



PennState Law

Center for Agricultural
and Shale Law





PennState Law

Center for Agricultural
and Shale Law

Statutory Protections/Restrictions:

***Understanding PA's Ag Area Security, Right-To-Farm,
ACRE, and Clean & Green Laws
for Specialty Crop Producers***



PennState Law

Center for Agricultural
and Shale Law

**Legal Planning for Specialty Crop Producers:
Understanding Liability Protections, Regulatory Processes, and
Other Legal Risks**



Housekeeping

- Webinar is being recorded
- Access to recording available to all registrants
- Q&A
- Materials available on website



PennState Law

Center Staff

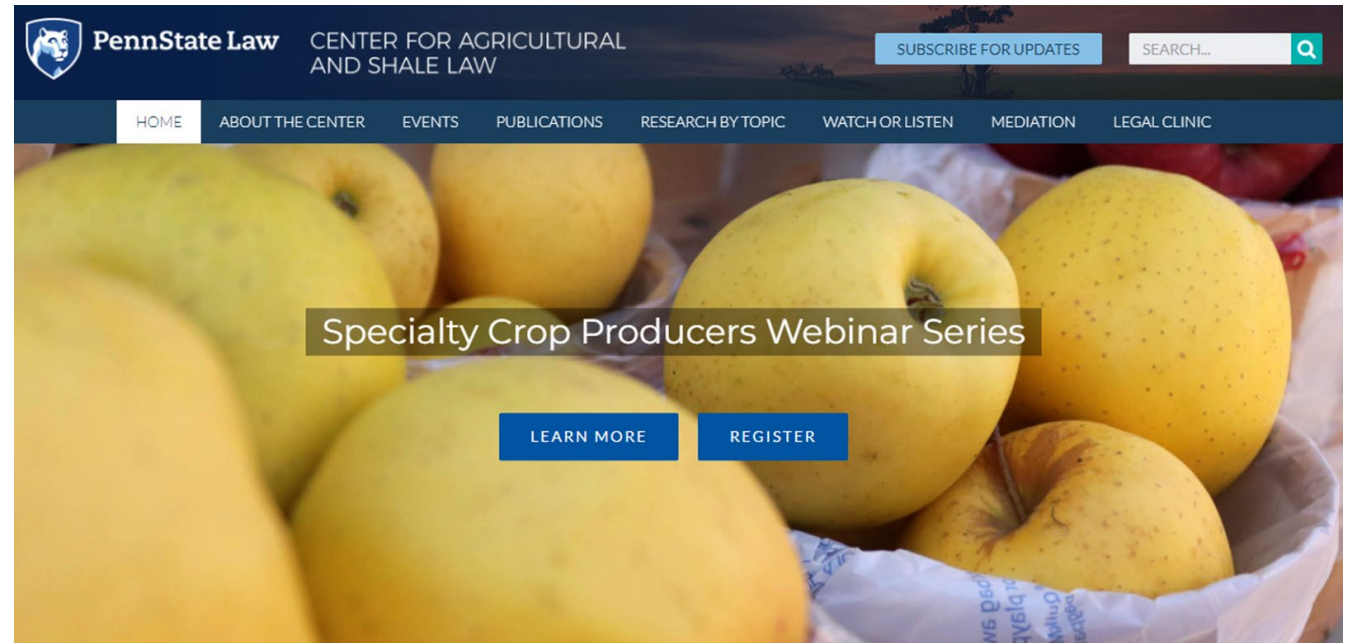
- **Ross Pifer, Director**
- **Jacqueline Schweichler, Staff Attorney**
- **Audry Thompson, Staff Attorney**
- **Brook Duer, Staff Attorney**
- **Chloe Marie, Research Specialist**



Ag Law Center Website Resources

<https://aglaw.psu.edu>

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



Agricultural Law Weekly Review

[SEE ALL AGRICULTURAL LAW WEEKLY REVIEWS >](#)

[Agricultural Law Weekly Review—Week Ending January 21, 2022](#)

Pesticides/Herbicides: 'Pure' Honey Label May Be Deceptive Due to Pesticide Residue On January 13, 2022, the U.S. District Court for the Eastern District of New York issued an order denying in part honey maker Sioux Honey Association Cooperative's motion to dismiss a claim against it alleging deceptive business practices, false advertising, and unjust enrichment because the company's SueBee brand honey was labeled with the words "Pure" or "100% Pure" when the honey contained trace amounts of glyphosate. *Scholder v. Sioux Honey Association*, No. 2:16-cv-05369. Sioux Honey





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.com



PennState Law

Center for Agricultural
and Shale Law



PennState Law

Center for Agricultural
and Shale Law

Legal Planning for Specialty Crop Producers: Understanding Liability Protections, Regulatory Processes, and Other Legal Risks

A multi-part 2022 educational series to assist Pennsylvania specialty crop producers successfully augment wholesale sales revenue with income from direct sales, pick-your-own, value-added commodity processing, or agritourism, agritainment & educational activities, Penn State Law's Center for Agricultural and Shale Law is conducting an educational series of workshops and webinars over the coming year about the prevention and planning necessary to best avoid contractual, tort, and regulatory liabilities in conducting income-augmenting activities.

Visit our website at aglaw.psu.edu for registration and details.

Topic #1

Legal Liability Risks from Business Invitees on the Farm

This topic will examine the ways in which legal liability can arise from the care, custody, and control of real estate upon which visitors are invited for the purpose of doing business with a specialty crop producer, as well as liability insurance coverage, waivers, etc.

- Wednesday, Mar. 9, 2022, 12 noon, via Zoom. Register at aqlaw.psu.edu

Topic #2

Legal Liabilities in Selling Raw and Processed Specialty Crop Products

This topic will educate producers on the various theories of contractual, warranty, and common law legal liabilities, including “products liability,” that can arise from the production and sale of both raw agricultural products and value-added processed products, as well as how insurance may protect against such claims.

- Wednesday, Mar. 23, 2022, 12 noon, via Zoom. Register at aqlaw.psu.edu

Topic #3

Business Structures for Operational Resilience and Liability Avoidance

This topic will review the various forms of business entity structures that may be employed by specialty crop producers, the attributes and pros and cons of each, the formalities that must be followed to maintain financial and legal liability protections.

