

**AGRICULTURE, COMMUNITIES AND RURAL ENVIRONMENT (ACRE)**

**Statute Discussion**

**January 14, 2015**

**10:00 AM – 11:00 AM**

**Pennsylvania Farm Show Complex, Erie Room**

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## **I. ACT 38 OF 2005 — AGRICULTURE, COMMUNITIES AND RURAL ENVIRONMENT**

### **A. Purpose and Intent of ACRE Legislation**

On July 6, 2005, Act 38, also known as “ACRE” (Agriculture, Communities and Rural Environment), 3 Pa. C.S. § 311, went into effect to ensure that municipal ordinances regulating normal agricultural operations are not in violation of state law. The central purpose of ACRE is to protect normal agricultural operations from unauthorized local regulation. The intent of ACRE is to resolve conflicts that may arise from the regulation of normal agricultural operations at the local level. ACRE confers upon the Attorney General: (1) the power and duty to review local ordinances for compliance with State law and (2) the authority, in the Attorney General’s discretion, to bring a legal action against a local government unit in Commonwealth Court to invalidate or enjoin the enforcement of an unauthorized local ordinance. 3 Pa. C.S. §§ 314, 315.

In enacting ACRE, the General Assembly made the following legislative declaration:

The General Assembly of the Commonwealth of Pennsylvania declares that the Commonwealth has a vested and sincere interest in ensuring the long-term sustainability of agriculture and normal agricultural operations in a manner that is consistent with State Policies and statutes. In furtherance of this goal, the Commonwealth has enacted statutes to protect and preserve agricultural operations for the production of food and other agricultural products.

The Commonwealth has also empowered local government units to protect health, safety and welfare of their citizens and to ensure that normal agricultural operations do not negatively impact upon the health, safety and welfare of citizens.

It is the purpose of this act to ensure that when local government units exercise their responsibilities to protect the health, safety and welfare of their citizens in regulating normal agricultural operations, ordinances are enacted consistent with the authority provided to local government units by the laws of this Commonwealth.

The General Assembly of the Commonwealth of Pennsylvania further declares that the intent of this act is to provide for the resolution of conflicts that may arise from the regulation of normal agricultural operations. It is further the intent of this act that this process:

- (1) provides a dispassionate and unprejudiced legal review of local ordinances regulating normal agricultural operation to determine whether a local ordinance complies with the Commonwealth’s existing statutes;
- (2) reduces costs associated with determining whether a local ordinance complies with the Commonwealth’s existing

statutes by utilizing current State resources and mechanisms; and

- (3) provides for a prompt and fair resolution to the conflict.

3 Pa. C.S. § 311 Historical and Statutory Notes.

**B. Key Definitions Under ACRE**

Section 312 of ACRE sets forth three definitions:

1. **“Local Government Unit.”** A political subdivision of the Commonwealth.
2. **“Normal Agricultural Operation.”** As defined under section 2 of the act of June 10, 1982 (P.L. 454, No. 133), [The Right to Farm Act, 3 P.S. § 953] entitled “An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances.”

Accordingly, the Right to Farm Act’s definition of “normal agricultural operation” is incorporated into ACRE and states as follows:

**“Normal agricultural operation.”** The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is:

- (1) not less than ten contiguous acres in area; or
- (2) less than ten contiguous acres in area but has an anticipated yearly gross income of at least \$10,000.

The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including, but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items of agricultural equipment and machinery defined by the act of December 12, 1994 (P.L. 944, No. 134),<sup>2</sup> known as the Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice.

3. **“Unauthorized local ordinance.”** An ordinance enacted or enforced by a local government unit which does any of the following:
  - (1) prohibits or limits a normal agricultural operation unless the local government:
    - (a) has expressed or implied authority under State law to adopt the ordinance; and
    - (b) is not prohibited or preempted under State law from adopting the ordinance.
  - (2) restricts or limits the ownership structure of a normal agricultural operation.

### **C. Office of Attorney General’s ACRE Program**

Section 314 of ACRE provides that “[a]n owner or operator of a normal agricultural operation may request the Attorney General to review a local ordinance believed to be an unauthorized local ordinance and to consider whether to bring legal action under section 315(a).” 3 Pa. C.S. § 314(a).

Section 315 of ACRE authorizes the Office of Attorney General to “bring an action against the local government unit in Commonwealth Court to invalidate the unauthorized local ordinance or enjoin the enforcement of the unauthorized local ordinance.” 3 Pa. C.S. § 315(a).

In response to the enactment of ACRE, the Office of Attorney General developed and implemented a process for receiving requests for review of ordinances, for completing such reviews within the 120-day time period prescribed by the Act (or extending the 120-day review period to obtain additional information or provide the time required to complete the review), for negotiating with local government units when legal problems with ordinances are identified, and for bringing legal action against a local government unit when such action is warranted.

When the Office receives a request for review of an ordinance, the Office sends the owner/operator who requested the review an acknowledgement that the request was received, and the municipality whose ordinance is the subject of the request for review a notice that the request has been received and that the ordinance will be reviewed.

Upon completion of the review, the Office advises both the owner/operator and the municipality in writing whether or not it intends to bring legal action to invalidate or enjoin the enforcement of the ordinance. If the Office advises the municipality that it intends to bring legal action, it affords municipal officers an opportunity to discuss the legal problems identified in the review and to correct such problems before a legal action is brought.

The Attorney General's policy in administering the ACRE program is to avoid litigation with municipalities and, instead, negotiate on ordinance amendments to resolve the legal problems with ordinance provisions. The fact that only seven lawsuits have been filed, based on 48 ordinances accepted for review, is a testament to the success of the policy. The recent decisions by the Supreme and Commonwealth Courts, *infra*, have fostered increased efforts by municipalities to negotiate proposed amendments to resolve an ACRE review prior to litigation. The Attorney General has also utilized its resources to educate municipalities and concerned citizens on the Commonwealth's regulation of agricultural operations. The ACRE program is fulfilling the intent of the General Assembly.

#### **D. ACRE Program Statistics**

The statistics for ACRE as of January 14, 2015:

- 116 total requests for review received
- 13 requests are pending review
- 99 requests have been reviewed
- 51 denied requests
- 48 accepted requests
- 2 in litigation
- 16 negotiating with townships
- 30 resolved
- 4 withdrawn while review was pending

## **II. STATE STATUTES COMMONLY INVOKED IN AN ACRE REVIEW**

The State statutes and regulations that are considered in an ACRE review of a local ordinance obviously depend on the subject matter the municipality is attempting to regulate with the ordinance. The following is a list of statutes and regulations that are frequently considered when the Attorney General is reviewing a local ordinance to determine if it is an unauthorized local ordinance.

