



PennState Law

Center for Agricultural
and Shale Law





PennState Law



Penn State Center for Agricultural and Shale Law

Phone: (814) 865-4290

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PennState Law

Center for Agricultural
and Shale Law

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CENTER FOR AGRICULTURAL
AND SHALE LAW

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SEARCH...



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EVENTS

PUBLICATIONS

RESEARCH BY TOPIC

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MEDIATION

LEGAL CLINIC

Welcome to the Center for Agricultural and Shale Law

aglaw.psu.edu



Pennsylvania Agricultural Mediation Program

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



Contact us:

Jackie Schweichler, Program Coordinator
329 Innovation Blvd.

University Park, PA 16802

(814) 746-4619

AgMediation@PennStateLaw.psu.edu

Website: www.PAAgMediation.com



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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 aglaw.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 aglaw.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 aglaw.psu.edu

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



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CENTER FOR WATER QUALITY EXCELLENCE

CWQE

Making Progress Together

High Tunnels & Stormwater WORKSHOP AGENDA

March 10, 2022

1:55 – 2:20 pm ACRE Law

Brook Duer, Attorney – Penn State Center for Agriculture and Shale Law

- ACRE History
- AG Office: Code Audits and Helpful Resources
- Filing for Assistance





Before we talk about ACRE:

Rep. Zimmerman's HB 1486/Act 15 of 2018 (SWMA)

A high tunnel is **exempt from Stormwater Management Act**, if:

1. Impervious surface \leq 25% of all structures on site; **and**
2. (a) if \leq 7% slope - 35 ft from watercourse, public road, property line; **or**
(b) if $>$ 7% slope - 100 ft from watercourse, public road, property line; **or**
(c) SWMA - compliant buffer/diversion system d/n drain into watercourse.



Statutory/Legal Definition of High Tunnel

Act 15 of 2018 (SWMA)

1. used for production, processing, keeping, storing, sale or shelter of an agricultural commodity, or for the storage of agricultural equipment or supplies; **and**
2. (i) has a metal, wood or plastic frame; and (ii) when covered, has a plastic, woven textile or other flexible covering; and (iii) has a floor made of soil, crushed stone, matting, pavers or a floating concrete slab.

Same definition is used for the exemption to property taxes (as a “structure”) in Act 114 of 2013 and Act 130 of 2013.



Act 159 of 2014 (Uniform Construction Code)

