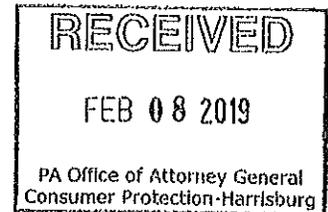


February 5, 2019



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

Dear Attorney General's office,

I am a farmer in Codorus Township in York County, PA. I have one hog building on my operation, and would like to be able to build a second hog building. That would make my operation a CAFO, as recognized by the federal CAFO regulations. According to Codorus Township's current Zoning Ordinance and specialty "Health Ordinance" what I would be required to do to meet the current requirements seems especially time consuming and expensive to accomplish. I also feel that some requirements may be overstepping their bounds, compared to current Pennsylvania agricultural environmental regulations. I am requesting an ACRE review for our township zoning ordinance and associated ordinances.

Ordinance No. 15-06, known as the Health Ordinance, has some items I would like reviewed. The introduction sets the tone for the Health Ordinance which only addresses CAFO operations. It states, *"Whereas, there are documented potential human health risks associated with Concentrated Animal Feeding Operations (CAFOs) including infections resulting from the potential transmission of airborne pathogens, health effects including asthma, bronchitis, and allergic reactions associated with exposure to air contaminants, and health effects associated with exposures to nitrates, drug residues, and other hazards that may be present in ground and/or surface waters contaminated by manure...."*

The ordinance specifically is addressed at CAFOs or CAO operations in the township. And while it provides definitions for CAOs, it only states that CAFOs have to obtain a Township Health Permit. A Township Health Permit is defined as *"Written authorization issued by the Codorus Township Board of Supervisors to construct, modify or operate a CAFO. Permits are effective for a five-year period before having to be renewed. Renewal applications must be submitted to the Township at least 180 days prior to expiration of the permit."*

Please refer to Section 2, which defines four different Classes of CAFOs.

Section 3 lists the rules that are applicable to all CAFOs.

Section 3.1 says that *"Codorus Township shall have the right to contract with outside engineers or other qualified parties to conduct inspections of proposed and permitted CAFOs as needed to ensure ongoing compliance with this Ordinance, with not less than one inspection performed on each facility annually. Inspection reports shall be generated and provided to the Codorus Township Board of Supervisors and posted on the Township's website."* I thought that the statewide Nutrient Management Act provides authority for inspections and enforcement of any issues, not the Township. Also, if a farmer has to follow the Conservation District procedures and the State Conservation Commission regulations, but is also charged to have the Township use their own engineer, that is a heavy burden on farmers financially. Our Nutrient Management Plans are considered public record, but is an inspection report considered public record and therefore able to be published on the website?

Section 3.1.1 says that the ... *"Township may designate a health inspector to enter and inspect at reasonable times...any places or conditions whatsoever within the jurisdiction of the Township for the purpose of enforcing the health laws, rules and regulations of the Commonwealth and this Ordinance, and for the purpose of examining for, and abating nuisances detrimental to the public health."* What legal standing is this based upon? It seems like it is arbitrary and open to wide interpretation. Who or what entity is qualified to do these types of inspections?

Section 3.2 states, *"The permittee shall provide adequate provisions for the control of airborne pathogens as determined by the Board of Supervisors."* What qualifies the Board of Supervisors to determine what is acceptable and reasonable for the control? What is their expertise?

Section 4 establishes spacing or distance requirements for how close CAFOs are allowed to be placed. What is this based on? Industry standards don't dictate placement, as far as I know, so why does a township have authority to dictate how close farms should be able to locate? Farm locations and property boundaries don't work out neatly, conveniently or fairly like this. As the Ordinance states, *"No Class I CAFO shall be located within 2 miles of any Class I or Class II or within 1 mile of any Class III or Class IV CAFOs. No Class II CAFO shall be located within 2 miles of any Class I CAFO, within 1 ¼ miles of any Class II CAFO or within 1 mile of any Class III or Class IV CAFO. No Class III CAFO will be located within 1 mile of any Class I or Class II CAFO or within ½ mile of any Class III or Class IV CAFO. No Class IV CAFO will be located within 1 mile of a Class I, II CAFO or within ½ mile of any Class III or IV CAFO. This distance shall be measured from the nearest point of one CAFO's confinement or waste containment system to the nearest point of another CAFO's confinement or waste containment system."* Please tell me this cannot be regulated like this!

