

Thanks for your time to explain your assistance at the AGs office. We are submitting information to you at the request of [REDACTED] for another opinion regarding the validity of the township's ordinance in consideration of Act 15. [REDACTED] is one of our customers at the [REDACTED] who asked for assistance with his high tunnel project. He has submitted to the township applications for 5 building permits one for each of the proposed high tunnels on his property. I believed based on Act 15 that he would be exempt from a formal stormwater management plan and design. He received a denial letter from the township (attached). We will be working with this land owner to resubmit his building permit applications along with a stormwater management plan to satisfy the township's request for approvals. Please find attached an introduction to the [REDACTED]. As discussed would like to get your input on ordinances in Lower Chanceford Township related to requirements with respect to stormwater management and the size of each of the high tunnels permitted per Act 15 (HB 1486) see attached information. My interpretation of Act 15 is that if all siting requirements are met then the 25% of the total impervious area of the existing structures on the property defines the size of a high tunnel that can be installed on the property. It should not limit him to only one high tunnel but guide the size of the high tunnel.

Under separate cover, our office will be sending you the township ordinances. We will include a short project description and provide a sketch plan of the property with the high tunnel locations. I have included another letter from a consultant that tried to help [REDACTED] previously in 2018 with his high tunnel approvals. I agree with [REDACTED] interpretation of the law.

Additionally, per the recent township rejection letter - the township is not allowing the barn on the property to be included as one of the existing structures as they claim there is no building permit for this structure. [REDACTED]

[REDACTED] the property with the barn on the property so I would like to understand if a township can exclude structures when calculating the permitted size or area of a high tunnel based on previous ownership and building permits. Seem conflated to me.

Once you have a chance to review the Act and local ordinances and our information provided please let me know if you have any questions. I am assuming that you would coordinate back with me as representative for [REDACTED], prior to any discussion with the township. The township is aware that we are providing support to resubmit and will be doing a stormwater management plan (even though we believe he should be exempt).

[REDACTED]

Thanks and have a good weekend.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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****LOWER CHANCEFORD TOWNSHIP****

4120 Delta Road
Airville, PA 17302

Phone 717-862-3589

Fax 717-862-3227

December 22, 2021

Dear [REDACTED]

This is to advise you that your application to install four(4) 28' X 100' high tunnels and one (1) 30' X 100' high tunnel is hereby rejected because of failure to propose measures to achieve compliance with the Lower Chanceford Township Storm Water Management Ordinance.


Section 4(A) of the Building Permit Ordinance of Lower Chanceford Township provides as follows:

"Proper surface draining of the land is provided. If the permit is to construct a building or structure pursuant to an approved subdivision or land development plan showing storm water management facilities, the Zoning Officer must ensure that the stormwater management facilities proposed by such subdivision or land development plan are in fact installed. If proposed stormwater management plan, the applicant must prepare such stormwater management plans and install such facilities as are necessary to achieve compliance with the "Lower Chanceford Township Stormwater Management Ordinance".

Your application does not include storm water management plans sufficient to achieve compliance with the Lower Chanceford Township Storm Water Management Ordinance.

Your application is not exempt from the provisions of the township Storm Water Management Ordinance by reason of House Bill No. 1486, Session of 2017 which provisions have been incorporated into the Lower Chanceford Township Storm Water Management Ordinance by an amendment to that ordinance dated July 3, 2018. Both the Act and the township ordinance assert that a "high tunnel" shall be exempt from all provisions of this ordinance provided:

1. The high tunnel and its flooring do not result in impervious area exceeding twenty-five (25%) percent of the area (footprint) of all structures located on the owner's total contiguous land area and the high tunnel meets certain additional criteria.


December 21, 2021

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In the instant case, the total footprint of all structures located on your property as of the date of application was 12,781.56 square feet of which 8,870 square feet are permitted. The rest are in violation because they do not have permits. Accepting the total footprint of 12,781.56, twenty-five (25%) per cent of that footprint is 3,195.39 square feet. The total high tunnels which you wish to install are 14,200 square feet, far more than the permitted 3,195.39 square feet.