- Wednesday, Apr. 6, 2022, 12 noon, via Zoom. Register at aqlaw.psu.edu

**Spring
2022
Sessions**

Topic #4

Licensing and Regulatory Obligations in Selling Raw and Processed Specialty Crop Products

This topic will educate producers on the state laws and county/municipal ordinances that regulate the activity of producing and selling foods for human consumption, including health/food code licensing requirements for the storage, production and sale of food, sales tax licensing and collection, and other regulatory requirements that may apply in particular contexts, venues, or jurisdictions.

- Wednesday Nov. 16, 2022, 12 noon, via Zoom. Register at aglaw.psu.edu

Topic #5

Municipal Law & Zoning for Agritourism / Agritainment, Specialty Crop Processing & Sales

This topic will provide producers an understanding of local municipal government requirements and procedure for permits and approvals that may be required for agritourism, agritainment, processing, and sales activities conducted in conjunction with the production of specialty crops.

- Wednesday, Nov. 30, 2022, 12 noon, via Zoom. Register at aglaw.psu.edu

Topic #6

Statutory Protections/Restrictions: Understanding PA's Ag Area Security, Right-To-Farm, ACRE, and Clean & Green Laws for Specialty Crop Producers

This topic will instruct producers on how to understand the scope of, and potentially employ, the various statutory protections in Pennsylvania law for agricultural operations, and frequently also available in other jurisdictions. It will also examine business operation limitations that arise from voluntary enrollment in governmental benefit programs which seek to preserve agricultural uses of land.

- Wednesday, Dec. 14, 2022, 12 noon, via Zoom. Register at aglaw.psu.edu

**Fall
2022
Sessions**



December 16, 2022, from 12 noon – 1:00pm ET

Understanding the Basics of Licensing & Regulation of Direct Agricultural Product Sales

January 27, 2023, from 12 noon – 1:00pm ET

Understanding the Basics of Agricultural Finance

Questions? Email Jackie Schweichler: jks251@psu.edu



Thanks to our Partners

This presentation was created as part of the
Pennsylvania Specialty Crop Block Grant Program



**Agricultural
Marketing
Service**



pennsylvania
DEPARTMENT OF AGRICULTURE

Specialty Crop Block Grant Program



Specialty Crop Producer Survey

**Please complete survey at the end
of this presentation**



PennState Law

Center for Agricultural
and Shale Law

Statutory Protections/Restrictions:

***Understanding PA's Ag Area Security, Right-To-Farm,
ACRE, and Clean & Green Laws
for Specialty Crop Producers***



PennState Law

Center for Agricultural
and Shale Law

**Legal Planning for Specialty Crop Producers:
Understanding Liability Protections, Regulatory Processes, and
Other Legal Risks**



Overview of Today's Presentation

- 1. Agricultural Area Security Law**
- 2. Right to Farm Act**
- 3. ACRE (Municipal Ordinance Review)**
- 4. Clean and Green (Preferential Real Estate Tax Assessment)**



Agricultural Area Security Law 3 Pa. Stat. §§ 901-915

Legislative Findings:

- It is the declared policy of the Commonwealth
 - “to conserve and protect and to encourage the development and improvement of its agricultural lands for the **production of food** and other agricultural products”
 - “to conserve and protect agricultural lands as valued natural and ecological resources which provide needed **open spaces** for clean air, as well as for aesthetic purposes.”



Agricultural Area Security Law

- AASL provides certain protections and benefits to landowners within an Agricultural Security Area.
 - Limitation on local regulations
 - Limitation on power of eminent domain
 - Eligibility for participation in Agricultural Conservation Easement program



Benefits of Agricultural Area Security Law

- Limitation on local regulations
 - Municipality is not permitted to enact laws that would unreasonably restrict farm structures or practices within ASA. *(This section has been seldom used legally.)*
 - Municipality shall exclude normal farming operations within ASA from definition of public nuisance.
- Municipality is permitted to act for benefit of public health and safety.



Benefits of Agricultural Area Security Law

- Limitation on power of eminent domain
 - Approval must be granted by Agricultural Lands Condemnation Approval Board (ALCAB)
 - ALCAB shall approve condemnation only if there is “no reasonable and prudent alternative.”



Benefits of Agricultural Area Security Law

- Agricultural Conservation Easements
 - Landowners with ASA are permitted to sell developmental rights to property.
 - The term of the easement is perpetual.



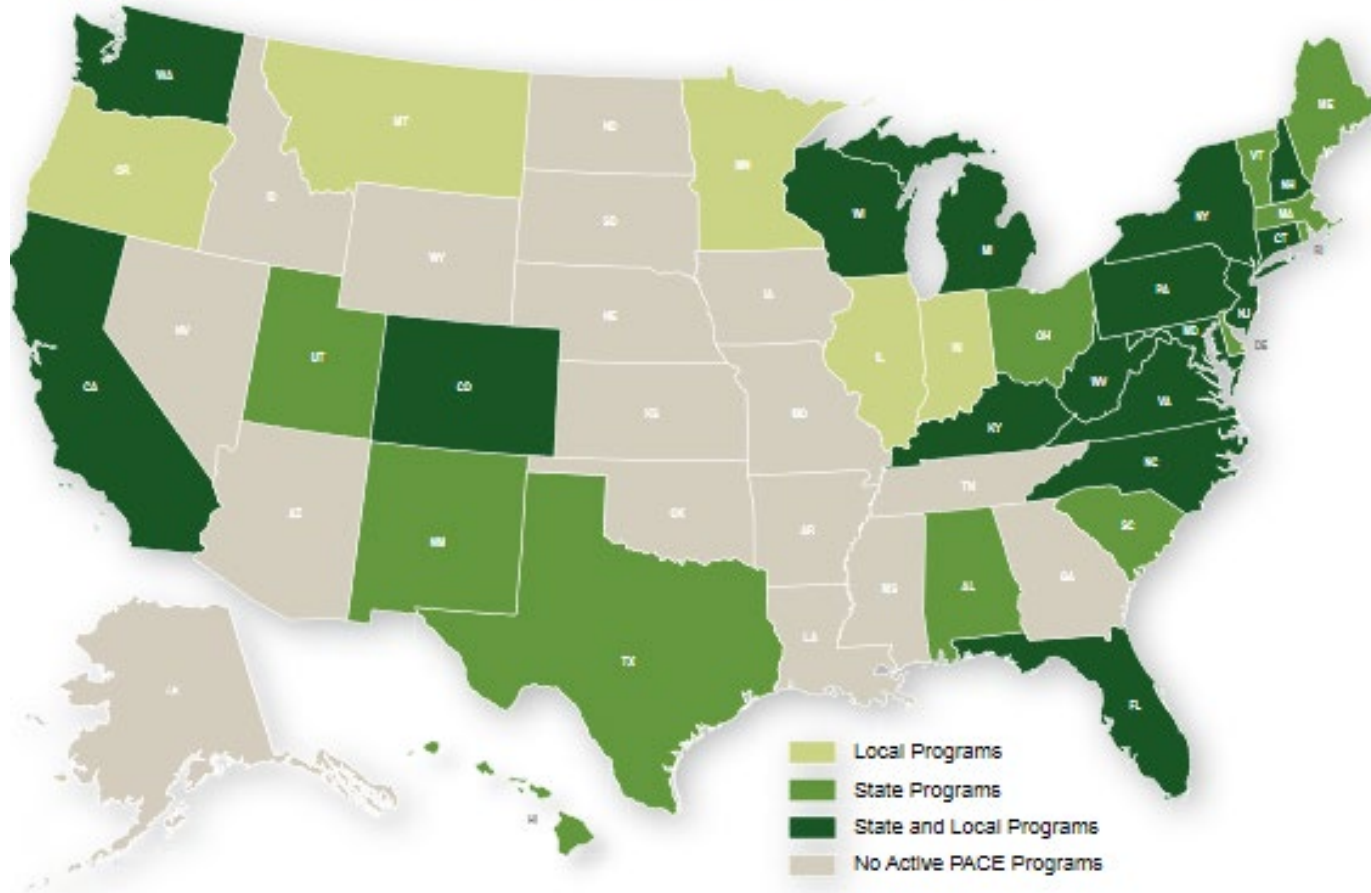
PACE Programs – What Are They?