#### **A. Municipalities Planning Code, 53 P.S. § 10601, *et seq.***

The Municipalities Planning Code (MPC) is the legislative enabling act that delineates municipal authority to enact zoning ordinances. One of the purposes of the MPC is "to ensure that municipalities enact zoning ordinances that facilitate the present and future economic viability of existing agricultural operations in this Commonwealth and do not prevent or impede

the owner or operator's need to change or expand their operations in the future in order to remain viable.” 53 P.S. § 10505. To accomplish this purpose, Section 10603 of the MPC sets forth the extent of municipal authority to enact zoning ordinances regulating agricultural operations.

**1. 53 P.S. § 10603(b)**

A municipality’s authority to regulate agricultural operations is limited under Section 10603(b) as follows:

- (b) Zoning ordinances, except to the extent that . . . regulation of activities related to commercial agricultural production would exceed the requirements imposed under the act of May 20, 1993 (P.L. 12, No. 6), known as the “Nutrient Management Act,” regardless of whether any agricultural operation within the area to be affected by the ordinance would be a concentrated animal operation as defined by the “Nutrient Management Act,” the act of June 30, 1981 (P.L. 128, No. 43), known as the “Agricultural Area Security Law,” or the act of June 10, 1982 (P.L. 454, No. 133), entitled “An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances,” or that regulation of other activities are preempted by other Federal or State laws may permit, prohibit, regulate, restrict and determine:

53 P.S. § 10603(b) (footnotes omitted).

**2. 53 P.S. § 10603(f)**

Section 10603(f) limits municipal authority to regulate forestry activities as follows:

- (f) Zoning ordinances may not unreasonably restrict forestry activities. To encourage maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land throughout this Commonwealth, forestry activities, including, but not limited to, timber harvesting, shall be a permitted use by right in all zoning districts in every municipality.

**3. 53 P.S. § 10603(h)**

Section 10603(h) limits municipal authority to regulate agricultural operations as follows:

- (h) Zoning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present unless the agricultural operation will have a direct adverse effect on the public health and safety.

Nothing in this subsection shall require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the act of May 20, 1993 (P.L. 12, No. 6), known as the “Nutrient Management Act,” the act of June 30, 1981 (P.L. 128, No. 43), known as the “Agricultural Area Security Law,” or the act of June 10, 1982 (P.L. 454, No. 133), entitled “An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances.”

**B. Nutrient and Odor Management Act, 3 Pa. C.S. § 501, *et seq.***

The Nutrient and Odor Management Act (NOMA) is designed to establish uniform standards to manage nutrients and odors on Concentrated Animal Operations and Concentrated Animal Feeding Operations across the Commonwealth. To that end, the NOMA states that “[t]his chapter and its provisions are of Statewide concern and occupy the whole field of regulation regarding nutrient management and odor management, to the exclusion of all local regulations.” 3 Pa. C.S. § 519(a). Section 519 of the NOMA also sets forth the following sections on preemption of local ordinances:

- (b) Nutrient management.--No ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.
- (c) Odor management.--No ordinance or regulation of a political subdivision or home rule municipality may regulate the management of odors generated from animal housing or manure management facilities regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.
- (d) Stricter requirements.--Nothing in this chapter shall prevent a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of this chapter and the regulations or guidelines promulgated under this chapter. No penalty shall be assessed under any such local ordinance or regulation under this subsection for any violation for which a penalty has been assessed under this chapter.

**C. State Conservation Commission’s Regulatory Scheme, 25 Pa. Code §§ 83.201, et seq., 83.701, et seq.**

The State Conservation Commission (SCC) is a departmental administrative commission under the concurrent authority of the PA Department of Environmental Protection (DEP) and the PA Department of Agriculture (PDA). The SCC administers and enforces the Nutrient and Odor Management Act Program. SCC promulgated comprehensive nutrient and odor management regulations that provide for preemption of local ordinances.

**1. Nutrient Management Regulations, 25 Pa. Code § 83.205**

The Nutrient Management Regulations provide for preemption of local ordinances as follows:

- (a) The act and this subchapter are of Statewide concern and occupy the whole field of regulation regarding nutrient management to the exclusion of all local regulations.
- (b) After October 1, 1997, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by the act or this subchapter if the municipal ordinance is in conflict with the act and this subchapter.
- (c) Nothing in the act or this subchapter prevents a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of the act and this subchapter.
- (d) No penalty will be assessed under any valid local ordinance or regulation for any violation for which a penalty has been assessed under the act or this subchapter.

**2. Odor Management Regulations, 25 Pa. Code § 83.705**

The Odor Management Regulations provide for preemption of local ordinances as follows:

- (a) The act and this subchapter are of Statewide concern and occupy the whole field of regulation regarding odor management to the exclusion of all local regulations.
- (b) No ordinance or regulation of a political subdivision or home rule municipality may regulate the management of odors generated

from animal housing or manure management facilities regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.

- (c) Nothing in the act or this subchapter prevents a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of the act and this subchapter.
- (d) A penalty may not be assessed under any valid local ordinance or regulation for any violation for which a penalty has been assessed under the act or this subchapter.

**D. Department of Environmental Protection’s Regulation of Agricultural Operations Pursuant to the Clean Streams Law**

The Department of Environmental Protection (DEP) regulates all agricultural operations that use or produce manure under 25 Pa. Code § 91.36. DEP imposes additional regulatory requirements for Concentrated Animal Feeding Operations pursuant to its National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance regulations under 25 Pa. Code § 92a.1, *et seq.* The DEP’s regulatory scheme is designed to establish uniform and comprehensive regulation of agricultural operations to prevent pollution of surface water and groundwater and protect water quality. 35 P.S. § 691.5; 3 Pa. C.S. §§ 502(4), 505.

**E. Solid Waste Management Act, 35 P.S. § 6018.101, *et seq.*, and DEP’s Regulatory Schemes, 25 Pa. Code § 271.101, *et seq.* and 25 Pa. Code § 287.1, *et seq.***

**1. Beneficial Use of Biosolids by Land Application, 25 Pa. Code § 271.901, *et seq.***

The Department of Environmental Protection (DEP) pursuant to its authority under the Solid Waste Management Act (SWMA) and accompanying municipal waste regulations regulates land application of Class A, Class B, and residential septage biosolids, which includes: permit, application, and testing requirements for land application of Class A, Class B, and residential septage biosolids; standards for concentration of pollutants, pathogens, and vector attractants and for sampling, analysis, and monitoring; and authority for the DEP to deny, suspend, modify, or revoke any permit or license and otherwise to enforce the SWMA and DEP regulations. 35 P.S. § 6018.101, *et seq.*; 25 Pa. Code § 271.1, *et seq.*

The Commonwealth Court has interpreted the SWMA and the DEP’s municipal waste regulations as preempting local regulation of solid waste management operations to the extent the regulation is inconsistent or in conflict with the SWMA. See, e.g., Commonwealth v. East Brunswick Township, 980 A.2d 720, 733-34 (Pa. Cmwlth. 2009) (explaining that “[r]equirements that are redundant of or stricter than those in the SWMA are preempted”);

Liverpool Township v. Stephens, 900 A.2d 1030, 1037 (Pa. Cmwlth. 2006) (holding that to the extent the ordinance “regulates the application of municipal waste to agricultural land, [it] is preempted.”).

