

[REDACTED]

Please reply to:
[REDACTED]

[REDACTED]

March 4, 2025

Via Email to ACRE@attorneygeneral.gov
and via First Class Mail

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

Re: ACRE Complaint – Fannett Township, Franklin County

Dear Attorney General Henry:

I write as counsel for [REDACTED] the owner of an approximately 65-acre parcel of land located in Fannett Township, Franklin County, Pennsylvania, with a street address of [REDACTED] (the "Property"). The Property currently includes two agricultural buildings utilized for raising swine. [REDACTED] desires to construct additional agricultural buildings for housing poultry, which use would be characterized as concentrated animal feeding operations ("CAFOs") (the "Chicken Houses"). The manure storage facility associated with the Chicken Houses would be an enclosed stacking shed for dry manure. The Township has not adopted a zoning ordinance and is not subject to county zoning.

The Fannett Township Subdivision and Land Development Ordinance (the "Ordinance") contains provisions which purport to regulate "intensive agriculture facilities" such as CAFOs and concentrated animal operations ("CAOs"). A true and correct copy of the relevant portion of the Ordinance is attached hereto as Exhibit "A" and is incorporated herein by this reference. Specifically, Article 5, Section 511(C)(1) of the Ordinance declares that CAFOs shall be setback **four hundred (400) feet** from a property line. This setback provision plainly violates the Nutrient and Odor Management Act ("NMA"), 3 Pa.C.S. § 501 *et seq.*, the associated regulations, 25 Pa. Code § 83.201 *et seq.*, and the Agricultural Communities and Rural Environmental law ("ACRE"), 3 Pa.C.S. § 311, *et seq.*

Under ACRE, a local government unit shall not adopt nor enforce an "unauthorized local ordinance." 3 Pa.C.S. § 313(a). An "unauthorized local ordinance" is an ordinance enacted or enforced by a local government unit, which prohibits or limits a "normal agricultural operation" unless the local government unit: (i) has expressed or implied authority under State law to adopt the ordinance; and (ii) is not prohibited or preempted under State law from adopting the ordinance. 3 Pa.C.S. § 312.

[REDACTED]

As a preliminary matter, a CAFO is a “normal agricultural operation.” Under ACRE, “normal agricultural operations” are the activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and are: (1) not less than ten contiguous acres in area; or (2) less than ten contiguous acres in area but have an anticipated yearly gross income of at least \$10,000. 3 Pa.C.S. § 312; 3 P.S. § 952.

The Chicken Houses fall squarely within the definition of normal agricultural operation. The Property is approximately sixty-five acres in size, and the area dedicated to the poultry and swine facilities will be well in excess of ten contiguous acres. The mass-production of eggs and meat for market is a normal agricultural activity.

Fannett Township lacks both express and implied authority to adopt the four hundred (400) foot setback found in Section 511(C)(1) of the Ordinance. The NMA specifically prohibits the adoption and enforcement of any local ordinance that conflicts with the provisions of the NMA or the regulations promulgated under it. 3 Pa.C.S. § 519. The maximum setback contemplated by the NMA regulations is three hundred (300) feet from a property line, which only applies if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8%, and if the slope is toward the property line, or the facility has a capacity of 1.5 million gallons or greater. 25 Pa. Code § 83.351(a)(2)(vi)(H). Otherwise, the NMA regulations only require a setback of two hundred (200) feet from a property line. 25 Pa. Code § 83.351(a)(2)(vi)(F). In either case, the applicable setback may only be waived by the landowners located within the applicable setback distance. Because the setback provision is inconsistent with the NMA and the associated regulations, Fannett Township lacks any authority to adopt it. Fannett Township is prohibited from adopting ordinances inconsistent with or restrained by the laws of this Commonwealth. 53 P.S. § 66506.