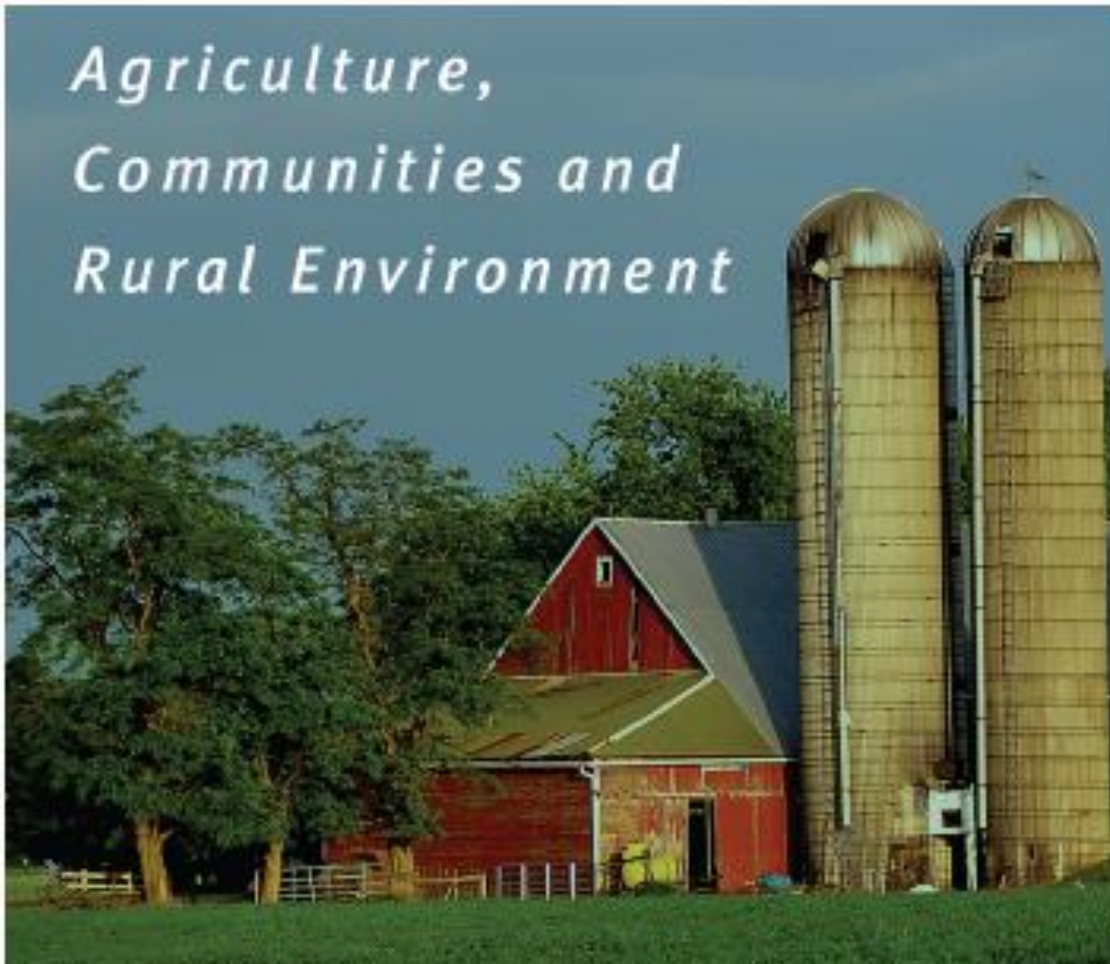
Exemption specifically amended to include high tunnels:

"Agricultural building." A structure utilized to store farm implements, hay, feed, grain or other agricultural or horticultural products or to house poultry, livestock or other farm animals, a milk house and ***a structure used to grow*** mushrooms, ***agricultural or horticultural products***. The term includes a carriage house owned and used by members of a recognized religious sect for the purposes of housing horses and storing buggies. The term shall not include habitable space or spaces in which agricultural products are processed, treated or packaged and shall not be construed to mean a place of occupancy by the general public.

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.



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.

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
February 2022	Upper Makefield Township	Steep Slopes; E&S; Storm Water Management; Restoration of Site	Ordinance	Complaint		Pending Review	
February 2022	Exeter Township	Open Air Burning; Intensive Agriculture	Ordinance	Complaint		Pending Review	
January 2022	Upper Makefield Township	AEUs, Stocking Rates, Intensive Agriculture, Agritainment	Ordinance	Complaint		Pending Review	
November 2021	Washington Township	Poultry; Storage; Fencing	Ordinance	Complaint	Township Response	Completed	Denied
November 2021	Ontelaunee Township	Livestock Guardian Dogs	Ordinance	Complaint		Pending Review	
November 2021	Upper Hanover Township	Dogs Barking on Property	Ordinance	Complaint	Township Response	Completed	Denied
October 2021	Upper Makefield Township	High Tunnels	Ordinance	Complaint	Township Response	Completed	Denied View Letter
October 2021	East Drumore Township	Landscaping Business		Complaint		Completed	Denied
October 2021	Upper Makefield Township	Equine Activities; Court Approved Settlement Agreement Between the Parties	Ordinance	Complaint	Township Response	Completed	Denied

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.

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*Agriculture,
Communities and
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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.

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.