- **Purchase of**
 - **Agricultural Conservation Easement**
 - **by (or funded by) Government**
-
- Farmland owner essentially sells the development rights for parcel of farmland to state or local government.
 - Deed restriction that limits future non-agricultural uses; prevents conversion of farmland



PACE Programs – Where Are They?

PACE Programs as of 2020



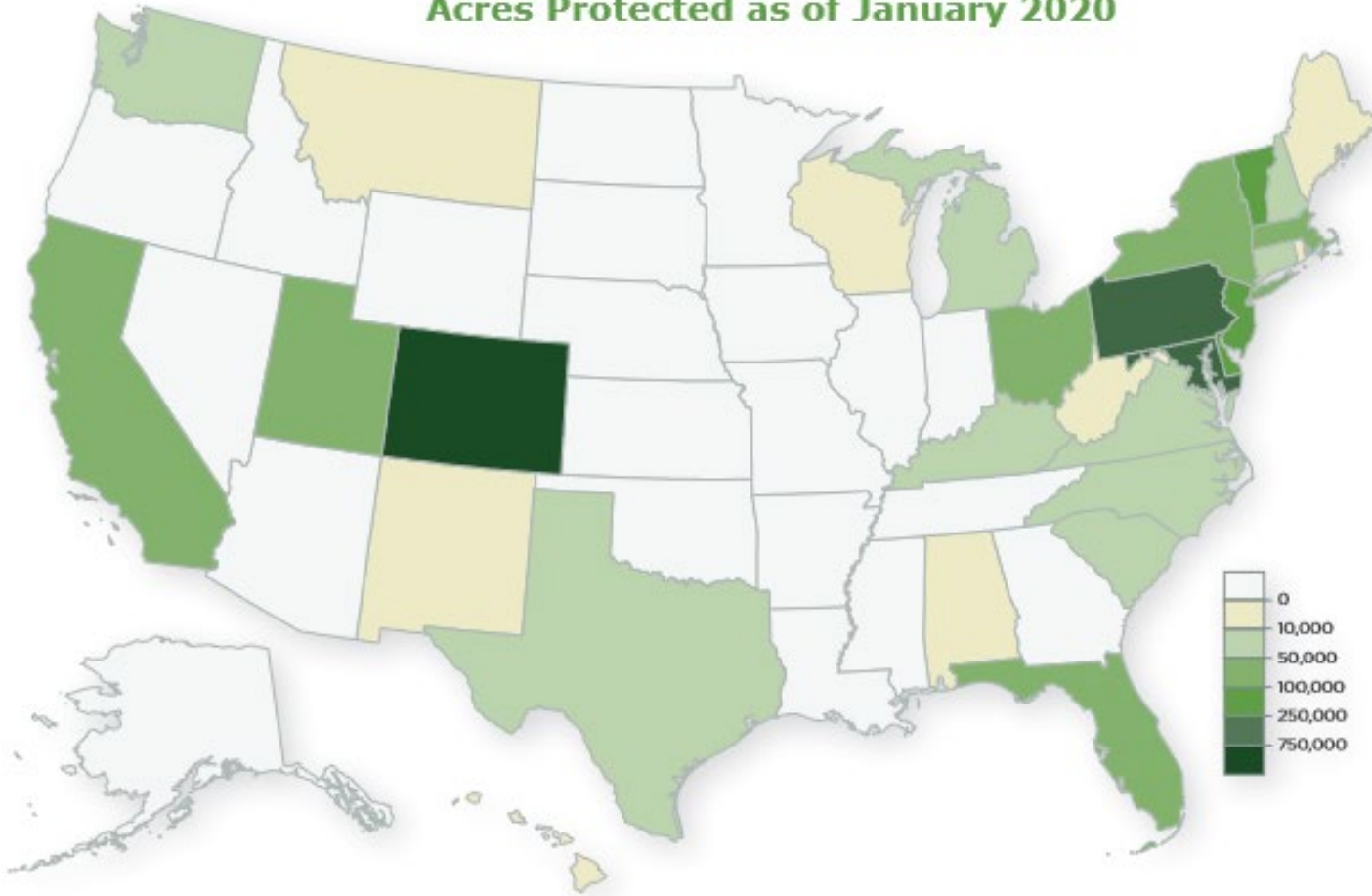
Local Programs only – 5 states
State Program only – 12 states
State and Local Programs – 16 states

