



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

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ATTORNEY GENERAL

March 14, 2025

Office of the Attorney General  
1251 Waterfront Place  
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Pittsburgh, PA 15222  
[REDACTED]

[REDACTED]

[REDACTED]

Fannett Township  
ATTN: Board of Supervisors  
P.O. Box 40  
Dry Run, PA 17220-0040

*ACRE Request for Review – Fannett Township, Franklin County – [REDACTED]*

Dear [REDACTED] & Board of Supervisors,

Act 38 of 2005 (“ACRE”), 3 Pa.C.S. §311, *et.seq.*, requires that the Office of the Attorney General (“OAG”), upon request of an agricultural owner or operator, review a local government ordinance for compliance with Act 38. The Act authorizes the Office, in its discretion, to file a lawsuit against the local government unit if, upon review, the Office believes that the ordinance unlawfully prohibits or limits a normal agricultural operation.

[REDACTED] on behalf of his client [REDACTED] filed an ACRE request for review with the OAG. [REDACTED] contends that Fannett Township’s Article 5, § 511(C)(1) ordinance violates ACRE.<sup>1</sup> [REDACTED] wants to “construct...agricultural buildings for housing poultry, which would be characterized as concentrated animal feeding operations (‘CAFOs’)...The manure storage facility associated with the [c]hicken [h]ouses would be an

<sup>1</sup> A copy of the ACRE complaint is attached to this letter for the Township’s review.

enclosed stacking shed for dry manure.” See March 4, 2025, ACRE Complaint, p. 1.<sup>2</sup> Fannett’s ordinance mandates that such structures must have a 400’ setback from property lines. However, state law exclusively governs the siting of such buildings. [REDACTED] is correct – the 400’ setback violates ACRE.

There are two types of regulated structures on farms where animal waste is present: 1) animal housing facilities; and 2) manure storage facilities. An animal housing facility is “[a] roofed structure or facility, or any portion thereof, used for occupation by livestock or poultry.” 25 Pa. Code § 83.701, *Definitions*. See the Nutrient and Odor Management Act (NOMA), 3 Pa. C.S. § 503, *Definitions*. A manure storage facility is “[a] permanent structure or facility, or portion of a structure or facility, utilized for the primary purpose of containing manure” including “liquid manure structures, manure storage ponds, component reception pits and transfer pipes, containment structures built under a confinement building, permanent stacking and composting facilities and manure treatment facilities.” 25 Pa. Code § 83.201, *Definitions*. See 3 Pa. C.S. § 503, *Definitions*.

NOMA is unambiguous, “[t]his chapter and its provisions are of Statewide concern and occupy the whole field of regulation regarding nutrient management...to the exclusion of all local regulations.” 3 Pa.C.S. §519(a), **Preemption of local ordinances, General**. The nutrient management regulations, which implement NOMA, govern the “location...of animal manure facilities....” 25 Pa.Code §83.202(2), **Scope** (emphasis added). It is crystal clear that these regulations, just like NOMA, preempt local ordinances. 25 Pa.Code §83.205(a) & (b), **Preemption of local ordinances** (“The act and this subchapter are of Statewide concern and occupy the whole field of regulation regarding nutrient management to the exclusion of all local regulations” and “[n]o ordinance or regulation...may prohibit or in any way regulate practices related to the storage...of animal manure...or to the...location...of facilities used for storage of animal manure....”(emphasis added)).

Setbacks for manure storage structures are either 100, 200, or 300 feet depending on the circumstances. 25 Pa.Code §83.351(a)(2)(v) & (vi). See *Nutrient Management Legislation in Pennsylvania*, Penn State Extension, 2024, p. 7; Agronomy Facts 40, *Nutrient Management Legislation in Pennsylvania: A Summary of the 2006 Regulations*, Penn State Extension, 2010, p. 5.<sup>3</sup> *Commonwealth, Office of the Attorney General v. Locust Township*, 49 A.3d 502, 512 (Pa. Cmwlth. 2019); *Berner v. Montour Township*, 655 Pa. 137, 217 A.3d 238 (Pa. 2019).

