)

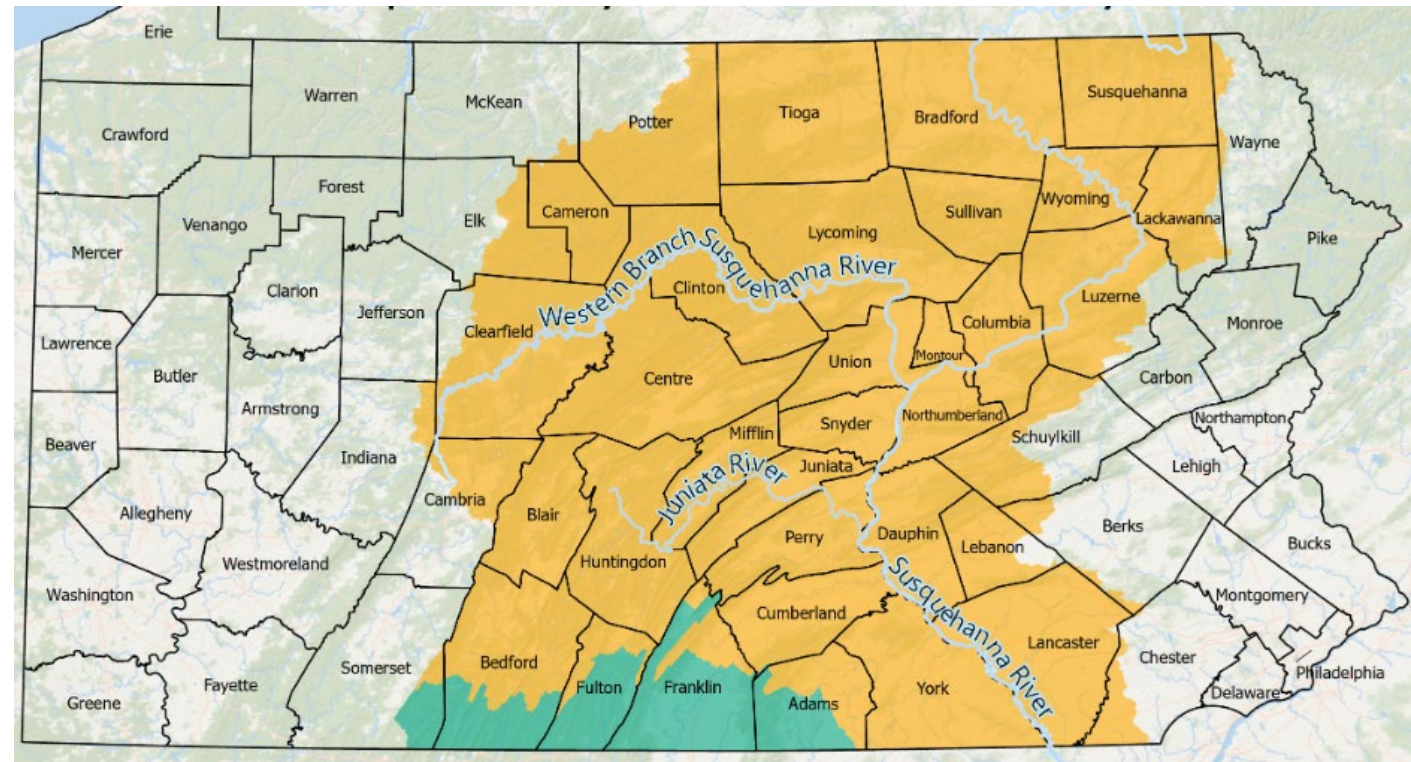


- Resources: [DEP site](#); [PA Association of Conservation Districts \(PACD\) site](#); PACD [directory](#) with District Managers listed
- 66 CDs ≠ 67 counties. No Phila. CD? Will one be created?
- PACD explanatory video ([4:35](#)). Much broader than agriculture. Delegation of authority creates a heavy load.