**2. Wastes Used in the Course of Normal Farming Operations, 25 Pa. Code § 287.101, et seq.**

The DEP pursuant to its authority under the Solid Waste Management Act (SWMA) and accompanying residual waste regulations regulates the use of certain wastes used in the course of normal farming operations. 35 P.S. § 6018.101, *et seq.*; 25 Pa. Code § 287.1, *et seq.* The DEP’s regulations exempt agricultural operations from permit requirements if they produce or utilize agricultural or food processing wastes in the course of normal farming operations and comply with DEP’s best management practice manuals for managing those wastes. 25 Pa. Code § 287.101(b)(1)-(2). DEP also regulates operations managing mushroom wastes and requires compliance with DEP’s best practices for environmental protection in the mushroom farm community. *Id.* § 287.101(1).

**F. Agricultural Area Security Law, 3 P.S. § 902, et seq.**

The Agricultural Area Security Law (AASL) provides for the creation of agricultural security areas (ASA) to protect and preserve the integrity and economic viability of agriculture in the Commonwealth. 3 P.S. § 902. Once a municipality designates farmland as an ASA, the AASL places unique and significant limitations on the municipality’s ability to condemn that land in the future, thus ensuring its preservation. 3 P.S. § 913(a)-(b). Section 911 of the AASL limits municipal authority to regulate agricultural operations within an ASA as follows:

§ 911. Limitation on local regulations

- (a) General rule.—Every municipality or political subdivision within which an agricultural security area is created shall encourage the continuity, development and viability of agriculture within such an area by not enacting local laws or ordinances which would unreasonably restrict farm structures or farm practices within the area in contravention of the purposes of this act unless such restrictions or regulations bear a direct relationship to the public health or safety.
- (b) Public nuisance.—Any municipal or political subdivision law or ordinance defining or prohibiting a public nuisance shall exclude from the definition of such nuisance any agricultural activity or operation conducted using normal farming operations within an agricultural security area as permitted by this act if such agricultural activity or operation does not bear a direct relationship to the public health and safety.

**G. Right to Farm Act, 3 P.S. § 951, et seq.**

The Right to Farm Act places limitations on municipal authority to regulate agricultural operations in order “to conserve and protect and encourage the development and improvement of [the Commonwealth’s] agricultural land for the production of food and other agricultural products.” 3 P.S. § 951. Section 953 of the Right to Farm Act places limits on local ordinances as follows:

§ 953. Limitation on local ordinances

- (a) Every municipality shall encourage the continuity, development and viability of agricultural operations within its jurisdiction. Every municipality that defines or prohibits a public nuisance shall exclude from the definition of such nuisance any agricultural operation conducted in accordance with normal agricultural operations so long as the agricultural operation does not have a direct adverse effect on the public health and safety.
- (b) Direct commercial sales of agricultural commodities upon property owned or operated by a landowner who produces not less than 50% of the commodities sold shall be authorized, notwithstanding municipal ordinance, public nuisance or zoning prohibitions. Such direct sales shall be authorized without regard to the 50% limitation under circumstances of crop failure due to reasons beyond the control of the landowner.

**H. Domestic Animal Law, 3 Pa. C.S. § 2301, et seq.**

The Domestic Animal Law (DAL) authorizes and regulates the permissible methods for the disposal of dead domestic animals and animal wastes, which includes farm animal mortalities and wastes on an agricultural operation. The DAL preempts any ordinances that pertain to the procedures for disposal of dead domestic animals.

**1. 3 Pa. C.S. § 2352 — Disposal of dead domestic animals**

- (a) Requirements.--The following requirements shall be met regarding the disposal of the bodies of dead domestic animals:

\* \* \* \*

- (4) Dead domestic animals, parts of dead domestic animals, offal and animal waste shall be disposed of only in accordance with one of the following methods or a method hereafter approved by the department:

- (i) Burial in accordance with regulations governing water quality.
- (ii) Incineration in accordance with regulations governing air quality.
- (iii) Processing by rendering, fermenting, composting or other method according to procedures and product safety standards established by the department.

**2. 3 Pa. C.S. § 2389 — Preemption of local laws and regulations**

This chapter and its provisions are of Statewide concern and shall have eminence over any ordinances, resolutions and regulations of political subdivisions which pertain to transmissible diseases of domestic animals as defined in this chapter; the whole field of regulation regarding the identification of domestic animals; the detection, containment or eradication of dangerous transmissible diseases and hazardous substances; the licensure of domestic animal or dead domestic animal dealers, agents and haulers; the procedure for disposal of dead domestic animals and domestic animal waste; the procedure for the slaughter and processing of domestic animals; humane husbandry practices and the licensure and conditions of garbage feeding businesses.

**I. Air Pollution Control Act, 35 P.S. § 4001, *et seq.***

The Air Pollution Control Act excludes operations engaged in the “production of agricultural commodities” from State air contaminant and air pollution regulations. 35 P.S. § 4004.1. The “production of agricultural commodities” is broadly defined to include all forms of agricultural operations. *Id.* § 4004.1(b)(1)-(4).

**J. Water Resources Planning Act, 27 Pa. C.S. § 3101, *et seq.*, and Department of Environmental Protection’s Regulatory Scheme, 25 Pa. Code § 110, *et seq.***

The Department of Environmental Protection (DEP) pursuant to its authority under the Water Resources Planning Act (WRPA) and accompanying regulations establishes the framework for water withdrawal and use registration, monitoring, record-keeping and reporting requirements. 27 Pa. C.S. §§ 3118, 3131, 3133-34; 25 Pa. Code § 110. The WRPA explicitly prohibits political subdivisions from regulating the allocation of water resources and the conditions of water withdraw. Section 3136(b) provides that “no political subdivision shall have any power to allocate water resources or to regulate the location, amount, timing, terms or conditions of any water withdrawal by any person.”

