



Protecting the Health, Safety and Welfare of Citizens

Opportunities for Local Governments to Regulate Agricultural Operations

Pennsylvania's rural and suburban local governments face many serious challenges, and one of the most difficult is handling conflicts caused by industrial-scale livestock operations. As more and more traditional farms convert to intensive methods, local communities are faced with the impact they have on public health and water resources. Coupled with the expansion of suburban development into farmland, communities are facing conflicts between neighbors and difficulty dealing with the odors, fly infestations, manure spreading and destruction of water quality.

Fortunately, municipal officials have one tool in their legal quiver to use in solving conflicts and protecting the health, safety and welfare of their residents – the Agriculture, Communities and Rural Environment law (ACRE).

What is ACRE?

The Agriculture, Communities and Rural Environment law attempts to balance agricultural interests with local government's duty of protecting residents.

ACRE strives to:

- Protect water quality by requiring **nutrient management plans** that detail how manure will be handled and define manure application setbacks and buffers;
- Identify what kind of agricultural operations must be regulated and define normal agricultural operations; and
- Allow agri-business to challenge local ordinances and require the Attorney General to review those ordinances for their legality.

ACRE empowers municipalities to adopt and enforce local ordinances and regulations.

According to Section 1 of ACRE, Act 38 of 2005, 3 P.S. §§ 501-522, municipalities are allowed to adopt ordinances or regulations which are consistent with and no more stringent than the requirements and regulations in the ACRE legislation. That right has been upheld by the Commonwealth Court of Pennsylvania.

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Section 1 of Act 38 of 2005 (ACRE), and the supporting regulations, may be adopted as a municipality's nutrient management code. By doing so, municipalities are empowered to enforce the nutrient management regulations, so they can protect citizens and resolve public nuisances. Since industrial livestock and nutrient and agricultural pollution are primarily regulated through nutrient management plans in Pennsylvania, municipalities can make sure that agriculture is not contributing excess pollution to waterways.

Unless a local ordinance consistent with ACRE exists, the best a municipal official can do in response to complaints from residents is to recommend residents call the county conservation district or Department of Environmental Protection (DEP). County conservation districts both enforce regulations and provide technical and educational assistance to agricultural operations. Because of this dual role, many conservation districts are hesitant to take a vigorous enforcement role. DEP is understaffed and often slow to follow-up on complaints and suspected violations, leaving citizens' concerns unanswered.

Benefits of a Nutrient Management Code

Local governments that adopt ordinances consistent with ACRE can ensure that agricultural operations do not negatively impact the health, safety and welfare of their citizens.

A local Nutrient Management Code can guarantee:

- Certified nutrient management plans are followed by industrial livestock operations (called CAOs and CAFOs in the law);
- Livestock operations that produce or import manure keep accurate records including:
 - Signed broker agreements, and
 - Nutrient balance sheets (documenting manure application rates on farm fields);
- Operators observe manure setbacks and buffers including:
 - CAOs and CAFOs must have a 100 foot setback or 35 foot vegetative buffer from all surface waters when applying manure ;
- Livestock facilities establish odor management plans for new or expanding facilities;
- Municipalities can assess fines for violations;
- Excess nutrients from livestock manure, poultry litter and pesticides are not running into our waterways and flowing downstream; and
- Local government can respond appropriately to the concerns of residents.

A word of caution about ACRE and local ordinances

Municipalities can adopt and enforce only those ordinances that are consistent with ACRE. A number of municipalities have adopted local ordinances attempting to restrict or regulate industrial livestock operations that have been challenged by agri-business. The Office of the Attorney General has reviewed contested ordinances and some municipalities have been notified that their ordinances are invalid or have legal deficits. The Attorney General has brought five legal actions against municipalities for adopting illegal ordinances.

For more information or assistance in adopting a local ordinance, contact PennFuture at 717-214-7920, by email to info@pennfuture.org, or through our website at www.pennfuture.org.