

*VLA E-Mail (ACRE@attorneygeneral.gov)*  
*And First-Class Certified Mail*  
 PA Office of Attorney General  
 Attn: ACRE  
 15<sup>th</sup> Floor, Strawberry Square  
 Harrisburg, PA 17120

Dear Attorney General Henry,

██████████ mushroom farm has been in operation on the Property for over forty-five (45) years and has not changed during that time. The Property is improved with a growing house, used to grow and cultivate mushrooms, an open-air cement pad used for the creation of compost for the growing of mushrooms and two mobile homes. The compost created on the Property is used exclusively to grow mushrooms on the Property and another mushroom farm owned by ██████████

200.5 Condition Uses (Subject to review procedures listed in Section 701 of this Ordinance)

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]

...

G. Commercial Composting (Including Spent Mushroom Soil Composting or Preparation), subject to Section 417.

The Zoning Ordinance defines "Composting" as "Any mixing, combining, processing, aerating, packaging, shipping, or similar use of any Composting Materials or storing processed compost. The term Composting Operations shall not include manure storage and land application. The Ordinance further defines three separate types of composting:

**Residential:** A Composting Operation using Composting Materials which consist of normal waste materials of a residential property, generated on the same property.

**Agricultural:** A Composting Operation using Composting Materials of which a minimum of fifty percent (50%) by weight of the composted material must be produced on the Farm.

**Commercial:** All other Composting Operations not defined as Residential or Agricultural."

Copies of relevant sections of the Zoning Ordinance are attached as Exhibits.

On July 11, 2023, [REDACTED] received a Notice of Violation and Enforcement Notice (the "Enforcement Notice") from the Little Britain Township Zoning Officer, alleging [REDACTED] mushroom farm was in violation of Section 200.5.G, for failing to obtain conditional use approval for commercial composting as defined by the Zoning Ordinance, and additional violations of Sections 417.1-417.9, 417.11 and 417.13 of the Zoning Ordinance, related to the operation of a commercial composting operation. The Enforcement Notice indicated that [REDACTED] had thirty days to come into compliance with the Zoning Ordinance. Although the Enforcement Notice did not provide [REDACTED] with any specific steps necessary for compliance with the Zoning Ordinance, we read it such that he must cease composting associated with his mushroom farm and then obtain conditional use approval before continuing with the operation of the farm. Copies of Enforcement Notice and these sections of the Zoning Ordinance cited in the Enforcement Notice are attached as Exhibits.

Based upon the language in the Enforcement Notice, we believe the Township is now requiring [REDACTED] to apply for a conditional use for commercial composting operation. Such an approval would require [REDACTED] to demonstrate compliance with a host of requirements in the Zoning Ordinance relating to operational requirements including, driveway and gravel restrictions, conducting a hydrogeologic study, minimum setbacks of 200 feet, constructing a "wholly-enclosed building that is leak proof and vector proof," and conducting a water analysis. See Exhibit C. These requirements are onerous and illegal as applied to a pre-existing mushroom farming operation that has been in existence on the Property for the last 45 years.

The Pennsylvania Agriculture, Communities and Rural Environment Act ("ACRE"), 3 Pa.C.S. §311, *et seq.*, precludes municipalities from adopting or enforcing "unauthorized" local ordinances, 3 Pa.C.S. §303(a). The Act authorizes the Office of Attorney General, upon request,

[REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED]  
[REDACTED]

to review a local government ordinance for compliance with Act 38. The Act defines "unauthorized" local ordinances as any ordinance that prohibits or limits a "normal agricultural operation." Based on the holding in *Gaspari v. Board of Adjustment of Muhlenberg Township*, 139 A.2d 544 (Pa. 1958), the settled law in the Commonwealth for more than 50 years has been that the preparation of mushroom compost is an "agricultural activity." Since the Act prohibits municipalities from limiting or restricting a "normal agricultural operation," any purported exclusion or limitation of mushroom and substrate activities in areas designated for agricultural use is invalid.

Furthermore, mushroom farming is a normal agricultural operation, as defined and regulated by the Pennsylvania Department of Environmental Protection ("DEP"), which may not be differentiated from other agricultural activities. 25 Pa. Code §§ 287.1, 287.101. Under the Pennsylvania Municipalities Planning Code (the "MPC") a township does not have the authority to allow certain types of agricultural activities, while precluding other forms of agriculture within the same district. 53 P.S. § 10603(b), (h); 10605; *see also Commonwealth v. Richmond Township*, 2 A.3d 678, 681 (Pa. Cmwlth. Ct. 2010) (citing a local government unit may not create an ordinance which is arbitrary, vague or unreasonable or inviting discriminatory enforcement); *see also Exton Quarries, Inc. v. Zoning Bd. of Adjustment*, 228 A.2d 169, 178 (Pa. 1967) (holding that the power to regulate does not extend to an arbitrary, unnecessary, or unreasonable intermeddling with the private ownership of property). Lastly, this issue is preempted by the Solid Waste Management Act ("SWMA") which protects the use of mushroom substrate and disposal of mushroom compost. 35 P.S. §§ 6018.301-.303; 25 Pa. Code §§ 287.1, *et. seq.*; *see Commonwealth v. East Brunswick Township*, 980 A.2d 720 (Pa. Cmwlth. Ct. 2009) (holding that a township cannot "duplicate the regulatory regime established in the SWMA and cannot impose more stringent requirements than the SWMA" and explaining that "[r]equirements that are redundant of or stricter than those in the SWMA are preempted"); *see also Range Resources-Appalachia, LLC v. Salem Township*, 964 A.2d 869 (Pa. 2009); *see also Commonwealth v. Richmond Township*, 2 A.3d 678 (Pa. Cmwlth. 2010); *Berner v. Montour Township Zoning Hearing Board*, 217 A.3d 238 (Pa. 2019). Similar to the facts of these cases, Little Britain Township is attempting to unlawfully impose a regulatory scheme on normal agricultural activities involving mushroom farming which conflicts with the regulatory scheme imposed by Pennsylvania pursuant to the SWMA.

In our view, the Little Britain Township Zoning Ordinance, in operation and effect, precludes mushroom composting from being part of a normal agricultural activity permitted as of right in the A-1 Agricultural District in contravention of ACRE. Little Britain Township's intent to frustrate [REDACTED] ability to continue to conduct a normal agricultural activity on his Property, as he has done for the last 45 years, is unacceptable.

I respectfully request that the Office of Attorney General formally review the applicable provisions of the Little Britain Township Zoning Ordinance, along with the Zoning Officer's Notice of Violations and Enforcement Notice and confirm that the subject provisions constitute an unauthorized local ordinance which unlawfully restricts mushroom growing activities, which is a normal agricultural operation under Pennsylvania law.

[REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED]  
[REDACTED]

Please advise of any additional information you may require in connection with the foregoing request.

Very truly yours,

[REDACTED]

[REDACTED]

By: [REDACTED]

[REDACTED]

Enclosures

cc: [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]