PA's Unique Conservation Predicament

- 35% of Chesapeake Bay watershed
- 90% of Upper Bay freshwater flow
- 50% of Total Bay freshwater flow
- 33,000 farms
- 75% of 2025 state nutrient reduction targets
- More than 12,000 miles of streams in the watershed with high levels of:
 - Nitrogen: Reduce by 34 million lbs./year
 - Phosphorus: Reduce by 0.7 million lbs./year
 - Sediment (soil): Reduce 531 million lbs./year
- [Pennsylvania's Final Phase 3 Watershed Implementation Plan](#) (July 19, 2022) & individual County Action Plans (CAP)





FY 2022–23 State Budget Funding due to Chesapeake Bay

- Transfer to Conservation District Fund

Available 2021-22	Supplemental 2021-22	Revised 2021-22	Budget 2022-23	Change \$	Change %
869	-	869	2,669	1,800	207.1%

- Creation of Clean Stream Fund (CSF) with appropriation of \$220M total and \$154M for the brand-new ***Agricultural Conservation Assistance Program (ACAP)***. **Larger than any state conservation program Pennsylvania has ever enacted/conducted within a defined timeframe.**



PA Agricultural Conservation Assistance Program

- The mechanics of how the program will operate were approved by the SCC on 11/15/22.
- The purpose of the ACAP is to assist farmers and landowners in the design and installation of agricultural conservation BMPs that will reduce or prevent nutrient and sediment losses from their farms and improve water quality and soil health across the Commonwealth.
- The State Conservation Commission (SCC) is charged with the administration and oversight of the ACAP and may “delegate” certain portions of the program to county conservation districts, Penn State College of Agricultural Science, and other cooperating organizations.
- Seventy percent (70%), or \$154 million, of the CSF is dedicated to ACAP.
- An additional ten percent (10%) or \$22 million of the CSF is dedicated to the Nutrient Management Fund for agricultural technical and financial assistance.
- This initial allocation of funds must be committed by 12/31/24 and spent by 12/31/26.



PA ACAP (cont.)

SCC is charged with the administration of ACAP, and includes specific duties and responsibilities including:

- Develop guidelines to administer the program.
- Allocate available ACAP funds to county conservation Districts.
- Designate agricultural conservation Best Management Practices (BMPs) eligible for funding.
- Develop training, education, technical assistance for staff performing program work.
- Designate a system for collecting and reporting ACAP project data.
- Establish program evaluations and quality control.
- Delegate defined duties/responsibilities to CDs, Penn State, or other entities.
- Report annually to the state legislature.
- Carry out ACAP in counties where county conservation districts choose to not participate.



PA ACAP (cont.)

- SCC is required to allocate ACAP funding to participating county conservation districts based on written apportionment criteria developed by the SCC.
- CD duties and responsibilities :
 - Carry out county ACAP consistent with SCC guidelines
 - Enter into delegation agreement if choosing to participate
 - CDs must opt-in or opt-out in a timely fashion to allow SCC to formulate a substitute plan
 - Accept and review complete applications within 90 days
 - Enter into agreements with successful applicants
 - Oversee agreements for the design and installation process
 - Verify completion and certification of BMP
 - Reimburse participants
 - Districts MAY form an advisory committee to advise the county program



PA ACAP (cont.)

- The enabling legislation outlines specific ACAP application approval criteria, including:
 - BMP(s) funded meets the goals of any applicable WIP or CAP plan
 - BMP is part of a conservation plan or AG E&S plan and a manure management or nutrient management plan. Development of such plans shall be included in the application if not yet developed prior to the application.
 - Priority given to BMPs that implement best management practices for control of nitrogen, phosphorus, or sediment.
 - All Animal Concentration Areas (ACAs) on the farm must be treated to abate storm water runoff, loss of sediment, loss of nutrients from the ACA, or the implementation of such BMPs shall be included in an application for funds.
 - Proximity to surface waters, public drinking water sources or karst geology with underground drainage systems or open sinkholes.
 - The project must meet the design and construction standards established by the commission.
 - Any other criteria considered by the conservation district, as applicable, and approved by the commission.



New Federal Conservation Funding Inflation Reduction Act

“The Inflation Reduction Act—signed in August 2022 by President Biden—represents the single largest investment in climate and clean energy solutions in American history.

The law provides \$20 billion to support USDA’s conservation programs that yield climate-related benefits while building resilience in agricultural operations. These are programs that are well-known to farmers and ranchers and are also oversubscribed. These investments mean that more producers will have access to conservation assistance.