### III. ACRE ACTIONS FILED BY THE ATTORNEY GENERAL

To date, the Attorney General has filed seven ACRE actions against municipalities to invalidate and enjoin the enforcement of an unauthorized ordinance. ACRE actions are brought in the Commonwealth Court under its original jurisdiction. 3 Pa. C.S. § 315(a). Currently, there are two of those seven actions that remain active.

#### A. Commonwealth v. Lower Oxford Township, No. 359 M.D. 2006

The Attorney General commenced an action against Lower Oxford Township by filing a Petition for Review to challenge ordinance provisions regulating composting activities on mushroom farm operations. Lower Oxford Township filed preliminary objections contending that section 313(b) of ACRE provides that ordinances existing prior to the enactment of ACRE must be enforced by a township before the Attorney General can bring an ACRE action to challenge the ordinance. Based on this contention, the Township claimed that the Attorney General lacked authority to bring an action under ACRE without alleging that Lower Oxford Township acted to enforce the challenged provisions of the pre-existing ordinance.

Section 313(b) of ACRE states as follows:

(b) Existing local ordinances. – This chapter shall apply to the enforcement of local ordinances existing on the effective date of this section and to the enactment or enforcement of local ordinances enacted on or after the effective date of this section.

The Commonwealth Court sustained this preliminary objection by interpreting section 313(b) to require that the Attorney General “must aver facts in the Petition to indicate that Lower Oxford has attempted to enforce the challenged provisions of the Ordinance” in order to state a cause of action under ACRE to challenge ordinances that existed prior to the enactment of ACRE. Commonwealth v. Lower Oxford Township, 915 A.2d 685, 688-89 (Pa. Cmwlth. 2006).

The Attorney General appealed the Commonwealth Court’s decision to the Supreme Court. See subsection D below for discussion on results of the appeal.

#### B. Commonwealth v. Heidelberg Township, et al., No. 357 M.D. 2006

The Attorney General commenced an action against Heidelberg Township, North Heidelberg Township, Borough of Robesonia, Borough of Womelsdorf (hereinafter “Heidelberg Township”) by filing a Petition for Review to challenge their joint ordinance provisions regulating “intensive raising of livestock or poultry.” Heidelberg Township filed preliminary objections claiming the Attorney General failed to state a cause of action under ACRE based on the same argument presented by Lower Oxford Township that section 313(b) of ACRE requires the Attorney General to allege the township acted to enforce the pre-existing ordinance.

On the same day as its published decision in Lower Oxford Township, the Commonwealth Court issued an unreported decision in Heidelberg Township sustaining the

preliminary objection based on its interpretation that section 313(b) requires a township to enforce a pre-existing ordinance before the Attorney General can challenge it under ACRE. Commonwealth v. Heidelberg Township, No. 357 M.D. 2006, Mem. Op. (Pa. Cmwlt. Dec. 12, 2006).

The Attorney General appealed the Commonwealth Court's decision to the Supreme Court. See subsection D below for discussion on results of the appeal.

**C. Commonwealth v. Locust Township, No. 358 M.D. 2006**

The Attorney General commenced an action against Locust Township by filing a Petition for Review to challenge ordinance provisions regulating "intensive animal agriculture." Locust Township filed preliminary objections claiming the Attorney General failed to state a cause of action under ACRE based on the same argument presented by Lower Oxford Township that section 313(b) of ACRE requires the Attorney General to allege the township acted to enforce a pre-existing ordinance. Locust Township also argued that the Attorney General must challenge the validity of a land use ordinance before the township's zoning hearing board and not the Commonwealth Court pursuant to the Municipalities Planning Code (MPC).

The Commonwealth Court sustained the preliminary objection based on its interpretation that section 313(b) requires a township to enforce a pre-existing ordinance before the Attorney General can challenge it under ACRE. Commonwealth v. Locust Township, 915 A.2d 738, 742 (Pa. Cmwlt. 2007).

The Commonwealth Court overruled the preliminary objection that the Attorney General must bring a challenge to a land use ordinance before a township's zoning hearing board. Id. at 7441-42. The court held that it had subject matter jurisdiction over the Attorney General's original jurisdiction action pursuant to the authority and jurisdiction established by ACRE and the Judicial Code. Id.

Both parties appealed the Commonwealth Court's decision to the Supreme Court. See subsection D below for discussion on results of the appeal.

**D. Appeals in Lower Oxford Township, Heidelberg Township, and Locust Township**

**1. Lower Oxford Township and Heidelberg Township Consolidated on Appeal**

On November 21, 2007, the Supreme Court issued a per curiam order affirming the Commonwealth Court's decision in Lower Oxford Township and Heidelberg Township. Commonwealth v. Heidelberg Township, 934 A.2d 699 (Pa. 2007). Justice Saylor filed a dissenting statement in which Justices Eakin and Baer joined. Id.

The Attorney General filed a Petition for Reconsideration, which was held by the Court pending a decision in the Locust Township appeal.

In the Locust Township appeal, as discussed further below, the Supreme Court reversed the Commonwealth Court's holding that section 313(b) required a township to enforce a pre-existing ordinance before the Attorney General can challenge it under ACRE. Commonwealth v. Locust Township, 968 A.2d 1263 (Pa. 2009). Subsequently, the Supreme Court issued a per curiam order in the consolidated Heidelberg and Lower Oxford Township appeals granting the petition for reconsideration, vacating the Court's November 21, 2007, per curiam order, and reversing the Commonwealth Court's order sustaining the preliminary objections based on the Court's opinion in Locust Township.

## 2. Locust Township Appeal

Following oral argument, the Supreme Court issued a decision on April 29, 2009, that affirmed in part and reversed in part the Commonwealth Court's decision. Commonwealth v. Locust Township, 968 A.2d 1263 (Pa. 2009).

The Court reversed the Commonwealth Court's holding that "an ordinance that pre-dates the effective date of ACRE cannot be challenged before a local municipality attempts to enforce it." Id. at 1271. The Court engaged in a statutory construction analysis of sections 313, 314, and 315 of ACRE. Upon reviewing the plain language of ACRE, the Court stated that it "believ[ed] that the statute is unambiguous with regard to when the Attorney General may bring an action to challenge an unauthorized local ordinance." Id. at 1273. "The Attorney General is not constrained in any way to seek invalidation only of unauthorized local ordinances which are newly adopted or enforced; to the contrary, the Attorney General is explicitly empowered to invalidate enacted local ordinances without regard to enforcement." Id. at 1274. Accordingly, the Court held that the "Commonwealth Court erred in requiring [the Attorney General] to wait for the Township to attempt to enforce the Ordinance before the Attorney General could challenge it in the Commonwealth Court." Id. at 1275.