Totals:
28 active state programs
21 states with active local programs



PACE Programs – Leading States

Acres Protected as of January 2020



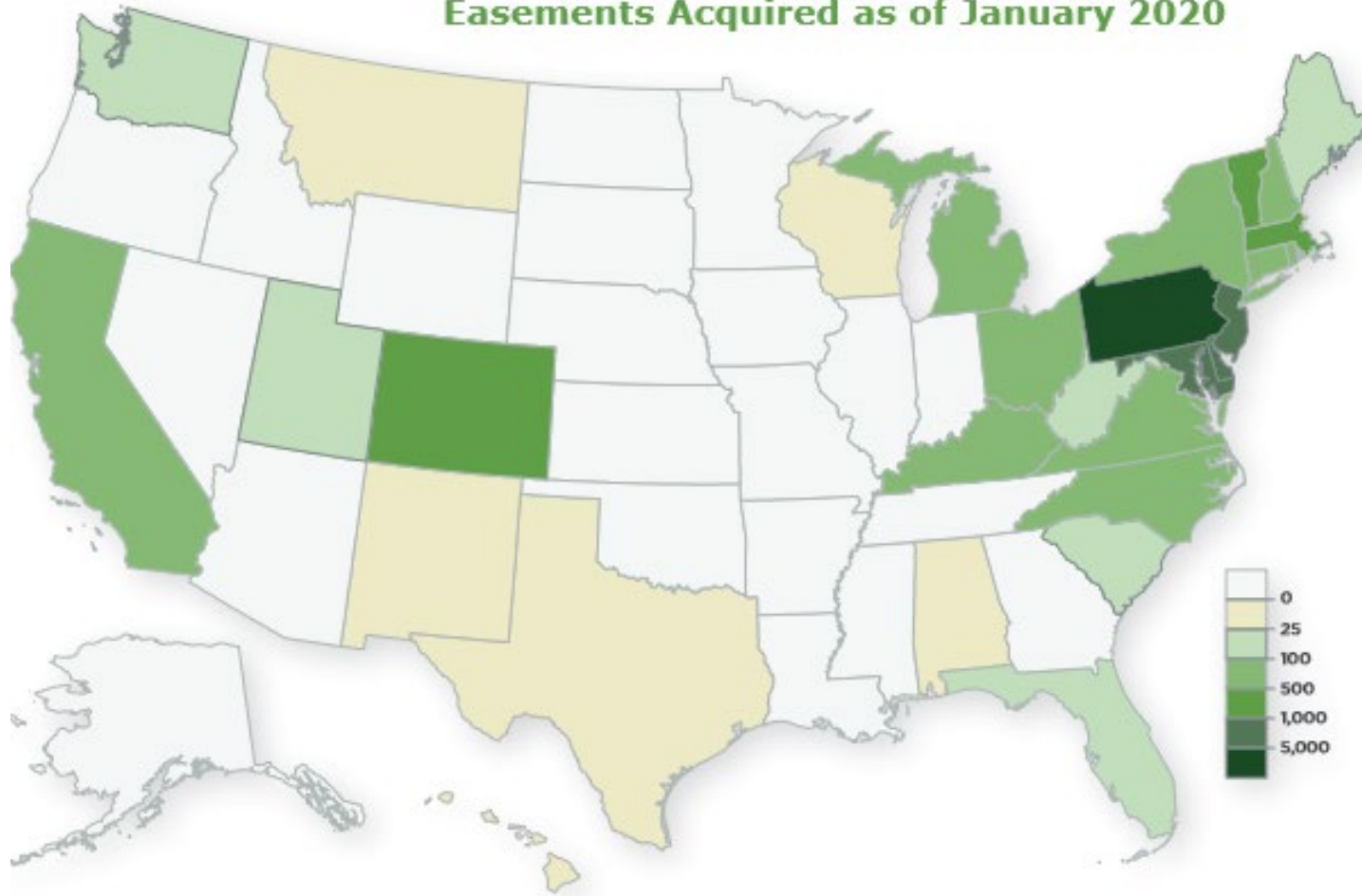
Pennsylvania – 577,092 acres
Maryland – 425,035 acres
New Jersey – 236,571 acres
Vermont – 164,250 acres
Delaware – 136,682 acres

TOTAL U.S. – 3,129,113 acres



PACE Programs – Leading States

Easements Acquired as of January 2020



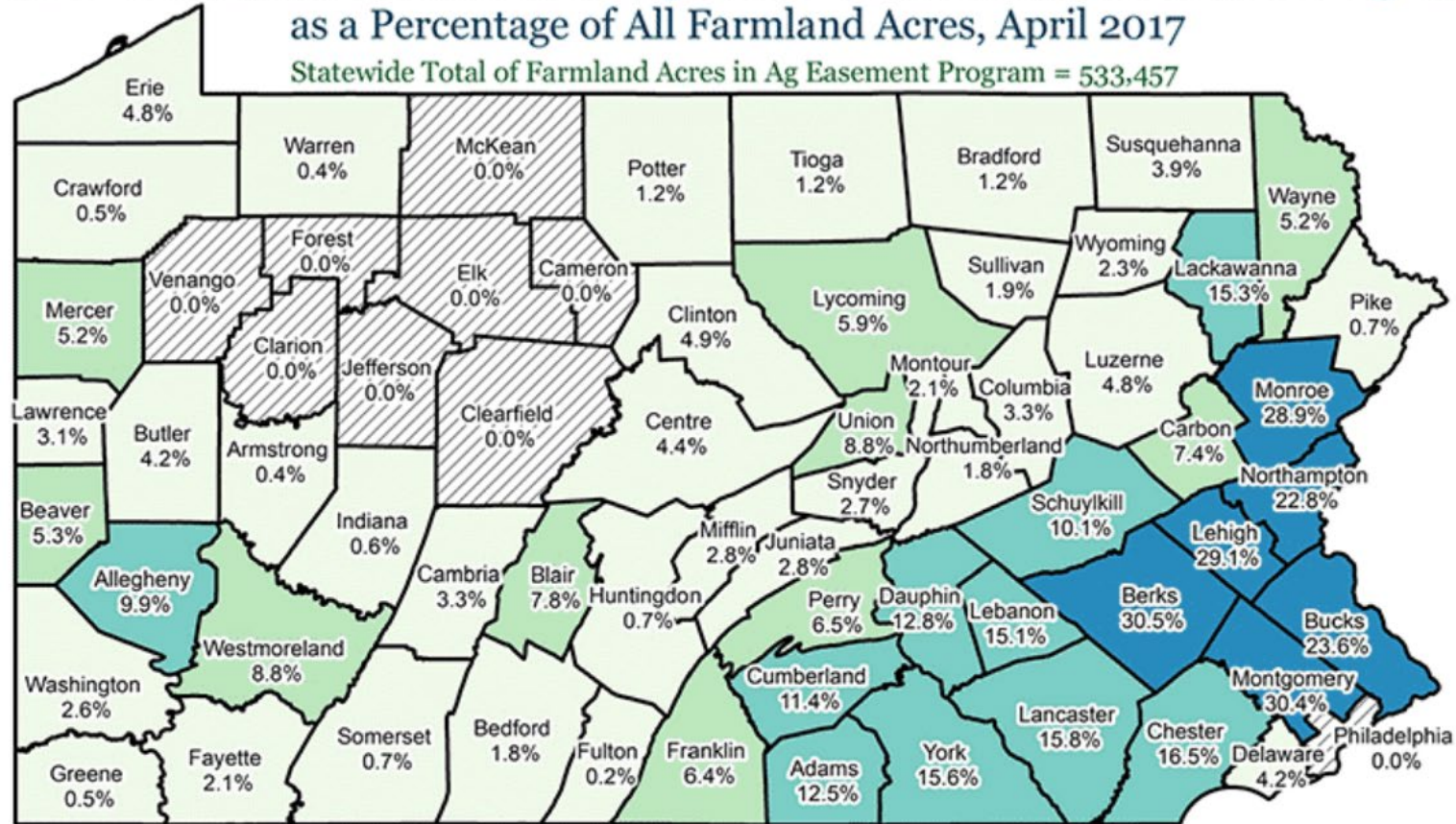
Pennsylvania – 5,636 easements
Maryland – 3,126 easements
New Jersey – 2,648 easements
Delaware – 1,039 easements
Massachusetts – 924 easements
Vermont – 746 easements