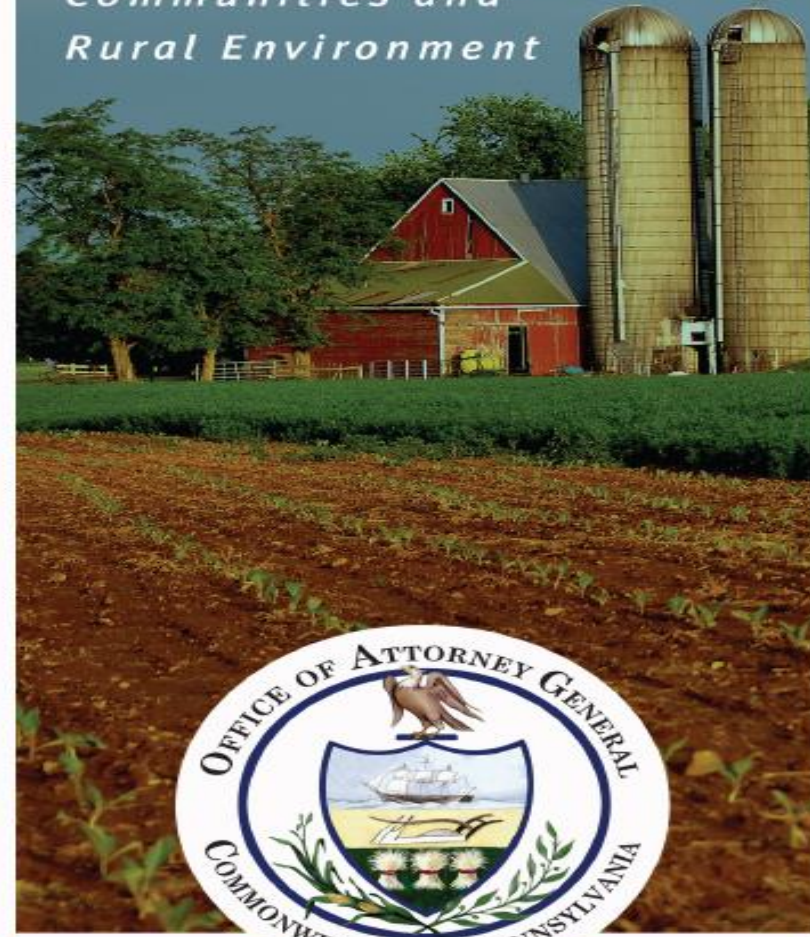
Peach Bottom Township: This lawsuit challenged ordinance provisions that regulate concentrated animal operations, including requiring animal housing buildings to be placed on low quality soils. The Attorney General approved ordinance amendments that were enacted by the Township to resolve and dismiss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



Agriculture, Communities, and Rural Environment Act (ACRE)

Pennsylvania Act 38 of 2005

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 to farming once sued.**
- 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.**
- **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.**
- **“A local government unit shall not adopt nor enforce an unauthorized local ordinance.” – 3 Pa. C.S.A. § 313(a).**



ACRE

Key Definitions

- **Local government unit**
- **Unauthorized local ordinance**
- **Normal agricultural operation**



ACRE

Local Government Unit

- Any political subdivision of the Commonwealth
- Primary application of ACRE is to townships



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

Also includes any ordinance that restricts or limits the ownership structure of a normal agricultural operation

- Foreign/out of state ownership?
- So-called “corporate farms”



ACRE

Normal Agricultural Operation

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



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 discuss ordinance 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.
- **Litigation in Commonwealth Court establishes statewide precedent.**



ACRE

Other Statutes Invoked

- **Municipalities Planning Code**
- **Nutrient and Odor Management Act**
- **State Conservation Commission's Regulatory Scheme**
- **Solid Waste Management Act**
- **Domestic Animal Law**
- **Air Pollution Control Act**
- **DEP regulation of Ag pursuant to Clean Streams Law and Storm Water Management Act**



THANK YOU!

Brook Duer

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CENTER MISSION AND BACKGROUND

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

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