The Court affirmed the Commonwealth Court's decision that it had subject matter jurisdiction over the Attorney General's original jurisdiction ACRE action. Id. at 1271. The Court rejected Locust Township's argument that the Attorney General acts on behalf of a local property owner in challenging an ordinance under ACRE and is thus required to bring such challenge before the zoning hearing board pursuant to the MPC. As explained by the Court:

This position misconstrues the nature of the Attorney General's action. Although Section 314(a) of ACRE provides that a farmer may request the Attorney General to review a local ordinance, such review is not a necessary prerequisite to the Attorney General's action. If the Attorney General decides to exercise its discretion and mount a challenge to an ordinance in the Commonwealth Court, it is not acting on behalf of the landowner; rather, it is acting in its own right, as the official charged with administering the program established by Chapter three, in order to defend and maintain the Commonwealth's interest in limiting local regulation of agriculture.

Id. at 1271.

## **E. Procedural Posture of Lower Oxford Township, Heidelberg Township, and Locust Township**

### **1. Lower Oxford Township**

As stated above, the Attorney General commenced an action against Lower Oxford Township by filing a Petition for Review to challenge ordinance provisions regulating composting activities on mushroom farm operations. After the Supreme Court decision discussed above, the Attorney General negotiated with Lower Oxford Township on ordinance amendments. Lower Oxford Township enacted the ordinance amendments to resolve the legal problems with the ordinance and the Attorney General withdrew the lawsuit in July 2011.

### **2. Heidelberg Township**

As stated above, the Attorney General commenced an action against Heidelberg Township, North Heidelberg Township, Borough of Robeson, Borough of Womelsdorf (hereinafter “Heidelberg Township”) by filing a Petition for Review to challenge their joint ordinance provisions regulating “intensive raising of livestock or poultry.” In 2011, the Attorney General filed an Amended Petition for Review and the parties are currently negotiating to resolve the action through ordinance amendments to resolve the legal problems with the ordinance.

### **3. Locust Township**

As stated above, the Attorney General commenced an action against Locust Township by filing a Petition for Review to challenge ordinance provisions regulating “intensive animal agriculture.” In May 2011, the Attorney General filed a Motion for Summary Judgment. On July 17, 2012, the Commonwealth Court issued an en banc decision granting in part and denying in part the Attorney General’s summary judgment. Commonwealth v. Locust Township, 49 A.3d 502 (2012) (en banc).

Locust Township’s zoning ordinance defines “intensive animal agriculture” as “the keeping, housing, confining, raising, feeding, production, or other maintaining of livestock or poultry animals when, on an annualized basis, there exists more than 150 Animal Equivalent Units (A.E.U.’s) on the agricultural operation, regardless of the actual acreage owned, used, or otherwise available to the agricultural operation.” *Id.* at 505. The definition also specifically includes Concentrated Animal Operations (CAOs) and Concentrated Animal Feeding Operations (CAFOs). The zoning ordinance allows intensive animal agriculture in the rural agricultural zone by special exception. Locust Township imposed numerous conditions in order to obtain a special exception to engage in intensive animal agriculture. The Attorney General challenged both the definition of intensive agriculture and many of the conditions imposed to obtain a special exception as preempted or prohibited by ACRE, the Nutrient and Odor Management Act (NOMA), Agricultural Area Security Law (AASL), Municipalities Planning Code (MPC), Water Resources Planning Act (WRPA), and Right to Farm Act (RTFA).

The Attorney General contended that the requirement under the ordinance for submission of a site plan was preempted by NOMA because it duplicated and exceeded the NOMA regulations which require CAOs and CAFOs to submit site-specific information. Id. at 508. The court held that a requirement for a site plan for a proposed operation was not preempted by the NOMA because “[e]ach serves a separate purpose with independent legal significance.” Id.

Under the ordinance, an intensive animal agriculture operation is required to submit an emergency contingency plan and an odor management plan. The Attorney General argued that these requirements are preempted because they duplicate and exceed the NOMA requirements. Locust Township contended that it was only imposing these requirements on smaller farm operations that are not regulated by the NOMA, thus they are not preempted by the NOMA. The court rejected the Township’s argument because the NOMA provides that smaller farm operations can voluntarily comply with the NOMA, thus the Township was imposing mandatory requirements on smaller farm operations that the General Assembly had decided should only be voluntary. Specifically, the court explained that:

By requiring farms too small to meet the definition of CAO or CAFO to submit and implement emergency response and nutrient management plans or proposals similar in type and scope to what is required under the NOMA, the Township attempts to make mandatory what the General Assembly had already decided must be voluntary. In this regard, Section 503(f) and (j) are in conflict with the NOMA and, thus, are preempted pursuant to Section 519 of the NOMA.

Id. at 511. The court granted summary judgment in favor of the Attorney General and declared these ordinance provisions invalid.

The Attorney General contended that the NOMA prohibited or preempted the requirement under the ordinance for a minimum setback of 500 feet for intensive animal agriculture operations. Id. 512. The court opined that this setback requirement exceeded the most stringent setback requirement of 300 feet under the NOMA. Id. Thus, the court held the NOMA preempts setback requirements that exceed those under the Act and the setback requirement also exceeded the Township’s authority under the Municipalities Planning Code. Id. at 512, 517. The court granted summary judgment in favor of the Attorney General and declared the setback provisions invalid.

Finally, the Attorney General challenged the ordinance requirements for intensive animal agriculture operations “which are expected to consume 10,000 gallons or more of water per day” to register with the Susquehanna River Basin Commission as a Consumptive Water Use; submit a comprehensive water impact study prepared by a hydrologist holding a Ph.D.; and to meter, measure and record in a bound log book the amount of water actually used on a daily basis, which log book must be available to the Township for inspection. Id. at 513. The Attorney General contended that these requirements were preempted by the WRPA, which regulates water withdrawal and use and establishes registration, monitoring, record-keeping and reporting requirements. The Township countered that it had the power pursuant to the MPC to impose the water use requirements. The court rejected the Township’s argument and explained that “[w]hile the MPC does provide municipalities with the authority to consider water supply in regulating

land use, it does not authorize municipalities to impose water withdrawal and use requirements on agricultural uses.” Id. at 514. The court held that the ordinance requirements were preempted by the WRPA because “its requirements, particularly the water impact study requirement, far exceed the requirements of the WRPA.” Id. The court granted summary judgment in favor of the Attorney General and declared the water use provisions invalid.

There are several challenges made by the Attorney General that were undecided by the court following its ruling on summary judgment and the Attorney General will continue to litigate those challenges.

