



December 29, 2023

**VIA EMAIL AND FIRST-CLASS MAIL**

Robert A. Willig, Esq.  
Senior Deputy Attorney General  
Office of Attorney General  
1251 Waterfront Place  
Mezzanine Level  
Pittsburgh, PA 15222

**Re: ACRE Complaint – Greene Township, Clinton County**

Dear Mr. Willig:

I write to request that the Pennsylvania Office of Attorney General (“OAG”) investigate Greene Township’s (“Township”) unauthorized application of its Motor Vehicle Weight Limitation and Bonding Ordinance (“Ordinance”) against my company [REDACTED] and the local independent trucks that haul food processing residual (“FPR”) materials from the [REDACTED] facility to local farmers for use as fertilizer.<sup>1</sup> For the local farmers, there are no reasonable alternative routes from [REDACTED] facility to their fields. As to the Pennsylvania Agricultural, Communities and Rural Environmental Act (“ACRE”), the Pennsylvania Superior Court has held that the land application of FPR from [REDACTED] on local farm fields constitutes a “normal agricultural operation.” The Township’s action amounts to unauthorized enforcement of its Ordinance. It targets [REDACTED] and, more importantly, local farmers’ agricultural operations and is therefore prohibited by ACRE.

For some context on the issue, for over thirty years, [REDACTED] has purchased and processed cattle at its facility to provide beef products to national and local distributors. The facility generates FPR, which is organic material from the process that may be used as fertilizer on farms to support crop growth. Independent truck haulers have used the local roads at issue to transport FPR for years without any interruption to the Township. Pennsylvania environmental law and the Pennsylvania Department of Environmental Protection (“DEP”) recognize this as an

1. [REDACTED] facility is located at [REDACTED]. The local roads at issue are [REDACTED] and [REDACTED] which are located a few miles from the facility by way of [REDACTED]. These two roads serve as sole access to nearby farms from the [REDACTED] facility.

important agricultural activity. Indeed, DEP publishes its “Food Processing Residual Management Manual” to promote its vital use and economic role in the Commonwealth.<sup>2</sup>

In August 2023, Greene Township advised [REDACTED] that its supervisors had made an official determination that truck traffic to and from the [REDACTED] facility had damaged certain local roads. When pressed to support its decision, the Township informed [REDACTED] that a traffic study had previously been performed. Although the Township did not produce a copy of the purported traffic study, it directed [REDACTED] to a summary evaluation performed by the Pennsylvania Department of Transportation (“PennDOT”), dated July 2, 1999, which [REDACTED] counsel secured through a 2021 Right-to-Know-Law request. This summary evaluation is the sole support for the Township’s “determination.”

Per the Township, because it has “determined” that this local FPR hauling traffic is allegedly damaging certain local roads, [REDACTED] must post a bond and fees for these vehicles totaling almost \$27,000. To support its “determination,” the Township cites to 75 Pa.C.S. § 4902 and related regulations at 67 Pa. Code Chapter 189, which provide that “local traffic” is exempt from posted weight limits unless the local authority “determines that an over-posted-weight vehicle or vehicles being driven to or from a particular destination or destinations are likely to damage the highway.” 67 Pa. Code § 189.3; 75 Pa.C.S. § 4902(a)(1). “Local traffic” is expressly defined to include “[v]ehicles and combinations going to or coming from a . . . farm located on a posted highway or which can be reached only via a posted highway. 67 Pa. Code § 189.2 (emphasis added).

The Township’s determination is a violation of ACRE because the applicable regulations clearly exempt traffic to and from “farms,” which includes both [REDACTED] facility and the local farms that receive the FPR deliveries. Both [REDACTED] operations and the hauling and application of FPR to local farms fit squarely within the definition of “normal agricultural operations” under ACRE. ACRE incorporates the term from the Right to Farm Act (“RTFA”), which broadly defines it, in part, to mean “[t]he activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products.” 3 P.S. § 952. The term also broadly includes “new activities, practices, equipment and procedures consistent with technological development within the agricultural industry.” *Id.* As stated above, [REDACTED] business is the “production and preparation for market of . . . livestock and their products” and is clearly encompassed within the definition.

As to the independent haulers, the Pennsylvania Superior Court has *already* expressly held that the Pennsylvania General Assembly, though legislation such as the Solid Waste Management Act, considers the land application of FPR on farmland to be a normal agricultural operation. Branton v. Nicholas Meat, LLC, 159 A.3d 540, 553 (Pa. Super. 2017). Perhaps even more importantly, the Superior Court has specifically held that the land application of FPR from Nicholas Meat on a local farm is also a “normal agricultural operation.” Branton, 159 A.3d at 555. Given this, it is clear that, with respect to ACRE, the Township’s enforcement action targets local farmers who are performing activities already expressly recognized as “normal

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<sup>2</sup> Available at [PDFProvider.ashx \(pa.gov\)](https://www.pdfprovider.ashx(pa.gov)).

agricultural operations.” ACRE prohibits the Township from exactly this type of arbitrary enforcement of its Ordinance.

Finally, on a practical level, as to the Township’s “determination,” applicable PennDOT guidance clearly states that “damage” must be actually proven:

#### **Section 4 - Determine Exemptions and Local Traffic**

Based on current Commonwealth law, there are multiple ways a hauler can be exempted from permitting requirements. Municipalities have the ability to exempt haulers and revoke exemption for some criteria, but other **exemptions are automatic unless damage can be proven**. This section will explain the current regulations and help municipalities identify local traffic and haulers that are exempt from posting and bonding procedures.

PennDOT Publication 221 at p. 21 at Section 4 – Determine Exemptions and Local Traffic (emphasis added).<sup>3</sup> In other words, the Township must prove actual damage to the identified local streets to deny application of exemptions which are otherwise automatic. It cannot do so by relying on a purported study that is almost a quarter-century old.

It is my understanding that ACRE exists to prohibit an “Unauthorized local ordinance,” which includes an “ordinance . . . enforced by a local government unit which . . . (2) Restricts or limits the ownership structure of a normal agricultural operation.” The Township’s action to target the local transportation of critical FPR from [REDACTED] facility to local farms despite the recognition of both as “normal agricultural operations” and the exemption for such traffic to and from the facility under the definition “local traffic” is arbitrary and a violation of ACRE. The Township’s action is made more egregious by the fact that it is relying on a PennDOT document authored twenty-four years ago in 1999 to support its “determination.” The Township’s unreasonable action represents the unauthorized enforcement of its Ordinance against [REDACTED] and local farmers.

I appreciate your attention to this matter and look forward to your assistance.

Sincerely,

[REDACTED]

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<sup>3</sup> Available at <https://www.dot.state.pa.us/public/pubsforms/Publications/PUB%20221.pdf>.