Further, the four hundred (400) foot setback is preempted by the NMA, 3 Pa.C.S. § 501 *et seq.*, and the NMA’s associated regulations, 25 Pa. Code § 83.201 *et seq.* The NMA regulates setback requirements related to manure storage facilities, which are facilities located within CAFOs. As noted, the four hundred (400) foot setback exceeds the most stringent setback requirements imposed on a manure storage facility. 25 Pa. Code § 83.351. In *Commonwealth v. Locust Township*, the Commonwealth Court held that an ordinance was preempted by the NMA where it imposed a 500 foot setback on all portions of a CAFO (not just the manure storage facilities). *Commonwealth v. Locust Township*, 49 A.3d 502, 512 (Pa. Cmwlth. 2012). *See also Commonwealth v. Richmond Township*, 2 A.3d 678, 685 (Pa. Cmwlth. 2010) (holding that a 1500-foot setback is preempted by the NMA regulations to the extent it applies to “any facility” covered by the regulations).

Here, the Township has informed [REDACTED] that the four hundred (400) foot setback applies to all portions of a CAFO and is stricter than the maximum three (300) foot setback requirement set forth in the NMA regulations. 25 Pa. Code § 83.351. [REDACTED] attempted to work with the Township to obtain a waiver from the preempted setback requirements in an effort to avoid the need to invoke ACRE review and compliance, however, the Township was not receptive to such request. In a letter dated January 11, 2025 (enclosed herewith as Exhibit “B”), the Township unequivocally informed [REDACTED] that it will “continue to

enforce the full setback requirement as stated in Section 511.C of the Fannett Township Subdivision and Land Development Ordinance.”

Section 511(C)(1) is unlawful as it is preempted by the NMA and the associated regulations and Fannett Township plainly lacks any authority to adopt or enforce the excessive setback. Pursuant to 3 Pa.C.S. § 314(a), [REDACTED] respectfully requests that the Office of Attorney General review the Ordinance and bring prompt legal action to invalidate the illegal setback provision found in Section 511(C). Thank you for your consideration of this matter.

Respectfully submitted,

[REDACTED]

Enclosures

CC: [REDACTED]

EXHIBIT A

511 - Intensive Agriculture

- A. Application: Intensive agriculture shall be considered a land development if it involves new building or construction or the expansion of existing buildings and meets applicable State or Federal definitions of a confined animal feeding operation or concentrated animal operation or requires the filing of a plan under the Nutrient Management Act (3 P.S. 1701 et seq.). Intensive agriculture facilities including barns, feed lots, runs, commercial stables, and pens, shall meet the requirements of this section.
- B. The intensive agriculture facility must have and be in compliance with both a Conservation Plan and Nutrient Management Plan.
- C. Intensive Agricultural facilities described in Section 511A, shall observe the following setbacks:
 - 1. Four hundred (400) feet from a property line.
- D. Adequate ingress and egress shall be provided to facilitate safe movement of trucks and farm vehicles.
- E. The intensive agriculture facility shall be situated on the property with regard to the dispersal of odors and minimizing impacts on neighboring properties.
- F. Intensive agriculture facilities shall meet the requirements of all local and state ordinances including, but not limited to, Pennsylvania Nutrient Management Act, and the Clean Streams Act.

EXHIBIT B

[illegible]

[REDACTED]

Our file: [REDACTED]

My office serves as Township Engineer for Fannett Township, Franklin County, Pennsylvania. Per correspondence dated December 20, 2024, waiver requests were made to the Fannett Township Board of Supervisors for two proposed poultry operations at two separate locations referenced above. The requests centered around a desire to encroach within the 400-foot minimum setback requirement for intensive agriculture operations from a property line. After hearing testimony and considering the information provided at its January 6 meeting, the Board of Supervisors voted unanimously at said meeting to deny the waiver requests as presented and continue to enforce the full setback requirement as stated in Section 511.C of the Fannett Township Subdivision and Land Development Ordinance.

Should you have any questions concerning this correspondence, please don't hesitate to contact this office at your convenience.

[REDACTED]

TCC

[REDACTED]

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