

[REDACTED]

From: [REDACTED]
Sent: Monday, August 28, 2023 6:26 PM
To: [REDACTED]
Subject: [EXTERNAL] Letter regarding Greene Township, Clinton County

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Dear [REDACTED]

Attached, please find a copy of a letter that I sent to your office the end of February regarding Greene Townships Stormwater and Zoning Ordinance. Our township residents are under seige in regards to our farming operations. I do not know what happened to that letter, but apparently the mail system ate it, which we are used to. I understand that you are coming to speak at a meeting at the Charter School at the request of the Clinton County Conservation District on September 14th. I thought this email was sent 3 weeks ago and It unfortunately was not sent.

I had contacted the PA Farm Bureau and their [REDACTED] looked the letter over and had helped me with organizing it better. They are very interested in the outcome and are very concerned at the overreach of our township supervisors, which is being pushed by the township engineer who is incorrigible and not looking out for the taxpayers at all.

Please email me back to met me know that you received this email. Thank you very much for your time and attention to this matter.

[REDACTED]

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[REDACTED]

February 27, 2023

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

RE: Greene Township (Clinton County) ordinances

Attorney General ACRE staff,

We are writing to request an investigation of the Greene Township (Clinton County) Stormwater and Zoning ordinances. We believe these ordinances contain provisions that unduly burden farmers and violate the ACRE law.

We'll begin with the Greene Township's storm-water ordinance.

- (1) Article 2, Section 1.1.2 page II-2: States, "the following activities may be exempt from the plan preparation and submission provisions of this Ordinance, but shall remain subject to the minimum design standards and criteria specified in this Ordinance (and any erosion and sediment pollution control requirements): 1.1.2 Agricultural Activity, when operated in accordance with an approved conservation plan, or erosion and sediment pollution control plan. There's no "may be exempt" about it. Agricultural Activity requiring a conservation plan or agriculture erosion and sediment plan (growing of crops and tillage) is exempt from local regulation. Therefore, we contend this also violates the PA ACRE law.
- (2) Article 2, Section 1.1.5, page II-3: This section addresses timber harvests. Written E & S Plans are required for Timber harvesting that disturbs 5,000 Square feet or more, but as noted by Penn State's Forest Management and Timber Harvesting Guidelines, which includes the model forestry ordinance often cited by this office, DEP is responsible for enforcing these regulations and townships are discouraged from duplicating or exceeding these standards. See also, ACRE Acceptance letter, 12/21/18, East Brandywine Township, Chester County at 2-3; ACRE Acceptance Letter, 2/20/18, Pennsbury Township, Chester County at 2-3,6. By requiring an assessment of factors beyond or the same as those assessed in establishing a written E & S Plan, we contend that the local ordinance is in violation of ACRE. As the current Greene Township storm-water ordinance is written, any timber harvest over 5,000 square feet would need to submit a sketch plan showing the location, extent, and description of the proposed forest

management/timber operations to the Municipality for review, and for a determination regarding the requirement to prepare and submit a Stormwater Management Plan in accordance with this Ordinance. And, it goes on to say that, "In making a determination regarding the requirement to prepare and submit a Stormwater Management Plan in accordance with this Ordinance, the Municipality will consider, at a minimum, the following factors: proximity of forest management/timber operations to adjacent developed properties and roadways, the type of operations (clear cut versus select cut)..." Timber harvests are not governed for stormwater or permits at 5,000 square feet and nothing in State law requires small (under 25 acres) timber harvests to be evaluated based upon the proximity of forest management/timber operations to adjacent developed properties and roadways, the type of operations (clear cut versus select cut). We contend this also is a direct violation of the ACRE law.

Next, let us look at Greene Township's Zoning Ordinance:

- (1) The Greene Township ordinance defines as CAFO and a CAO (Section 1.03 Definitions – page 9) as follows:

CONCENTRATED ANIMAL FEEDING OPERATION (CAFO) – Agricultural operations where the animal density exceeds two (2) animal equivalent units (AEU) per acre on an annualized basis.

CONCENTRATED ANIMAL OPERATIONS (CAO) – Agricultural operations where the animal density does not exceed 1000 lbs. (one thousand pounds) per acre, but the operation meets the minimum nutrient management requirements established by the Clinton County Soil Conservation District.

Greene Township's definition are wrong and, as written, they would subject agricultural operations that are too small to be regulated under the Nutrient and Order Management Act (NOMA) and its provisions and, therefore, conflicts with, and is more stringent than the NOMA.

Here are the correct definitions for CAFOs and CAOs

A Concentrated Animal Feeding Operation (CAFO) is an agricultural operation that meets one or more of the following criteria:

- 1.The operation is considered a Concentrated Animal Operation (CAO) with greater than 300 Animal Equivalent Units (AEUs); or
- 2.The operation maintains an animal population of greater than 1,000 AEUs; or
- 3.The operation is defined as a large CAFO under U.S. Environmental Protection Agency (EPA) regulations at 40 CFR 122.23(b)(4).