Section 7.2 establishes administrative fees that CAFOs are required to pay to the Township. It states, *"The original application fee amount shall not exceed the amount needed to recover the cost of any annual inspections, investigation and review of the proposed application, which fee amounts are based upon the anticipated costs of review, inspection and investigation by Codorus Township and which fee amounts have also taken into consideration the need for special investigative services, including geologic inspections, hydrologic inspections, groundwater monitoring, soils evaluation, and other unique costs of a scientific or technical nature associated with the processing of the application. Fees are as follows:*

<i>Class I</i>	<i>\$10,000</i>
<i>Class II</i>	<i>\$2,000</i>
<i>Class III</i>	<i>\$1,500</i>
<i>Class IV</i>	<i>\$1,000</i>

This seems to be saying that CAFOs are required to do additional requirements well above and beyond what the statewide Nutrient Management Act or the federal CAFO rules require. These fees seem to be designed to discourage a farmer from considering a CAFO.

Section 7.3 gives more concerning details. Please look into that.

Section 7.5 states that *"The five-year renewal fee for all Classes or CAFOs shall be \$1000 to be paid at the time the application for renewal permit is submitted..."*

Section 11 addresses violations and penalties. *"Enforcement of the provisions, and violations thereof shall be by an action brought before the district justice in the same manner provided for the enforcement of summary*

*offenses under the PA Rules of Criminal Procedure.*" So a farmer who operates a CAFO is potentially considered a criminal?

There is also a Codorus Township regular Zoning Ordinance that I would like to have reviewed by the Attorney General's ACRE program.

Section 302 of the Zoning Ordinance lists definitions.

*Agriculture* is defined as the production and preparation for market of crops, livestock.... and ends the definition by stating, *"This definition specifically excludes concentrated animal feeding operations which are separately defined."*

CAFOs are defined using numbers of

*700 mature dairy cows*

*1000 veal calves*

*1000 cattle other than mature dairy or veal;*

*2500 swine, 55lbs or more*

*10,000 swine, 54 lbs or less*

*500 horses.....*

*ETC.*

*Large Livestock Operation* is defined as, *"A concentration on contiguous lands owned by the same owner or owners of over 20,000 chickens, 5,000 turkeys, 500 hogs or 200 head of cattle or other animals weighing in excess of 300 pounds."* This seems to be creating a separate definition of livestock or poultry operations that isn't consistent with or recognized by the Nutrient Management Act or federal CAFO regulations.

Section 607.c.2 states, *"That a registered professional engineer employed by the Township or by a Commonwealth agency has certified that all driveways, buildings, animal concentration areas, manure storage facilities, carcass storage facilities, carcass compost facilities and other associated buildings and structures which have been permitted have been constructed in accordance with the plan submitted to the Township and in accordance with all applicable federal, state and local laws and regulations including, but not limited to...."* seems to asking for more engineer certifications (and I'm sure the farmer is expected to pay) above what the regulations require.

Section 607.c.6 says, *"Any use certificate shall be specifically conditioned upon continued compliance with all the requirements of this section (607) and all other relevant provisions of this Ordinance and with all the requirements of 25 Pa. Code, Chapters 83 and 91, with the implementation of all provisions of the proposed Odor Management Plan and with the representations set forth in this application."* Does this mean they can revoke the Use Certificate or shut down the operation or fine it for non-compliance after it is built?

