



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

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*Re: ACRE Request for Review – Pocono Township, Monroe 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 Pocono Township’s timber harvesting ordinances. [REDACTED] and I exchanged several emails but I was unable to schedule a time for a conference call to discuss 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 Pocono 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 letter identifying the troublesome Pocono Township ordinances along with references to prior ACRE cases where the OAG has dealt with the same or similar issues.

In Section 470-58.A(7), **Forestry**, Pocono sets mandatory buffer zones and a required percentage of the basal area to remain when timber harvesting occurs close to streams. Moreover, Pocono Township mandates that a “wetland study [be] performed by an individual qualified to do so” prior to harvesting. The OAG has explained what a Township can and cannot do with respect to timber harvesting close to water sources. *See East Nantmeal Township*, pp.

14-16, 18; Borough of Monroeville, p. 11; North Coventry Township, pp. 10-11; Lower Saucon Township, pp. 3-4; and Eldred Township, pp. 3-4, Acceptance Letters. When one reads through those Acceptance Letters one sees that Pocono Township's ordinances concerning timber harvesting near streams conflicts with the state regulatory programs protecting "[a]ll surface waters, lakes, ponds, streams and wetlands in Pennsylvania." See Pennsylvania Department of Environmental Protection ("DEP"), *Timber Harvest Operations Field Guide for Waterways, Wetlands, and Erosion Control*, July 2009, p. 4.

Section 470-58.A(5), **Forestry**, prohibits logging on Sundays and holidays. Pocono cannot simply forbid agricultural activity for entire days under what the OAG presumes is some type of nuisance rationale. The OAG presumes that Pocono wants to maintain quiet on those days when many of its residents are at home. Yet by doing so the Township implicates the strict limitations on nuisance actions found in the Right to Farm Act ("RTFA"). 3 P.S. §§ 951, 954. Limiting logging to certain hours is permissible if those limitations are reasonable; as Pocono Township's ordinance is. But forbidding timber harvesting for entire days because such logging may be a "nuisance" to some is impermissible.

Pocono Township's 2017 Fee Schedule, XV, **Other Fees**, reads that a "Professional Escrow Account in the amount of \$1,000 shall be required to be deposited with the Township...Township incurred professional fees shall be billed in accordance with the attached professional fees schedule...When Professional Escrow Accounts get below ½ of the original monies, the [timber harvesting permit] applicant is required to replenish the account back to the original amount." Pocono cannot charge fees or escrows. See E. Nantmeal, pp. 7 & 8; N. Coventry, p. 11; Lower Saucon, p. 3; Pennsbury, pp. 5-6; and Lower Milford Acceptance Letters.

██████████ informs me that while it may not be in the ordinances Pocono Township requires that the Monroe County Conservation District must approve the Erosion & Sedimentation ("E&S") plan before the timber harvesting permit will be issued. If true, the Township cannot require such preapproval. See East Nantmeal (2016), pp. 6-7, 11; East Brandywine, pp. 5-6; North Coventry, pp. 4-5; Eldred, pp. 1-2; and Clay, pp. 4-5, Acceptance Letters.

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 several troublesome ordinance provisions noted above, it is my recommendation that Pocono Township repeal its current timber harvesting ordinances and pass the PSU model. Many municipalities across the Commonwealth have done that with good results. If Pocono enacts the PSU Model 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