TOTAL U.S. – 17,264 easements



Acres of Farmland Enrolled in the Ag Conservation Easement Purchase Program as a Percentage of All Farmland Acres, April 2017

Statewide Total of Farmland Acres in Ag Easement Program = 533,457



- No Farmland Enrolled in Easement Purchase Program
- 0.1% to 4.9% Acres of Total Farmland Enrolled
- 5.0% to 9.9% of Total Farmland Enrolled
- 10.0% to 19.9% Acres of Total Farmland Enrolled
- 20.0%+ Acres of Total Farmland Enrolled

Data sources: Farms in Easement Purchase Program, Pennsylvania Department of Agriculture, Bureau of Farmland Preservation; Number of Farms, 2012 Census of Agriculture, National Agricultural Statistics Service. Prepared by the Center for Rural Pennsylvania.



Creation of Agricultural Security Area

- Landowners initiate process by submitting proposal to local government unit.
- Proposal is submitted to Planning Commission and ASA Advisory Committee.
- Municipality holds public hearing.
- Municipality makes decision.



Criteria for Agricultural Security Area

- Municipality shall consider:
 - Whether soils and conducive to agriculture;
 - Whether ASA is compatible with comprehensive plan;
 - Whether land is viable agricultural land;
 - Additional factors including farm improvements, trends in economics and technology, and other relevant factors.



Criteria for Agricultural Security Area

- *41 Valley Associates v. Board of Supervisors of London Grove Township*, 882 A.2d 5 (Pa. Commw. Ct. 2005)
 - Must consider land for agricultural use broadly rather than current specific agricultural use



Right to Farm Laws – Background

- Right to Farm Laws have been enacted in all 50 states.
- All Right to Farm Laws attempt to remedy farm – non-farm conflicts.
- The specific provisions in Right to Farm Laws vary from state to state.
- Right to Farm Laws generally limit nuisance lawsuits against farms.



Pennsylvania Right to Farm Act

- 3 P.S. §§ 951-957
- Enacted on June 10, 1982
- Amended in 1998 to address expansion or alteration of agricultural operations.



Pennsylvania Right to Farm Act – Legislative Policy

- “to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. . .”
- “to reduce the loss to the Commonwealth of its agricultural resources by limiting the circumstances under which agricultural operations may be the subject matter of nuisance suits and ordinances.”



Pennsylvania Right to Farm Act – Protections Granted

- Requires that municipalities exclude normal agricultural operations from definition of public nuisance;
- Limits nuisance actions against agricultural operations; and
- Limits ability of municipalities to restrict direct commercial sales of agricultural products.



Pennsylvania Right to Farm Act – “Normal Agricultural Operations”

- The activities, practices, equipment, and procedures utilized in production, harvesting, and preparation for market
- Of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities
- For operations that are at least ten acres in size or produce annual gross income of at least \$10,000.



Limitation on Nuisance Actions

- Right to Farm Act is a defense to nuisance action against agricultural operation where:
 - Operation has been lawfully operating for at least one year;
 - Conditions complained of have existed since established date of operation; and
 - Conditions complained of are normal agricultural operations.



Limitation on Nuisance Actions

- Where agricultural operations are expanded or altered, Right to Farm Act is defense to nuisance action if:
 - Operation has expanded or altered for at least one year; **OR**
 - Expansion or alteration has been addressed in Nutrient Management Plan.



Direct Commercial Sales

- Direct commercial sales must be permitted use:
 - On property owned and operated by landowner
 - who produces at least 50% of agricultural commodities sold.



Exceptions to Application of Right to Farm Act

- Right to Farm Act does not protect farmers where:
 - Agricultural operation has direct adverse effect on public health and safety;
 - Zoning ordinance prohibits or limits operation;
 - Agricultural operation is in violation of federal, state, or local statute or regulation;
 - Agricultural operation pollutes water or causes flooding.



Case Law: *Horne v. Haladay* (Pa. Super. 1999)

- **Facts:**
 - Nov. 1993 – 122,000 laying hens in poultry house
 - Aug. 1994 – decomposition building constructed
 - Nov. 1995 – nuisance lawsuit filed
- **Claims:**
 - Failure to control flies, strong odor, and excessive noise
 - Alleged devaluation of property by \$60,000



Case Law: *Horne v. Haladay* (Pa. Super. 1999)

- Court opinion:
 - Right to Farm Act covered private nuisance as well as public nuisance.
 - Right to Farm Act covered pre-existing neighbors.
- Holding:
 - Upheld dismissal of case because it had not been filed within one-year time period.



Right to Farm Act – Constitutional Issues

- Type One – Limited Prohibition on Filing Suit Against Farming Operations
- Type Two – Absolute Prohibition on Filing Suit Against Farming Operations



Right to Farm Act – Unconstitutional Statute

- *Bormann v. Board of Supervisors*, 584 N.W.2d 309 (Iowa 1998)
 - “A farm or farm operation located in an agricultural area shall not be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operation.”