In addition to the exemption provided under the amendment dated October 2, 2018, the ordinance provides for other exemptions as set forth in Section 302 of the ordinance. Proposals which create impervious areas on the project site of less than or equal to 1,000 square feet are exempted activities which create impervious areas of less than 5,000 square feet are exempt from storm water management site plan preparation requirements subject to certain limitations as set forth in Section 302(C) of the ordinance. Suffice it to say, your proposal is to create impervious area substantially in excess of 5,000 square feet, which requires that you achieve compliance with the storm water management planning requirements set forth in the ordinance.

You have not submitted any proposals for achieving compliance with the Storm Water Management Ordinance and therefore your application must necessarily be rejected.

Very truly yours,



[REDACTED]

February 11, 2018

[REDACTED]

DRAFT

Lower Chanceford Township
Board of Supervisors and Chanceford Township Planning Commission

[REDACTED]
Lower Chanceford Township Secretary
Lower Chanceford Municipal Office
4120 Delta Road
Airville, PA 17302

RE: [REDACTED]

[REDACTED]
High Tunnel Installation.

PROJECT NO.: [REDACTED]

Dear [REDACTED]

We have been asked by [REDACTED] to assess the need for Township approvals in order for him to install four high tunnel seasonal greenhouses (each greenhouse may not exceed 3,343 sf in size) on his farm situated at [REDACTED] within Lower Chanceford Township. In order to access this situation, I have reviewed both the Lower Chanceford Township Stormwater Management Ordinance adopted October 7, 2014 and last amended April 7, 2015, as well as PA House Bill No. 1486 which exempts "high tunnel" greenhouses from requirements of the Stormwater Management Act (Act 167 of 1978) as long as certain criteria are met.

We are requesting, on [REDACTED] behalf, that the Township, through their staff, engineer, Planning Commission and/or Board of Supervisors, determine whether the Township agrees with our assessment of the situation as it relates to what approvals, if any, [REDACTED] must secure from Lower Chanceford Township in order to construct high tunnel greenhouses on his subject at [REDACTED]

There is no question that the Township's Stormwater Ordinance does indeed exclude construction of new buildings or impervious areas as an "agricultural activity" which is specifically exempt from stormwater management planning as required by the Ordinance. Furthermore, it is clear that any new impervious coverage in excess of 250 sf requires the approval of a Stormwater Management Plan by the Township. Regulated activities which are not exempt due to the above, but have less than 5,000 sf of new impervious coverage are exempt from the stormwater management site plan requirements of the Township's Ordinance, if the subject tract is more than 10 acres in size and the location of any new impervious coverage and all related grading is at least 100 feet from adjacent properties on the downhill side, and provided the activity will not cause erosion nor adversely affect downstream property owners. If an activity involving less than 5,000 sf of new impervious coverage is not eligible for this exemption, a Simplified Stormwater Management Plan per Section 401.F is required.

[REDACTED]

Any regulated activities involving in excess of 5,000 sf of new impervious cover will require a full Stormwater Management Plan submission and subsequent approval per all applicable Ordinance provisions.

Having said all this, House Bill No. 1486 (the Bill), dated October 17, 2017, which took effect 60 days after enactment (December 17, 2017), exempts "high tunnel" greenhouses from the requirements of the PA Stormwater Management Act (Act 167 of 1978). The Bill further states that *"a municipality that has adopted a watershed storm water plan or enacted a local ordinance or regulation that regulates high tunnels prior to the Bill's effective date (December 17, 2017) shall amend the plan, ordinance or regulation to be in compliance with House Bill No. 1486 (the Bill)."*

The Bill has several criteria which must be met, which if met qualifies the proposed high tunnel as being exempt from the need for Stormwater Management Plan approvals. The first criteria of immediate concern is the definition of high tunnel. The Bill defines "high tunnel" as *"a structure which is used for the production, processing, keeping, storing, sale or shelter of any agricultural commodity as defined in the PA Farmland and Forest Land Assessment Act of 1974, or for the storage of agricultural equipment or supplies."* The high tunnel must be consistent with the following: *"has a wood, metal or plastic frame; when covered has a plastic, woven or textile or other flexible covering; has a floor made of soil, crusted stone, matting, pavers or a floating concrete slab."*

Assuming [REDACTED] high tunnels meet the above definition, and he believes they do, there are a few other criteria he must meet in order for his high tunnels to qualify for the Stormwater Management Plan exemption permitted by House Bill No. 1486.

