



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

March 31, 2020

Office of Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222

[REDACTED]

[REDACTED]

Re: ACRE Request for Review – Kidder Township, Carbon County

Dear [REDACTED] and [REDACTED]

[REDACTED] file an Agricultural Communities and Rural Environment (“ACRE”), 3 Pa.C.S. § 311, *et seq.*, request for review challenging the legality of certain provisions of Kidder Township’s timber harvesting ordinances. [REDACTED] and I exchanged several emails and he recently informed me that [REDACTED] has assumed responsibility for this matter.

The Office of the Attorney General (“OAG”) has a public ACRE website. Go to the OAG’s public website at <https://www.attorneygeneral.gov/>. Click on the “Resources” tab. You will see a link to the “Agricultural Communities and Rural Environment” website. Click on the ACRE link which will take you to the OAG’s ACRE Resource Center. Or you can go directly to the Resource Center by following this link. <https://www.attorneygeneral.gov/resources/acre/>. Therein you will see a list of the ACRE cases that have come into this Office along with what we call “Acceptance Letters.” If the OAG believes that certain ordinances violate ACRE we draft these Acceptance Letters explaining why the ordinances violate ACRE and what the municipality must do to remedy the situation. You will see that there are several timber harvesting cases listed with links to the Acceptance Letters.

The OAG has reviewed Kidder Township’s timber harvesting ordinances and found several provisions that violate ACRE. The OAG has addressed these same issues many times in previous timber harvesting cases. I offer the following list identifying the troublesome Kidder Township ordinances along with references to prior ACRE cases where the OAG has dealt with the same or similar issues:

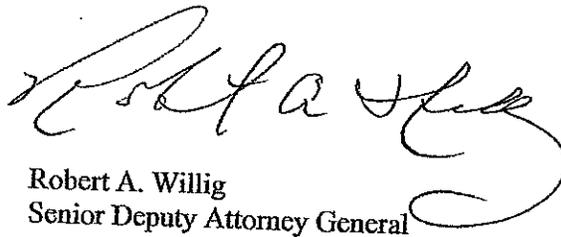
1. Section 106-5.B & F(3), *Erosion & Sedimentation (“E&S”) Plans must be reviewed and approved by the local conservation district or the township*: East Nantmeal (2016), pp. 6-7, 11; East Brandywine, pp. 5-6; North Coventry, pp. 4-5; Eldred, pp. 1-2; Clay, pp. 4-5;
2. [REDACTED] states that the Kidder requires that either landowners or loggers must pay approximately \$1,000-\$2,000 for the Township’s review of the timber harvesting permit application. Stone attached receipts claiming to show that the Township charged [REDACTED] close to \$1,400 in processing the timber harvest permit

application. If true, Kidder cannot impose these exorbitant review costs: E. Nantmeal, pp. 7 & 8; N. Coventry, p. 11; Lower Saucon, p. 3; Pennsbury, pp. 5-6; Lower Milford;

3. Section 106-3, *Definitions, Professional Forester*: E. Nantmeal, p. 4; N. Coventry, pp. 5-7;
4. Section 106-3, *Definitions, Select Cut*: E. Nantmeal, p. 5; Lower Saucon, pp. 7-8;
5. Section 106-5.C, *Regulations*: Most of these requirements are already included in the E&S Plan and are therefore duplicative of state law;
6. Section 106-5.F(2), *Clear Cutting*; E. Nantmeal, pp. 13-14; Monroeville, pp. 9-10; E. Brandywine, p. 5; N. Coventry, pp. 9-10; Lower Saucon, p. 8; Clay, pp. 5-6;
7. Section 106-5.F(11), *Harvesting near water sources*; E. Nantmeal, pp. 14-16, 18; Monroeville, p. 11; N. Coventry, pp. 10-11; Lower Saucon, pp. 3-4; Eldred, pp. 3-4;
8. Section 106.6.B(2), *Insurance requirements*; E. Nantmeal, p. 7; N. Coventry, p. 11; Lower Saucon, p. 6;
9. Section 106-10.A & B, *Penalties*; Kidder cannot imprison those who violate the ordinances; Monroeville, p. 9

In September, 2019, the Pennsylvania State University ("PSU") School of Agriculture published "*Forest Management and Timber Harvesting in Pennsylvania*." <https://extension.psu.edu/forest-management-and-timber-harvesting-in-pennsylvania>. That document contains, amongst other valuable general information for municipalities, a recommended model timber ordinance that Townships can enact which will be in compliance with the ACRE law. In light of the rather lengthy list of troublesome ordinance provisions noted above, it is my recommendation that Kidder Township repeal its current timber harvesting ordinances and pass the PSU model. If Kidder does that the OAG will consider this matter closed and will take no further action. Please let me know how you wish to proceed. Thank you for your assistance.

Sincerely,



Robert A. Willig
Senior Deputy Attorney General