ACRE – 3 Pa. C.S.A. § 311 - 318

- a. OAG Ordinance Review
- b. MPC Section 603 text & Express and Implied Preemption
- c. [Berner v. Montour Twp. Zoning Hearing Bd.](#)

Clean & Green Preferential Tax Assessment

- a. Basic Administration
- b. Changes of use & Rollback taxes
- c. Rural Enterprise Exceptions

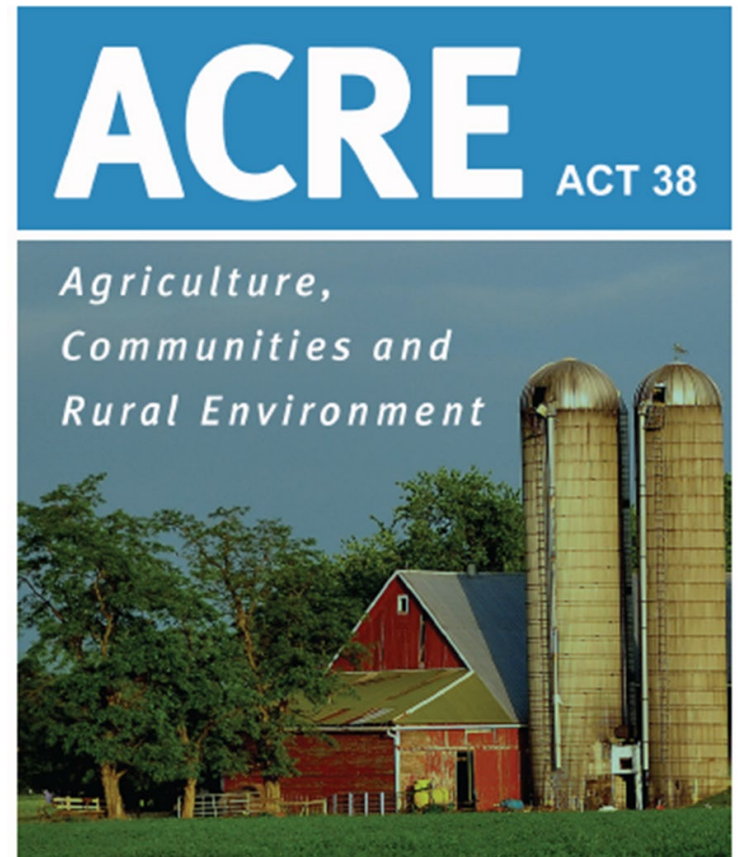


ACRE – Agriculture, Communities and Rural Environment

On July 6, 2005, Act 38 also known as “ACRE” (Agriculture, Communities and Rural Environment) went into effect to ensure that ordinances adopted by local governments to regulate normal agricultural operations are not in violation of state law. A local ordinance cannot exceed, duplicate or conflict with state law.

An “unauthorized local ordinance” is an ordinance enacted or enforced by a local government unit which does either of the following:

- Prohibits or limits a normal agricultural operation unless the local government unit has authority under state law to adopt the ordinance and it is not prohibited or preempted under state law.
- Restricts or limits the ownership structure of a normal agricultural operation.





ACRE - Why enacted? Right to Farm Act has limits.

- RTF only says a “normal ag operation” cannot be the subject of a “nuisance” claim under law.
- Only creates a defense to “nuisance” claims
- Requires farmers to bear all costs to assert the protection of farming and only once sued for nuisance.
- RTF of limited usefulness; no way to assert it “offensively.”



ACRE - Issues Addressed

- Applies to all forms of local regulation of “normal agricultural operations” and creates an “offensive” enforcement mechanism. It’s a sword, not just a shield.
- Same bill also enacted Odor Management for CAFOs.
- Odor Management regulations enacted with plan preparation requirements.



ACRE - Basic Premise

- ACRE addresses municipal regulation of normal agricultural operations via ordinance *“as written”* or *“as applied.”*
- “A local government unit shall not adopt nor enforce an unauthorized local ordinance.” – 3 Pa. C.S.A. § 313(a).



ACRE – Key Definitions

- “Unauthorized local ordinance” – the *ultimate issue*
- “Normal agricultural operation”



ACRE – Unauthorized Local Ordinance

Any ordinance enacted by a local government unit that *prohibits or limits* a normal agricultural operation unless:

- Local government unit *has authority under state law* to adopt the ordinance; and
- Local government unit *is not prohibited nor preempted* by state law from adopting the ordinance



ACRE – Unauthorized Local Ordinance

The definition also includes any ordinance that *restricts or limits the ownership structure* of a normal agricultural operation.

- Foreign or out of state ownership? An unanswered question.
- So-called “corporate farms.”



ACRE – “Normal Agricultural Operation”

- [incorporated from the RTF Law](#)

- Activities, practices, equipment, and procedures utilized in production, harvesting, and preparation for market
 - agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities;

AND

- At least ten acres in size or produce annual gross income of at least \$10,000.
- Coda: *“Includes new activities, practices, equipment . . .”*
- Absence of reference to marketing and retail sales.



ACRE - Procedure

- **Producer submits written request to Attorney General's Office for review of ordinance.**
- **Attorney General has 120 days to determine whether to accept case.**



ACRE - Procedure

- If Attorney General accepts case, municipality is given opportunity to negotiate/settle before suit is filed.
- Attorney General will file suit in Commonwealth Court if unable to resolve issue with municipality.



ACRE – Procedure

- Costs of action are borne by Attorney General’s Office, not landowner.
 - There is also a “private right of action” which allows the individual to use ACRE as the basis for a lawsuit.
 - Permissive award to plaintiff of attorneys’ fees/costs if “neg. disregard” or to defendant if “frivolous” or w/o “sub. Justification.”
- Litigation in Commonwealth Court establishes statewide precedent.
- Annual report to PA General Assembly required. [2020 Annual Report](#).

ACRE

ACT 38

*Agriculture,
Communities and
Rural Environment*



<https://www.attorneygeneral.gov/resources/acre/>

Requests for review of an ordinance should be sent, in writing, to the following address:

**PA Office of Attorney General
Attn: ACRE
15th Floor, Strawberry Square
Harrisburg, PA 17120**

ACRE@attorneygeneral.gov

Requests for review should include a copy of the ordinance, a short explanation of the objection the farm owner or operator has to the ordinance, and any other materials that will aid the Attorney General's review.