This includes:

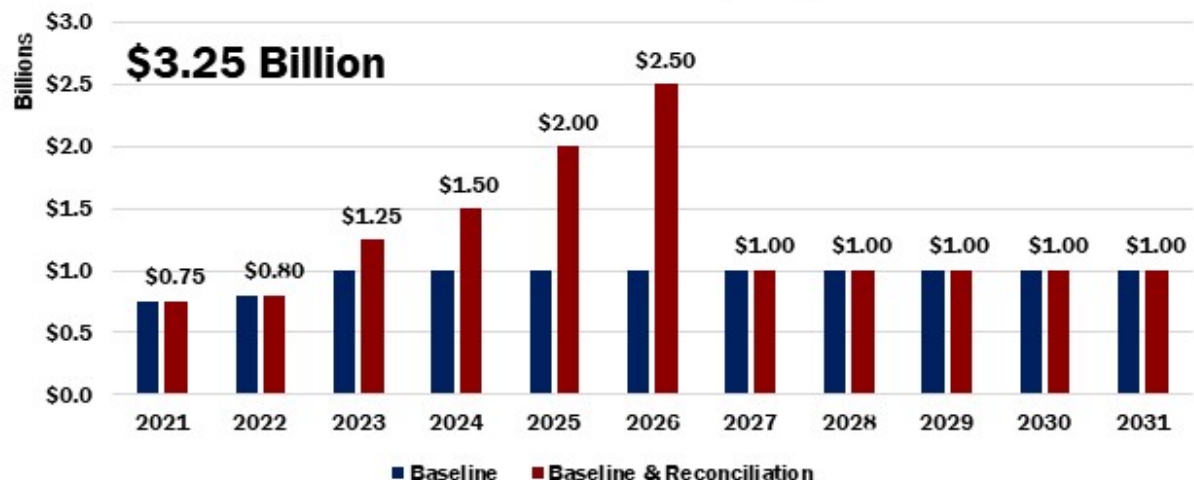
- \$8.45 billion for the [Environmental Quality Incentives Program](#)
- \$4.95 billion for the [Regional Conservation Partnership Program](#)
- \$3.25 billion for the [Conservation Stewardship Program](#)
- \$1.4 billion for the [Agricultural Conservation Easement Program](#)
- \$1 billion for conservation technical assistance
- \$300 million to measure, evaluate, quantify carbon sequestration and greenhouse gas emission reductions from conservation investments

These additional funds will help farmers and ranchers implement expanded conservation practices **that reduce greenhouse gas emissions and increase storage of carbon in their soil and trees.”**

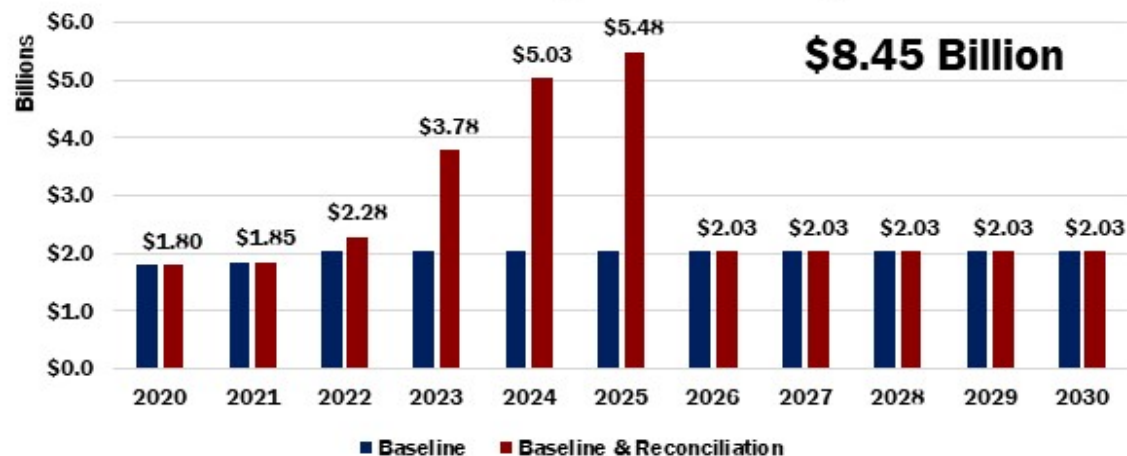
Source: NRCS, <https://www.nrcs.usda.gov/about/priorities/inflation-reduction-act>