**F. Commonwealth v. Richmond Township, No. 360 M.D. 2006**

The Attorney General commenced an action against Richmond Township by filing a Petition for Review to challenge ordinance provisions regulating “intensive agricultural operations.” On preliminary objections, the Commonwealth Court directed the Attorney General to file a more specific pleading with respect to how the ordinance provisions prohibit or limit a normal agricultural operation. Commonwealth v. Richmond Township, 917 A.2d 397, 405 (Pa. Cmwlth. 2007). The Attorney General filed an Amended Petition for Review.

In a previous action between a farmer and Richmond Township, the Commonwealth Court addressed one of the ordinance provisions at issue that requires a 1500 foot setback for “intensive agricultural activities.” Burkholder v. Zoning Hearing Board of Richmond Township, 902 A.2d 1006 (Pa. Cmwlth. 2006). The farmer claimed that the 1500 foot setback conflicted with the setbacks for manure storage facilities under the Nutrient and Odor Management Act. Id. at 1011. The court held that to the extent the ordinance imposed a 1500 foot setback on manure storage facilities; it is preempted by the Nutrient and Odor Management Act. Id. at 1016-1018.

In 2008, Richmond Township filed a motion for judgment on the pleadings, and discovery was stayed pending the resolution of the motion. In May 2009, the Commonwealth Court denied the motion in its entirety in a published opinion. Commonwealth v. Richmond Township, 975 A.2d 607 (Pa. Cmwlth. 2009). With respect to the Municipalities Planning Code (MPC), the court explained that because Section 10603(h) of the MPC “states that nothing in that section requires a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the NMA, the RFL, or the AASL . . . the legislature implicitly has determined that an agricultural operation complying with these acts does not constitute an operation that has a direct adverse effect on the public health and safety.” Id. at 616 n.13 (citation omitted).

In January 2010, the Attorney General filed a motion for summary judgment. The Amended Petition for Review challenged the “intensive agricultural operations” zoning ordinance provisions as prohibited or preempted by ACRE, the Nutrient and Odor Management Act (NOMA), Domestic Animal Law (DAL), Agricultural Area Security Law (AASL), Municipalities Planning Code (MPC), and Right to Farm Act (RTFA).

On May 28, 2010, the Commonwealth Court granted summary judgment in favor of the Attorney General on all six counts of the Amended Petition for Review and enjoined Richmond Township from enforcing the provisions of the zoning ordinance relating to intensive agriculture.

Commonwealth v. Richmond Township, 2 A.3d 678 (Pa. Cmwlth. 2010). The court’s opinion sets forth analyses and holdings on issues of first impression in interpreting the statutes alleged to preempt the township’s ordinance. The court’s rulings provide clear guidance to municipalities and the agricultural community across the Commonwealth on the extent of municipal authority to regulate agricultural operations.

Richmond Township’s zoning ordinance defined “Agriculture (Intensive)” as “[s]pecialized agricultural activities including, but not limited to, mushroom production, poultry production, and dry lot livestock production, which due to the intensity of production, necessitate development of specialized sanitary facilities and control.” Id. at 682. The Attorney General contended that this definition was vague, ambiguous, and inviting of discriminatory enforcement. The court agreed and held that “because a person cannot read the Ordinance and ascertain whether a particular agricultural activity would be considered intensive agriculture, the Ordinance is vague and ambiguous.” Id. at 683. The court also held that “because enforcement of the Ordinance depends upon the subjective determination of Township officials, the Ordinance invites discriminatory enforcement.” Id.

The Attorney General contended that the NOMA prohibited or preempted the requirements under the ordinance for a 1500 foot setback for intensive agricultural operations from other zoning districts or residences; the prohibition of commercial composting and the limitation on on-site composting; and the requirement that solid and liquid wastes be disposed of on a daily basis. Id. At 684. With respect to the setback, the court found that the most stringent setback requirement under the NOMA regulations is 300 feet, so that the 1500 foot setback conflicted with and was more stringent than the setbacks imposed by the NOMA regulations. Id. at 685. Thus, the court held that the 1500 foot setback is preempted by the NOMA regulations “to the extent the Township applies the 1500 foot setback to **any facility** covered by the regulations.” Id. (emphasis added). The court also held that the ordinance provisions for composting and waste disposal conflicted with, and were therefore preempted by, the NOMA. Id.

The Attorney General contended that the ordinance restricts agricultural operations in violation of the MPC. Id. at 686. The MPC precludes a municipality from exceeding the requirements of the NOMA, thus, based on its conclusion that the ordinance conflicted with the NOMA, the court held that the ordinance violated the MPC. Id. at 687. Significantly, the court explained, as it did in its previous opinion denying judgment on the pleadings, that the language in the MPC under Section 10603(h) “indicates that, as a matter of law, an agricultural operation complying with the NMA, AASL, and the RFL does not constitute an operation that has a direct adverse effect on the public health and safety.” Id. at 687 n.11.

With respect to the AASL, the Attorney General argued that the ordinance requirements for intensive agriculture unreasonably restrict farm structures and farm practices. Id. at 687. The court held that the ordinance “restricts the location of manure storage facilities, which are farm structures, by requiring a 1500-foot setback from other zoning districts and residences[, and] [t]he restriction is unreasonable when one considers that the maximum setback in the NMA regulations is 300 feet.” Id. The court further held that the ordinance “restricts composting, which is a farm practice, by prohibiting commercial composting and the exportation of compost

for use elsewhere[, and] [t]he restrictions are unreasonable considering that NMA regulations allow these practices.” Id. Finally, the court held that the ordinance restrictions are “not related to the public health or safety because, as a matter of law, an agricultural operation complying with the NMA is not a threat to the public health or safety.” Id.

The Attorney General contended the ordinance requirement for disposal of solid and liquid wastes on a daily in a manner to avoid a public nuisance violated the RTFA by defining or prohibiting normal agricultural practices as a nuisance. Id. at 688. The RTFA provides that: “[e]very municipality that defines or prohibits a public nuisance shall exclude from the definition of such nuisance any agricultural operation conducted in accordance with normal agricultural operations.” Id. Relying on the undisputed expert report of Gregory P. Martin, Ph.D., PAS, which established that daily disposal of wastes is not part of normal poultry operations, the court held the ordinance requirement violated the RTFA. Id.

The Attorney General contended that the DAL preempted the prohibition of commercial composting. Id. at 686. The court agreed and explained that under the DAL composting is a permissible method for the disposal of dead domestic animals and animal waste and there is no prohibition of commercial composting under the DAL. Id. The DAL contains an express preemption provision that precludes ordinances pertaining to the procedure for the disposal for dead domestic animals and animal waste; therefore, the court held that the DAL preempted the prohibition on commercial composting under the ordinance. Id.