The Importance of ACRE

Agriculture is critical to the well-being of the Commonwealth. Agriculture generates over \$7 billion in cash receipts and over \$3 billion in international sales every year. The total economic impact of agriculture on the Commonwealth on a yearly basis is over \$70 billion. There are approximately 58,000 farms covering over 7 million acres in Pennsylvania along with 2561 distinct municipalities (townships, cities, boroughs). Moreover, the ACRE law as well as other agriculture statutes explicitly recognize the importance of agriculture to the Commonwealth. When one mixes together billions of dollars, millions of acres, tens of thousands of farms, and several thousand municipalities together it is inevitable that disagreements, misunderstandings, and friction will occur. ACRE helps balance this dynamic state of affairs.

ACRE In Action

Richmond Township: This lawsuit challenged an ordinance that defined and regulated “intensive agricultural activity,” including setback distance and waste disposal requirements. The court granted judgment in favor of the Attorney General on all challenges to the ordinance provisions and the Township subsequently amended its ordinance with the Attorney General’s approval.

Lower Oxford Township: This lawsuit challenged an ordinance placing restrictions on mushroom composting operations. The Attorney General approved ordinance amendments that were enacted by the Township to resolve and dismiss the lawsuit.

Joint Ordinance: This lawsuit challenged an ordinance adopted jointly by Heidelberg and North Heidelberg Townships and Robesonia and Womelsdorf Boroughs that defined and regulated ‘intensive raising of livestock or poultry.’ Following negotiations, the four municipalities enacted joint ordinance amendments to resolve the legal problems with the ordinance and the Office of the Attorney General withdrew the lawsuit.

East Brunswick Township: This lawsuit challenged an ordinance regulating the application of biosolids to agricultural land. Following court proceedings, the Attorney General approved ordinance amendments that were enacted by the Township to resolve and dismiss the lawsuit.

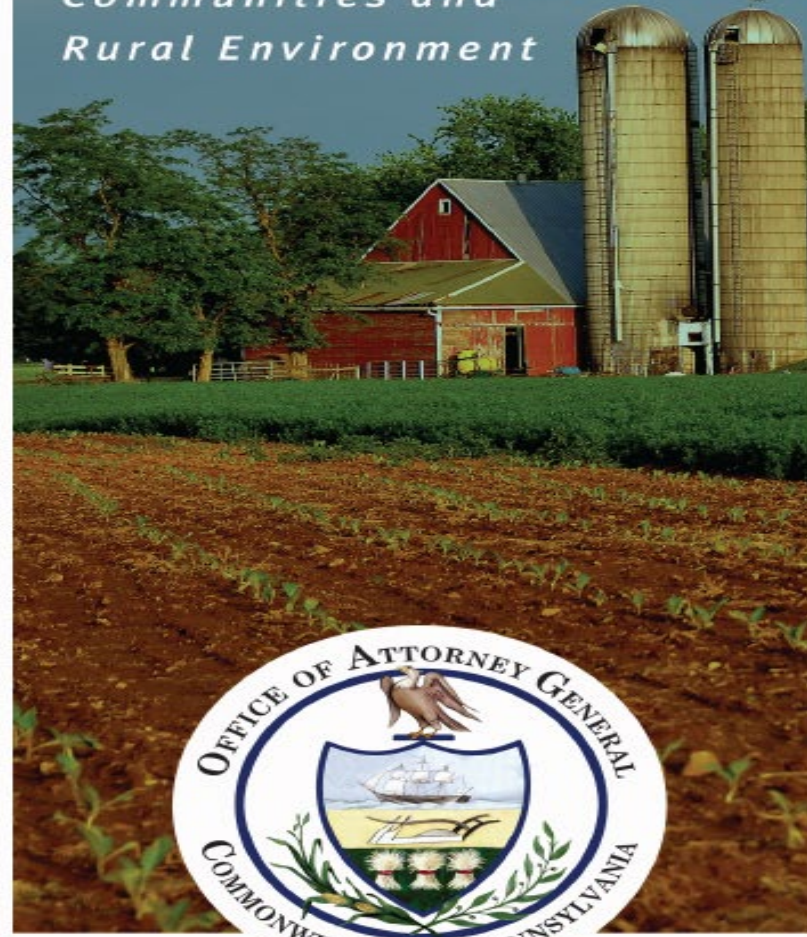
Peach Bottom Township: This lawsuit challenged ordinance provisions that regulate concentrated animal operations, including requiring animal housing buildings to be placed on low quality soils. The Attorney General approved ordinance amendments that were enacted by the Township to resolve and dismiss the lawsuit.

Packer Township: This lawsuit challenged an ordinance regulating the application of biosolids to agricultural land. Following court proceedings, the Township rescinded the ordinance and the lawsuit was dismissed.

acre@attorneygeneral.gov
www.attorneygeneral.gov

ACRE ACT 38

*Agriculture,
Communities and
Rural Environment*



Josh Shapiro
Pennsylvania Attorney General

ACRE

ACT 38

What is ACRE?

On July 6, 2005, Act 38 also known as “ACRE” (Agriculture, Communities and Rural Environment) went into effect to ensure that ordinances adopted by local governments to regulate normal agricultural operations are not in violation of state law. A local ordinance cannot exceed, duplicate or conflict with state law.

An “unauthorized local ordinance” is an ordinance enacted or enforced by a local government unit which does either of the following:

- Prohibits or limits a normal agricultural operation unless the local government unit has authority under state law to adopt the ordinance and it is not prohibited or preempted under state law.
- Restricts or limits the ownership structure of a normal agricultural operation.



Agriculture, Communities and Rural Environment

How it can help you

An owner or operator of a normal agricultural operation may request that the Office of the Attorney General review a local ordinance that the owner or operator believes to be unauthorized.

The Office of the Attorney General reviews the local ordinance after receiving the request from the owner or operator. If the Office believes that the ordinance violates ACRE, the Office and the local government work together to bring the ordinance into compliance with state law. If a resolution cannot be reached, the Office has the option of filing a lawsuit in the Commonwealth Court.

After examining all relevant information, the Office of the Attorney General will advise the owner or operator whether or not the Office plans to file a lawsuit to challenge the ordinance.

If the Attorney General decides not to file a lawsuit, the owner or operator still can file a lawsuit in Commonwealth Court to challenge the ordinance.



How to Request Review of an Ordinance

Requests for review should be sent, in writing, to the following address:

PA Office of Attorney General
Attn: ACRE
15th Floor, Strawberry Square
Harrisburg, PA 17120

or by email:
ACRE@attorneygeneral.gov.

Requests for review should include a copy of the ordinance, a short explanation of the objection the farm owner or operator has to the ordinance, and any other materials that will aid the Attorney General’s review.