Section 633 addresses Agricultural Commodity Sales. 633.3 says that for an operator of a CSA, Farm Market or a Roadside Stand, *"The operator, unless all sales are of agricultural commodities grown or produced on land farmed by the operator of the sales facility, must demonstrate that he has in place an accounting system that will enable him to segregate and keep accurate records of sales of agricultural commodities grown or produced on land farmed by the operator, sales of agricultural commodities not grown or produced on land farmed by the operator and sales of items other than agricultural commodities, and shall on or before February 1 of each year, provide records to the township zoning officer sufficient to establish compliance with subsections 1 and 2 of this section."* This seems like the Township is trying to micromanage the business plan of what is often a fairly minor source or supplemental income, and requirements like this would completely discourage any farm

operation from doing this type of enterprise. This also seems like the IRS would have the right to ask for these details, but hopefully not the Township.

Likewise, in Section 634 regarding Farm Processing Establishments, the Township is requiring an accounting system to differentiate the value of products grown/produced on the farmer's ground, and the value of products grown/produced elsewhere, and submit the records to the Township by Feb 1 of each year. Again, this will completely discourage anyone from having this type of business operation.

Section 649 is entitled Environmental Regulations.

649.a addresses Noise. It does say that agricultural operations are exempt where the operation exceeds the maximum allowable sound level if it is temporary or seasonal in nature. But who is responsible and qualified for proving the noise level with the "octave bank analyzer" if a farmer is accused of making too much noise? Who pays for it? And does the PA Right to Farm Act protect farmers from noise generated that isn't "temporary or seasonal in nature"?

649.e.1 addresses Pollution; Odors and Fumes. *"No person, partnership, corporation or association may cause or permit on land owned by him, the emission into the outdoor atmosphere or any malodorous, hazardous, or non-permitted air contaminants from any source in such manner that the odors are detectable outside of the property of the person on whose land the source is being operation."* I don't see any place related to this Section that says agricultural operations are exempt. I am concerned that a person taking this literally would say that odors associated with normal agricultural operations or the land application of manure are subject to this regulation.

649.e.2 discusses Dust and Particulate Matter. Similar to above, it says, *"No person, partnership, corporation or association may cause or permit on land owned by him, the emission into the outdoor atmosphere of any particulate air contaminants from any source in such manner that the particulates are detectable by human senses outside of the property of the person on whose land the source is being operated."* I don't see any specific reference that normal agricultural operations are exempt from this. I am concerned that this could be interpreted to include dust arising from normal harvesting of crops, spreading of fertilizers, or tilling of soils.

649.f addresses Fly Control. *"Any operation in any zoning district must assure such operation will not allow flies to leave the premises or traverse boundary lines to the extent that they become a public nuisance as defined in this Ordinance. In the event that Codorus Township or other government entity finds that the proliferation of flies emanating from an established operation is affecting the health/welfare of people, the operators will be required to implement a fly control plan. Any special exception granted by the Zoning Hearing Board shall be specifically conditioned upon the successful implementation of the fly control plan and shall be revoked if the proposed fly control plan is not implemented and in operation at the time of the commencement of the new operation. In the event any fly control program proves unsuccessful in controlling the fly population, the applicant will be required to implement additional measures acceptable to the Township to enable the required control to occur."* The only entity that really has any regulation over flies is the Food and Drug Administration (FDA) and it only addresses Egg Laying operations. Who at the Township is knowledgeable about what is adequate to control flies, around an agricultural operation or any other kind of business? Penn State Extension would potentially be able to assist, and would most likely have more technical knowledge of what is reasonable, adequate and effective for fly control measures. But, no one entity really has authority or jurisdiction over flies.

Section 1007 of the Zoning Ordinance provides the guidelines for Special Exception Applications, which is what a CAFO would require in Codorus Township. A traffic study and a water feasibility study are requirements. These types of studies are typically a huge expense without much benefit to the township. I was under the impression that the PA Water Resources Planning Act (Act 220) has the authority to regulate water usage, and I'm interested in knowing if the requirement of a hydrologic study would fall under the state's authority, or a municipal authority.

I appreciate your consideration of my request to review the Codorus Township Zoning Ordinance and the Health Ordinance. Please contact me if you would like additional information about my farming operation.

Sincerely,

[REDACTED]  
[REDACTED]  
Codorus Township, York County, Pennsylvania  
[REDACTED]