A Concentrated Animal Operation (CAO) is defined in the State Conservation Commission's (SCC's) Chapter 83 regulations as an agricultural operation with eight or more AEUs where the animal density exceeds two AEUs (2,000 pounds) per acre on an annualized basis.

Under Pennsylvania law, all animal agricultural operations are regulated and defined to fall into one of the three following categories:

- Animal agricultural operations too small to be a CAO/CAFO which are subject to the Clean Streams Law regulatory scheme. See 25 Pa. Code § 91.36.
- Concentrated animal operations (CAO), which are subject to the Nutrient and Odor Management Act and the Clean Streams Law regulatory schemes. See 25 Pa. Code §§ 83.201, .701, and 91.36.
- Concentrated animal feeding operations (CAFO), which are subject to the Nutrient and Odor Management Act and the Clean Streams Law regulatory schemes. See 25 Pa. Code §§ 83.201, .701, 91.36, and 92a.1.

(2) Additionally, Greene Township zoning ordinance, Article II, A- Agriculture, section 2.03, number 2, letter B makes CAFO and CAO "conditional uses" and appears to establish requirements for animal operations that require a conditional use and seems to impose a 15 minimum acreage requirement for CAOs and CAFOs. Animal production operations, including CAOs/CAFOs, are types of agricultural production that are recognized by the State as normal agricultural operations (NAO) as defined under the RTFA, 3 P.S. § 952. Our contention is the Township lacks authority to establish minimum acreage amounts for agricultural operations that conflict with State Law. To be sure, the Township is within its authority to require a conditional use or special exception for a CAO/CAFO. However, the conditions imposed to obtain that approval cannot conflict with or exceed State law, 53 P.S. § 10603(b). This office has previously remarked that minimum lot sizes that are greater than those required under the state's right to farm law minimums (10 acres or less if income levels are met) are in violation of ACRE. See ACRE Acceptance Letter 11/9/16, Cumberland Township, Adams County, at paragraph IV (C).

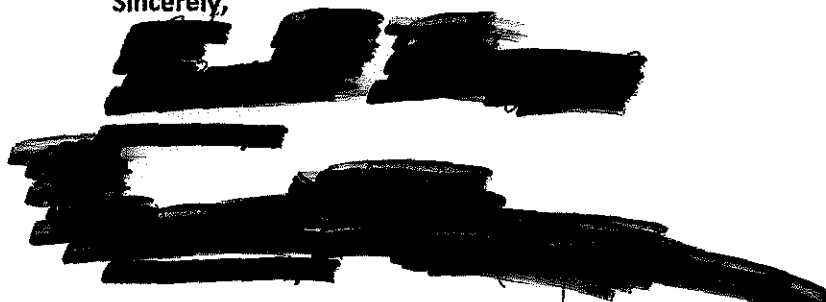
(3) Greene Township is requiring zoning permits be acquired for small manure storage tanks. They are citing Section 11.02.1.A. (page 115) "A permit shall be required prior to the opening of a business or the change of ownership of a business, a change in use of land or buildings, or the erection, construction or enlargement of any building, structure or any portion thereof."

The State Conservation Commission (SCC), pursuant to its authority under the Nutrient and Odor Management Act (NOMA), 3. P.S. § 501 et seq., and accompanying regulations, 25 Pa. Code§ 83.201, et seq., comprehensively regulates nutrient and odor management on CAOs and CAFOs. The SCC's regulations impose 100-to-300-foot setbacks from property lines and water sources depending on site-specific conditions. 25 Pa. Code§ 83.351. However, these setbacks apply to only CAOs and CAFOs. They do not apply to smaller operations or smaller holding tanks.

Animal operations that are too small to be a CAO or CAFO are not subject to any such setbacks – not even setbacks from streams or wells. These smaller operations are only subject to DEP regulations which require that manure storage facilities be designed, constructed, operated, and maintained to ensure that the facility is structurally sound, water-tight, and located and sized properly to prevent pollution of surface and groundwater for events up to at least a 25-year/24-hour storm. 25 Pa. Code § 91.36(a)(I). Pursuant to Section 91.36, these requirements are met if the design and construction of the manure storage facility is certified by a registered professional engineer as meeting the USDA Natural Resources Conservation Service's (NRCS) engineering conservation practice standards contained in the Pennsylvania Technical Guide. Any setbacks from roads or property boundaries or buildings established by Greene Township zoning ordinances that require setbacks for manure storage tanks for agricultural operations are preempted because they are more stringent than those established by the State. Manure storage tanks less than 1,000,000 gallons and not part of a CAO or CAFO require only the stamp / seal of a registered professional engineer – no permits, no setbacks. Therefore, Greene Township's attempt to have small manure storage units subject to setbacks and zoning permits, which are not required under state law, policy or regulation represents an inconsistent and more stringent regulation and an ACRE violation.

We own a dairy farm in Greene Township, Clinton Co. and we feel that these matters need looked into and that this storm water ordinance and zoning issue need to be looked into. If you need a copy of the ordinance please let us know.

Sincerely,

A large, irregular black redaction mark covers the signature and address block of the letter. The redaction is composed of several thick, horizontal and vertical strokes, completely obscuring any text that might have been present.