CBO Conservation Baseline & \$18.05 Billion in IRA

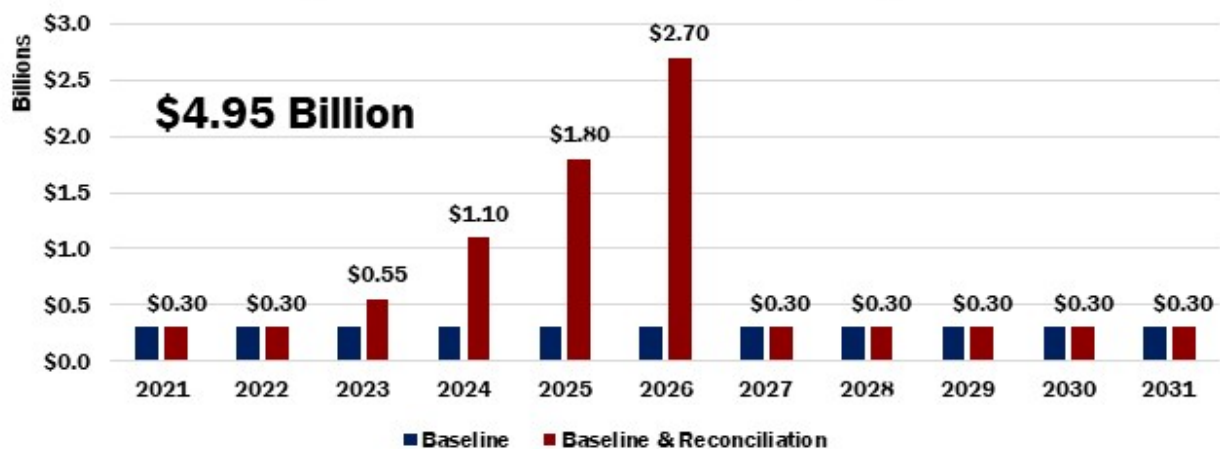
Conservation Stewardship Program



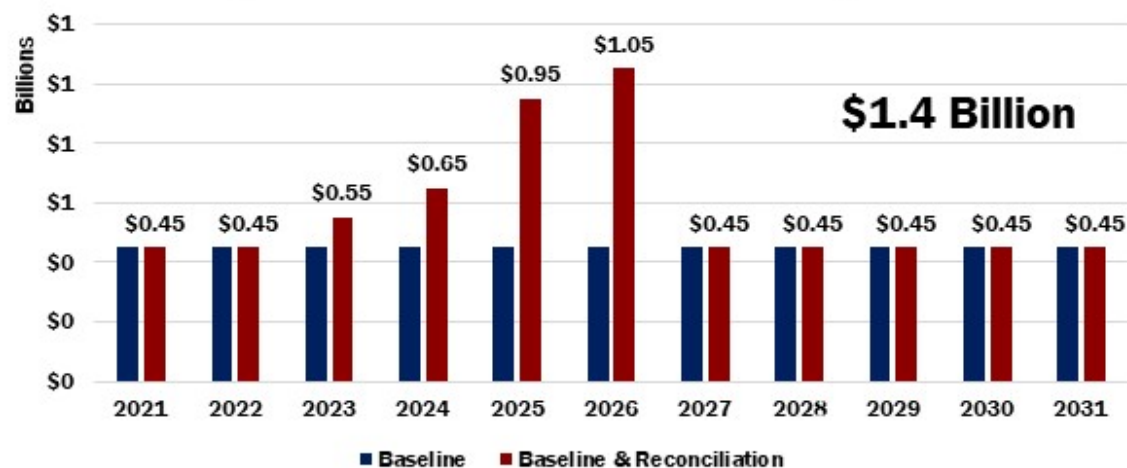
Environmental Quality Incentives Program