The Bill specifically states that "A" high tunnel shall be exempted if "the" high tunnel or its flooring does not result in an impervious area exceeding 25% of all structures located on the owner's total contiguous land area. [REDACTED] has computed his existing impervious structure coverage to be as follows:

Structures Only:

| | |
|-------------|-----------------|
| Barn | 8,880 sf |
| Lean To | 300 sf |
| Trailer | 924 sf |
| Garage/Shop | 600 sf |
| Steer Shed | 450 sf |
| New House* | <u>2,220 sf</u> |
| Total: | 13,374 sf |

*House was properly permitted according to [REDACTED]

Our interpretation of the Bill is that [REDACTED] is exempt from Stormwater Management Plan approvals if he proposes any number of qualifying high tunnel greenhouses as long as each high tunnel does not exceed 25% of all "structures" (the Bill does not require a date at which time the existing structure area is to be computed). [REDACTED] appears to be eligible for an exemption as long as the total area of each high tunnel greenhouse he proposes does not exceed 3,343 sf. I personally spoke with Representative [REDACTED] who co-authored the Bill, and he confirmed that there is no limit to the number of high tunnel greenhouses eligible for stormwater management exemption as long as each does not exceed 25% of the existing structure square footage which currently exists on the subject farm, and all other applicable criteria in the Bill are satisfied. Representative [REDACTED] further stated that, if a municipality disagrees with this interpretation, that we are to ask the municipality to contact his office and/or his legal team directly to get clarification on the intended interpretation of the Bill (Law).

In order for the high tunnel greenhouses to be eligible for the exemption, one of the following criteria must also be met:

- 1) The high tunnel is located at least 100 feet from a perennial stream or watercourse, public road or neighboring property line

"or"

- 2) The high tunnel is located at least 35 feet from any perennial stream or watercourse, public road or neighboring property line and located on land with a slope no greater than 7%

"or"

- 3) The high tunnel is supported with a buffer or diversion system that does not directly drain into a stream or watercourse by managing stormwater runoff in a manner consistent with requirements of this act (meaning Act 167 of 1978).

Our conclusion, based upon our interpretation of House Bill No. 1486, and our phone conversation with Representative [REDACTED] is that as long as no single proposed high tunnel greenhouse exceeds 3,343 sf, [REDACTED] can propose multiple high tunnel greenhouses and is exempted from the provisions of Act 167 and all municipal ordinance regulations relating to such. For example, [REDACTED] proposal to construct four 3,000 sf high tunnel greenhouses totaling 12,000 sf is exempt from Act 167 stormwater management criteria as long as all House Bill No. 1486 criteria are satisfied.

[REDACTED] would appreciate written acknowledgment that you concur with our conclusions on his behalf, at your earliest possible convenience, so that he can make appropriate plans for the early spring planting season.

Sincerely,

[REDACTED]
[REDACTED]

BY:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

cc:

[REDACTED]

[REDACTED]

DESCRIPTION OF THE PROPOSED PROJECT

[REDACTED]

[REDACTED]

The following describes the proposed project with respect to the property for enhancing agricultural productivity on the farm:

- Five temporary high tunnel structures (28' x 100' (4) and 30' x 100' (1) will be erected on the property (see site plan for location).
- All high tunnel structures will be used for growing tomatoes and other specialty crops.
- High tunnel structures are temporary and will be rotated once every other year to allow for planned crop rotation.
- Tunnels will be spaced at approximately 28 feet apart to allow for high tunnel frames to be rotated on a regular basis.
- Cover cropping will be implemented to improve soil health.
- High tunnels will be placed in areas that are less than a 7% slope and are at a minimum 100 feet from any stream, watercourse, public road or neighboring property line.
- No site grading will take place for the installation of the high tunnels.
- Soil disturbance associated with the installation of the high tunnel will be limited to a very small area at each of the corner anchor points. A hand auger is used to dig down at the corners of the structure to secure an anchor.
- Vegetative filter strips will be maintained along the perimeter of the high tunnels to help filter and infiltrate stormwater runoff from the canopy.

Farm Site Map



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|--|--|---|--|--|
| | | <p>Map Name: [Redacted] Prepared For: [Redacted] Property Address: [Redacted] Date Published: 12/1/2021</p> | | |
|--|--|---|--|--|