ACRE on attorneygeneral.gov

Visit www.attorneygeneral.gov for information on ACRE cases the Office of Attorney General has reviewed since the start of 2017. Check the website for updates on existing and newly received cases and for the ACRE acceptance letters that the Office of the Attorney General has sent to Townships starting in 2006 and running to the present.

**Excerpt of
OAG's
ACRE
webpage.**

The below grid is an easy reference guide to the ACRE cases that have come in to the Office of the Attorney General for review since the beginning of 2017. You will find the following in the grid: 1) the month and date the complaint was received; 2) the Township involved; 3) a brief bullet point of the issue(s) involved in the case; 4) a link to the ordinance(s) challenged; 5) a link to the ACRE complaint the Office of Attorney General received; 6) a link to the Township response if one was received; 7) the status of the Office of Attorney General's ACRE review; and 8) the disposition. Please check this site frequently for updates on existing and newly received cases.

Received	Township ▾	Issue	Ordinance	Complaint	Township Response	Status	Disposition
March 2021	Pine Township	Normal Agricultural Operation	Ordinance	Complaint		Completed	Accepted View Letter
March 2021	Municipality of Monroeville	Permit Fees	Ordinance	Complaint	Township Response	Completed	Accepted and Settled View Letter
March 2021	Chanceford Township	Dog Kennels	Ordinance	Complaint	Township Response	Completed	Denied
January 2021	Salisbury Township	Permit Fees; Timber Harvesting	Ordinance	Complaint		Completed	Settled
January 2021	Industry Borough	Permit Application Fees	Ordinance	Complaint		Completed	Accepted and Settled View Letter
January 2021	Unity Township	Administrative, Engineering, & Inspection Fees; Conservation District Approval Letter	Ordinance	Complaint		Completed	Accepted View Letter
November 2020	Maidencreek Township	Prior Non-Conforming Use; AEU's	Ordinance	Complaint	Township Response	Completed	Denied View Letter



ACRE & MPC Section 603 text

- Most challenged ordinances are enacted by a local government unit using authority in the Municipalities Planning Code.
- Issues of Express and Implied Preemption begin to enter the analysis.



MPC Section 603(b) –

(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 Act



“Clean and Green” - Preferential Tax Assessment Program

- Statute: The Pennsylvania Farmland and Forest Land Assessment Act of 1974, [72 P. S. § § 5490.1—5490.13](#). (*Easier to read [copy](#).*)
- Regulations: [7 Pa. Code 137b.1 – 137b.133](#). PREFERENTIAL ASSESSMENT OF FARMLAND AND FOREST LAND UNDER THE CLEAN AND GREEN ACT.
- 59 of 67 counties have programs.
- Some administration by the Pennsylvania Department of Agriculture - [webpage](#).



Clean and Green

- The Pennsylvania Farmland and Forest Land Assessment Act of 1974, also known as the Clean and Green Act, or Act 319, allows land taxation per its **value as used** rather than the **prevailing market value**.
- Enrolled land is assessed per the *income approach* to land appraisal – the amount of income the land can produce at **its highest and best agricultural use**.
- As of 2020 Farmland Preservation Program Annual Report, 11.2 million acres were enrolled statewide. The average reduction in fair market assessed value for enrollees is roughly 50 percent – providing an incentive to keep the land undeveloped.



Clean and Green

- The program is voluntary and requires a minimum of 10 acres to remain in one of three designated use categories:
 - **Agricultural use** – land used to produce agricultural commodities commercially;
 - **Agricultural reserve** – noncommercial open space land used for recreation and scenic enjoyment that is open to the public free-of-charge; and
 - **Forest reserve** – 10 acres or more of forested land capable of yielding timber or other wood products.



Clean and Green

- **Change of Use & Rollback Tax Assessment** - Land use changed from an eligible use to an ineligible use subjects the enrolled land to a roll back tax assessed as the last seven years of tax savings, plus six percent simple interest, and the land is removed from the program.
 - Certain land divisions and conveyances are exempt from roll-back penalties if the original use of the land does not change - “Split-offs” and “separations.”
 - “Rural Enterprises” are allowed (includes retail sales with conditions). The law contains many, many “exceptions.”
- County assessment offices administer the program at the county level. The Pennsylvania Department of Agriculture, Bureau of Farmland Preservation, provides for uniform interpretation of the Clean and Green Act among county assessment offices and distributes use values by May 1 of each year.
 - Counties may establish use values that are lower, but not higher.

Clean and Green - Rural Enterprises, etc.

§ 5490.8. Roll-back taxes; special circumstances

(d) (1) A landowner may apply a **maximum of two acres** of a tract of land subject to preferential assessment toward **direct commercial sales of agriculturally related products and activities** or **for a rural enterprise incidental to the operational unit** without subjecting the entire tract to roll-back taxes, provided that:

(i) The commercial activity is owned and operated by the landowner or his beneficiaries who are designated as class A for inheritance tax purposes.

(ii) An assessment of the inventory of the goods involved verifies that it is owned by the landowner or his beneficiaries.

(iii) The rural enterprise does not permanently render the land incapable of producing an agricultural commodity.

(2) **Roll-back taxes shall be imposed upon that portion of the tract where the commercial activity takes place** and the fair market value of that tract shall be adjusted accordingly.

(3) Notwithstanding the provisions of paragraph (2), no roll-back taxes shall be due and no breach of a preferential assessment shall be deemed to have occurred if the direct commercial sales of agriculturally related products:

(i) Take place on **no more than one half** of an acre;

(ii) Are of at least **fifty percent (50%) of products produced on the tract**; and

(iii) Require **no new utilities or buildings**.



Clean and Green – More Exceptions

- Ag use includes “alternatives energy system,” if majority is used on site.
- “Separations,” 2 acre “split-offs” – complex rules and limitations
- Recreational activities
- In Ag use, the farmstead acreage is included as part of the use, in Ag Reserve and Forest Reserve, counties can choose to include in the use.
- Cell towers < ½ acre
- Oil, gas, coal bed methane exploration/extraction, pipe storage – complex rules
- Noncoal surface mining.
- Wind has special rules when majority is not used on site, but solar does not.

Bottom line is that there are so many exceptions, every factual circumstance must be researched. And the statute frequently gets amended.



Summary of Today's Presentation

- 1. Agricultural Area Security Law**
- 2. Right to Farm**
- 3. ACRE (Municipal Ordinance Review)**
- 4. Clean and Green (Preferential Real Estate Tax Assessment)**



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