#### **G. Commonwealth v. East Brunswick Township, No. 476 M.D. 2007**

The Attorney General commenced an action against East Brunswick Township by filing a Petition for Review to challenge an ordinance that attempted to regulate the application of biosolids to agricultural land. In a nutshell, the ordinance banned corporations from land applying biosolids and allowed persons to land apply only after obtaining a permit from the Township which required duplication of the DEP’s permitting requirements.

East Brunswick Township filed preliminary objections claiming that the township possesses the inalienable right to local self-government which is superior to State government and ACRE unconstitutionally infringes upon that right. The Commonwealth Court overruled this preliminary objection and explained that “‘local governments are creatures of the legislature from which they get their existence.’” Commonwealth v. East Brunswick Township, 956 A.2d 1100, 1107 (Pa. Cmwlth. 2008) (quoting Robert E. Woodside, Pennsylvania Constitutional Law 507 (1985)). The court held that “‘the General Assembly acted constitutionally when it restricted municipalities from adopting ‘unauthorized local ordinances’ that interfere with normal agricultural operations.’” Id. at 1008.

The Attorney General filed an Application for Summary Relief requesting judgment as a matter of law that the ordinance on its face was preempted by State law, including the Solid Waste Management Act (SWMA). The court explained that “[t]he threshold issue in any Act 38 [ACRE] case is what constitutes a ‘normal agricultural operation.’” Id. at 1114. The court opined that “‘the determination of what constitutes a ‘normal agricultural operation’ is an evidentiary, not a legal, determination.” Id. at 1115. The court held that in the absence of an

evidentiary record to make the factual finding that land applying biosolids is a normal agricultural operation, it must deny summary relief. Id. at 1116.

Meanwhile, East Brunswick Township repealed the anti-corporate biosolids ordinance and adopted a new ordinance to regulate the application of biosolids to agricultural land within the township. The new ordinance duplicated and exceeded the DEP's notice provisions, required bonding, testing fees, site inspections, and operational requirements that are not required by the DEP, and imposed its own enforcement scheme, which included criminal penalties. The Attorney General filed an Amended Petition for Review to challenge the new ordinance. East Brunswick Township filed preliminary objections in the nature of a demurrer.

In overruling the preliminary objections, the court analyzed key precedent on challenges to local ordinances that attempt to regulate the application of biosolids to agricultural land and explained that such ordinances "have not fared well under preemption challenges." Commonwealth v. East Brunswick Township, 980 A.2d 720, 730 (Pa. Cmwlth. 2009). The court discussed the reasoning and holdings in Liverpool Township v. Stephens, 900 A.2d 1030, 1037 (Pa. Cmwlth. 2006) and Synagro-WWT, Inc. v. Rush Township, 299 F. Supp. 2d 410, 420-21 (M.D. Pa. 2003). Id. at 731-33. The court concluded that "Liverpool Township and Synagro teach that a township cannot duplicate the regulatory regime established in the SWMA and cannot impose more stringent requirements than the SWMA." Id. at 733. The court also held that "[r]equirements that are redundant of or stricter than those in the SWMA are preempted." Id.

Based on its analyses, the court explained that:

The SWMA does not authorize the Township to set up its own sewage sludge police force to enforce the SWMA. The Township cannot establish a comprehensive scheme of sewage sludge regulation to replicate the one set forth in the SWMA and the Department's regulations at 25 Pa. Code, Chapter 271. As noted in Synagro, the Township has a remedy in Section 604 of the SWMA to enjoin violations of the SWMA. . . . The remedies provided by the legislature in the SWMA preclude other forms of "self-help" by the Township.

Id. at 734.

With respect to East Brunswick Township's ordinance, the court stated the "Township's signage, notification, testing fees and bonding requirements far exceed what is required in the Department's regulations, and, therefore, conflict with the SWMA." Id. at 732. The court concluded that the "Township did not have authority to adopt many, if not all, of the provisions of the 2008 Ordinance by reason of the SWMA." Id. at 730. The court held that the Attorney General stated a claim in each count of its amended petition for review and overruled the preliminary objections. Id. at 736.

Following the Commonwealth Court's decision, the Attorney General and East Brunswick Township agreed on amendments to the ordinance that, once enacted, resulted in a discontinuance of the ACRE lawsuit. This ordinance became the model ordinance that the Attorney General utilizes to resolve other ACRE reviews involving ordinances regulating the land application of biosolids.

#### **H. Commonwealth v. Packer Township, No. 432 M.D. 2009**

The Attorney General commenced an action against Packer Township by filing a Petition for Review to challenge an ordinance that attempted to regulate the application of biosolids to agricultural land. In a nutshell, the ordinance banned corporations from land applying biosolids and allowed persons to land apply only after obtaining a permit from the Township which required duplication of the DEP's permitting requirements. The ordinance was virtually identical to the first ordinance challenged in East Brunswick Township; however, Packer Township enacted an amendment to the ordinance to provide that the Attorney General did not have jurisdiction within the township to enforce ACRE.

Packer Township filed preliminary objections claiming that the Petition for Review should be dismissed because the ordinance "eliminates the authority of the Attorney General to enforce state laws in the Township." Commonwealth v. Packer Township, No. 432 M.D. 2009, 2010 WL 9519014, at \*1 (Pa. Cmwlth. Jan. 6, 2010). The Commonwealth Court overruled this preliminary objection and explained that "the Township does not have authority to annul the jurisdiction of the Attorney General." Id. at \*1.

The Attorney General filed an Application for Summary Relief requesting judgment as a matter of law that the ordinance on its face was preempted by State law, including the Solid Waste Management Act (SWMA). The Attorney General submitted an expert report to support a factual finding that land applying biosolids is a normal agricultural operation. In response, the township submitted a letter from a person employed with the Environmental Protection Agency that stated land application of biosolids was not a normal agricultural operation. The court denied the Application based on its determination that it would have to weigh the expert report submitted by the Attorney General against the letter submitted by the Township. Commonwealth v. Packer Township, No. 432 M.D. 2009, 2010 WL 9519038, at \*2 (Pa. Cmwlth. March 17, 2010).

Following discovery, Packer Township filed a Motion for Summary Judgment, which was denied in its entirety by the court in July 2012. In its motion, Packer Township asserted that it possessed the inalienable right to local self-government which is superior to State government and ACRE unconstitutionally infringes upon that right. The court rejected this argument based on its decision in Commonwealth v. East Brunswick Township, 956 A.2d 1100, 1107 (Pa. Cmwlth. 2008), *supra*, in which it held that "local governments are creatures of the legislature from which they get their existence." Commonwealth v. Packer Township, 49 A.3d 495, 499 (Pa. Cmwlth. 2012).