The *Berner* Court specifically held that NOMA preempts local ordinances that are “more stringent than, inconsistent with, or in conflict with the Act or its regulations.” *Berner, supra*, 655 Pa. at 153, 217 A.3d at 248 (Pa. 2019). There is no doubt- state law preempts local regulation on manure storage setbacks. There is no doubt - a 400’ local setback for manure storage is more stringent than, inconsistent with, and in conflict with the 100/200/300 foot state setbacks. Fannett Township’s 400’ setback for manure storage cannot stand.

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<sup>2</sup> A Concentrated Animal Operation (CAO) is an agricultural operation with eight or more AEUs where the animal density exceeds two AEUs per acre on an annualized basis. 25 Pa.Code §§ 83.201, 262. A CAFO is a CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, or any agricultural operation defined as a large CAFO under 40 CFR § 122.23. 25 Pa.Code § 92a.2. An Animal Equivalent Unit (“AEU”) is “1,000 pounds of live weight of any animal on an annualized basis.” *Agronomy Facts 54, Pennsylvania’s Nutrient Management Act (Act 38): Who is Affected?*, p. 1; See 3 Pa.C.S. § 503, *Definitions*; 25 Pa.Code § 83.201, *Definitions*.

<sup>3</sup> The OAG has also included with this letter copies of both the 2010 and 2024 Penn State Extension publications.

The same is true for animal housing structures. The NOMA odor management regulations govern the "...location...of animal housing facilities..." 25 Pa.Code §83.702(3), **Scope** (emphasis added). These odor regulations, just like the manure regulations cited above, preempt local ordinances. The manure and odor regulations practically mirror each other. 25 Pa.Code §83.705(a) & (b), **Preemption of Local Ordinances**. ("The act and this subchapter are of Statewide concern and occupy the whole field of regulation regarding odor management to the exclusion of all local regulations" and "[n]o ordinance or regulation...may regulate the management of odors generated from animal housing...if the...ordinance or regulation...is in conflict with this chapter and the regulations or guidelines promulgated under it.")

During the regulatory process, the State Conservation Commission (SCC) informed the Independent Regulatory Review Commission (IRRC), "[i]n Pennsylvania we are proposing to require an evaluation, preferably using the odor site index, to look at the distance from a regulated facility to a neighboring home, *but not requiring a specified setback distance*." Regulatory Analysis Form, Facility Odor Management Regulations, rec'd at the IRRC August 28, 2008, p. 16 (emphasis added).

An extensive regulatory framework, and a detailed OMP<sup>4</sup> process, has existed for years. The SCC requires all CAOs or CAFOs to develop and implement odor management plans for new animal housing that expressly includes the location for that new construction. 25 Pa.Code § 83.741(b)(2)(i) & (ii). A certified Odor Management Specialist must prepare the OMP and the plan must be approved by the SCC prior to construction. 25 Pa. Code § 83.741 (e), (f), (h). The Odor Management Specialist creates an OMP by using the Pennsylvania Odor Site Index (OSI). Experts from the Pennsylvania State University College of Agricultural Sciences, in cooperation with the SCC, developed the OSI to implement NOMA. 25 Pa. Code § 83.701. In determining the appropriate location for animal housing, the regulations do not impose a single uniform setback distance to address potential odor impacts. Instead, an OMP includes the Odor Best Management Practices necessary to address the potential impact of offsite migration of odors based on the OSI evaluation of the proposed facility on the site. 25 Pa. Code §§ 83.771(c), 781. This all leads to one conclusion: the distances noted in the OMP, not any local ordinance, governs the siting of animal housing facilities.

The OAG recommends that the Township do two things: 1) repeal §511(C)(1) and replace it with the 100/200/300 foot language for manure storage facilities and the OMP distances for animal housing; and 2) determine what state setback distances apply to the [REDACTED] situation and proceed accordingly.

If you can please respond to this letter within 30 days of receipt informing the OAG on how Fannett Township intends to handle this matter I would greatly appreciate it

Sincerely,



Robert A. Willig  
Senior Deputy Attorney General

<sup>4</sup> An Odor Management Plan is "[a] written site-specific plan identifying the Odor [best management practices] to be implemented to manage the impact of odors generated from animal housing and manure management facilities located or to be located on the site." 25 Pa.Code §83.701, **Definitions**, *OMP-Odor management plan-Plan*.