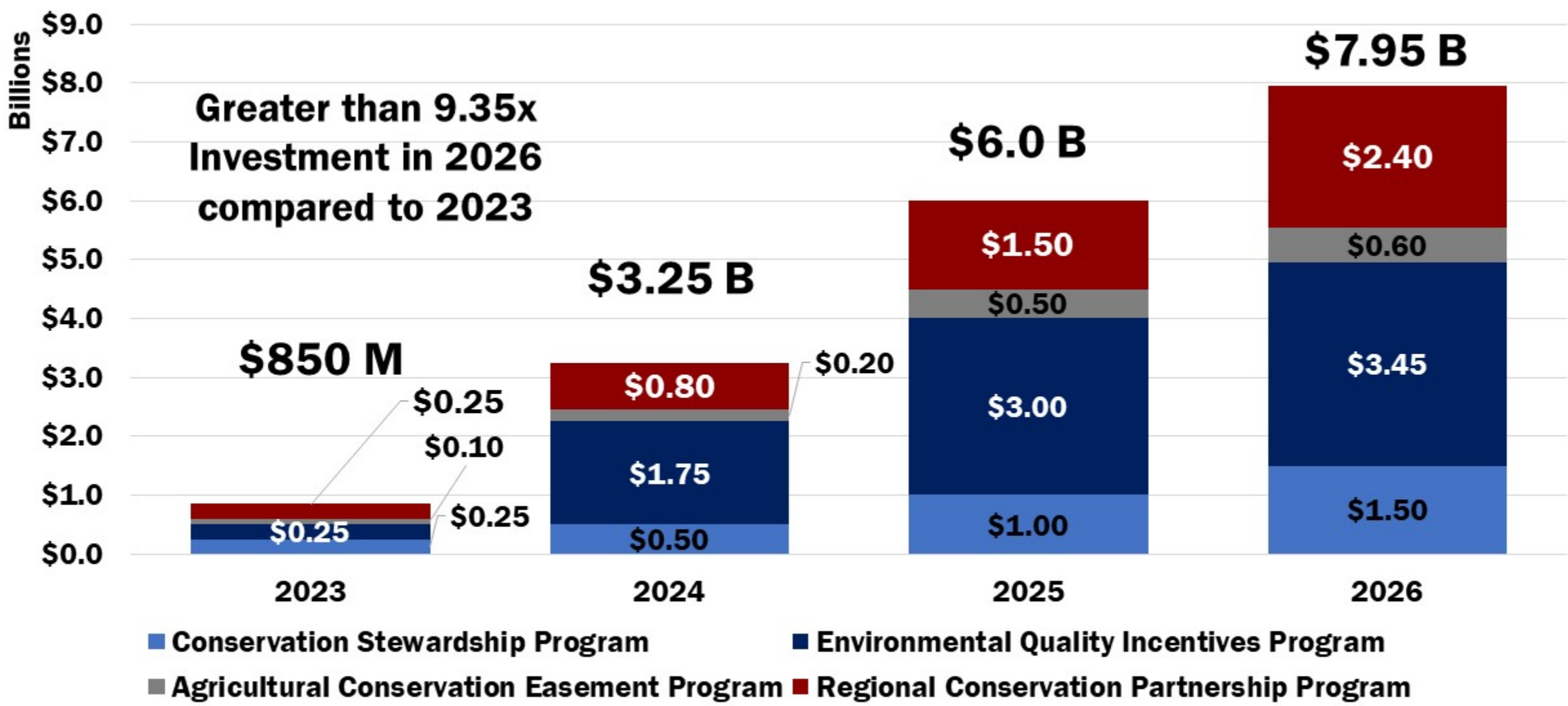
Regional Conservation Partnership Program



Agricultural Conservation Easement Program



CBO Conservation Baseline & \$18.05 Billion from IRA





THANK YOU!

Upcoming Webinars from the Center for Agricultural and Shale Law

Understanding Agricultural Law Series

- Fri. Dec. 16, 2022—Understanding the Basics of Licensing & Regulation of Direct Agricultural Product Sales
- Fri. Jan. 27, 2023—Understanding the Basics of Agricultural Finance

Quarterly Dairy Legal Update Series

- Tue. Jan. 17, 2023—Interstate Regulation of Milk Production & Processing

Legal Planning for Specialty Crop Producers Series

- Wed. Nov. 30, 2022—Municipal Law & Zoning for Agritourism/Agritainment, Specialty Crop Processing & Sales
- Wed. Dec. 14, 2022—Statutory Protections/Restrictions: Understanding PA's Ag Area Security, Right-To-Farm, ACRE, and Clean & Green Laws

3rd Annual PA Farm Show Agricultural Law Symposium: January 10 & 12, 2023

Register under "Events" at aglaw.psu.edu