Packer Township also contended ACRE requires that the farm owner/operator requesting review of an ordinance must be affected by the ordinance in order for the Attorney General to bring an action to challenge the ordinance. Id. at 500-501. The Township argued that the specific farmer that requested review of the ordinance was not affected by the ordinance, thus the farmer's request could not serve as the basis for the Attorney General's action. Id. The court rejected this argument and held that "ACRE does not require an affected complainant as a prerequisite for the Attorney General to challenge an ordinance." Id. at 500. The court explained that ACRE "explicitly authorizes the Attorney General to bring an action against the local government unit to invalidate an unauthorized ordinance regardless of whether an owner/operator of a normal agricultural operation initiated an investigation of the ordinance." Id. at 501. Finally, the court opined that "[t]here is no requirement that the Attorney General must make a specific finding that an ordinance limits a particular farm operation as a threshold burden. Rather, the Attorney General may challenge an ordinance as unauthorized as applied to *any* normal agricultural operation within the Township." Id.

Finally, Packer Township claimed that the Attorney General could not challenge provisions of the ordinance that do not address land application of biosolids, such as the statement in the ordinance under section 7 of a community bill of rights. Id. The court rejected this argument and held that "[a]ll of the Ordinance provisions, including section 7, are part and parcel of the Township's overall regulation of the land application of biosolids," thus the entire ordinance is properly subject to challenge by the Attorney General. Id.

In August 2012, the court scheduled a trial for January 2013. On September 4, 2012, Packer Township repealed its biosolids ordinance. Both parties immediately filed applications with the Court to assess the status of the lawsuit following the ordinance rescission. On December 17, 2012, the Court held that the lawsuit was moot and dismissed for want of jurisdiction. Commonwealth v. Packer Township, 60 A.3d 189 (Pa. Cmwlth. 2012).

#### **I. Commonwealth v. Peach Bottom Township, No. 423 M.D. 2009**

The Attorney General commenced an action against Peach Bottom Township by filing a Petition for Review to challenge ordinance provisions regulating concentrated animal operations and concentrated animal feeding operations. During the pendency of the litigation, Peach Bottom Township enacted a few amendments to some sections of the zoning ordinance challenged by the Attorney General that resolved certain issues; however, those amendments did not resolve issues with several of the sections challenged by the Attorney General, namely sections 202.2 (requiring CAOs/CAFOs to be sited on low quality soil); 202.3 (requiring a farm to have a minimum of 50 acres); 336 (requirements for a special exception that exceed the NOMA); and 501 (definitions), thus the case continued to be litigated and the parties also continued to negotiate on proposed ordinance amendments to settle the action.

On February 4, 2013, Peach Bottom Township Board of Supervisors enacted substantive amendments to sections 202.2, 336, and 501 of the zoning ordinance that the Attorney General challenges in this action. The Attorney General determined that some of the legal problems from the prior version of the ordinance sections remained despite the amendments and the amendments also presented new legal problems by adding requirements that were not part of the original

ordinance. On March 15, 2013, the Attorney General filed an Amended Petition for Review to challenge the newly enacted zoning ordinance provisions. The Township filed an Answer to the Amended Petition for Review.

On April 1, 2013, following negotiations, the Township enacted an ordinance amendment that removed the requirement that a farm must have a minimum lot size of 50 acres, which resolved the Attorney General's challenge to that ordinance requirement. In September 2014, following negotiations, the Township enacted ordinance amendments to resolve the remaining legal problems with the ordinance. However, the Township inadvertently omitted one section of the ordinance from the amendment package, so the case was not entirely resolved by the amendments. In November 2014, the Township corrected this omission through enactment of another amendment to remove the remaining single ordinance section and the OAG withdrew the lawsuit in December 2014.

#### **IV. INFORMATIONAL RESOURCES FOR REGULATION OF AGRICULTURE IN PENNSYLVANIA**

A. The Pennsylvania Department of Agriculture (PDA)'s website: [www.agriculture.state.pa.us](http://www.agriculture.state.pa.us)

B. The State Conservation Commission (SCC) administers and enforces the Nutrient and Odor Management Act Program.

State Conservation Commission's website: [www.agriculture.state.pa.us](http://www.agriculture.state.pa.us) click on the "Commissions and Councils" link to get to a link for SCC web page.

C. The Department of Environmental Protection (DEP) regulates manure storage and land application for all farms that use or produce manure. DEP publishes the Manure Management Manual, which provides best management practices for agricultural operations. DEP administers and enforces regulation of Concentrated Animal Feeding Operations. DEP also administers and enforces the land application of biosolids and water withdrawal and use registration programs.

DEP's website: [www.depweb.state.pa.us](http://www.depweb.state.pa.us)

D. The United States Department of Agriculture's Natural Resource Conservation Service (NRCS) assists in the Pennsylvania Nutrient and Odor Management Act program, as well as other agricultural areas, including farm funding programs. NRCS maintains the Pennsylvania Technical Guide (PaTG) which provides technical information and engineering requirements for the conservation of soil, water, air, and related plant and animal resources that is specific to Pennsylvania. Compliance with the PaTG is part of the DEP's water quality regulations and SCC's nutrient management act regulations.

PA NRCS website: [www.pa.nrcs.usda.gov](http://www.pa.nrcs.usda.gov)

- E.** Pennsylvania Department of Conservation and Natural Resources (DCNR) regulates State parks and forests and it also provides guidance to owners of private forest land on best management practices for forestry and timber harvesting. DCNR has State Foresters that will consult with municipalities on forestry and timber harvesting issues.

DCNR website: [www.dcnr.state.pa.us](http://www.dcnr.state.pa.us)

- F.** Penn State Cooperative Extension is a branch of the Penn State University's College of Agricultural Sciences. The Cooperative Extension provides an educational network that gives people in Pennsylvania's 67 counties access to Penn State's resources and expertise. It is funded by the U.S. Department of Agriculture and state and county governments. Through this county-based partnership, Penn State Cooperative Extension agents, faculty, and local volunteers work together to share unbiased, research-based information with local residents and farmers.

PSU Cooperative Extension website: [extension.psu.edu](http://extension.psu.edu)

- G.** The Agricultural Law and Resource and Reference Center, Penn State University The Dickinson School of Law. The PSU Ag Law Center was created through legislation and a grant from the PDA. It provides information on various aspects of the law and how it relates to agriculture and the environment, including research papers, explanations of agricultural laws, news letters, articles, and links to other agriculture informational sites. The PSU Ag Law Center presents educational seminars on laws related to agriculture and works closely with the PSU Cooperative Extension network to provide outreach education, resources and information on law and regulatory topics.

PSU Ag Law Center website: [www.dsl.psu.edu/centers/aglaw.cfm](http://www.dsl.psu.edu/centers/aglaw.cfm)