



Pennsylvania's Statutory Protection of Agricultural Operations



Berks County Conservation
District

Berks County Agricultural
Center— December 5, 2013



Overview of Presentation

- **My presentation will address:**
 - **Pennsylvania Right to Farm Act**
 - **ACRE / Pennsylvania Act 38 of 2005**
 - **Agricultural Security Areas**



Pennsylvania Right to Farm Act





Background

- **Right to Farm Laws have been enacted in all fifty states.**
- **All Right to Farm Laws attempt to remedy farm – non-farm conflicts.**



Background

- **The specific provisions in Right to Farm Laws vary from state to state.**
- **Right to Farm Laws generally limit nuisance lawsuits against farms.**



Nuisance Law

- **Landowner cannot use land in manner that unreasonably interferes with another landowner's use of land.**
- **Determination of nuisance balances benefit of use against harm caused by use.**



Nuisance Law

- **Private Nuisance interferes with rights of individual.**
- **Public Nuisance interferes with rights of community.**



Nuisance Law: Remedies

- **The remedies available for a party prevailing in a nuisance suit include:**
 - Injunction
 - Damages



Nuisance Law

- **“Coming to the Nuisance” Defense**
 - Early user has greater rights than later user.
 - “Coming to the Nuisance” was a defense under common law.
 - “Coming to the Nuisance” was being applied less frequently.
- **Determination of a nuisance is highly fact-specific.**



Pennsylvania Right to Farm Act

- Enacted on June 10, 1982
- Amended in 1998 to address expansion or alteration of agricultural operations



Legislative Policy

- “to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. . .”
- “to reduce the loss to the Commonwealth of its agricultural resources by limiting the circumstances under which agricultural operations may be the subject matter of nuisance suits and ordinances.”



Pennsylvania Right to Farm Act

- **Three Protections Granted By Act:**
 - Requires that municipalities exclude normal agricultural operations from definition of public nuisance;
 - Limits nuisance actions against agricultural operations; and
 - Limits ability of municipalities to restrict direct commercial sales of agricultural products.



“Normal Agricultural Operation”

- **The activities, practices, equipment, and procedures utilized in production, harvesting, and preparation for market**
- **Of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities**
- **For operations that are at least ten acres in size or produce annual gross income of at least \$10,000**



Limitation on Nuisance Actions

- **Right to Farm Act is defense to nuisance action against agricultural operation where:**
 - **Operation has been lawfully operating for at least one year;**
 - **Conditions complained of have existed since established date of operation; and**
 - **Conditions complained of are normal agricultural operations.**



Limitation on Nuisance Actions

- **Where agricultural operations are expanded or altered, Right to Farm Act is defense to nuisance action if:**
 - **Operation has expanded or altered for at least one year; OR**
 - **Expansion or alteration has been addressed in Nutrient Management Plan.**



Direct Commercial Sales

- **Direct commercial sales are permitted:**
 - **On property owned and operated by landowner**
 - **Who produces at least 50% of agricultural commodities sold.**



Exceptions to Application of Right to Farm Act

- **Right to Farm Act does not protect farms where:**
 - **Agricultural operation has direct adverse effect on public health and safety;**
 - **Zoning ordinance prohibits or limits operations;**
 - **Agricultural operation is in violation of federal, state, or local statute or regulation;**
 - **Agricultural operation pollutes water or causes flooding.**



Case Law

- ***Horne v. Haladay* (Pa. Super. Ct. 1999)**
 - **Facts:**
 - Nov. 1993 – 122,000 laying hens in poultry house
 - Aug. 1994 – decomposition building constructed
 - Nov. 1995 – nuisance lawsuit filed
 - **Claims:**
 - Failure to control flies, strong odor, and excessive noise
 - Alleged devaluation of property by \$60,000



Case Law

- ***Horne v. Haladay* (Pa. Super. Ct. 1999)**
 - **Court Opinion:**
 - Right to Farm Act covered private nuisance as well as public nuisance.
 - Right to Farm Act covered pre-existing neighbors.
 - **Holding:**
 - Upheld dismissal of case because it had not been filed within one year time-period.



Case Law

- ***Remaley v. Zook* (Snyder Co. 2009)**
 - **Facts:**
 - 1979 – Zooks begin dairy farming
 - April 2007 – Zooks begin construction of poultry barn
 - August 2007 – Chickens housed in poultry barn
 - November 2007 – Remaleys initiate nuisance litigation
 - **Requested Relief:**
 - Reconfiguration of poultry barn
 - Monetary damages for alleged devaluation of property



Case Law

- ***Remaley v. Zook* (Snyder Co. 2009)**
 - **Court Ruling:**
 - Poultry farm did not constitute a nuisance
 - Zooks conduct was not unreasonable
 - “[G]ravity of harm suffered by Plaintiffs does not outweigh the utility of Defendants’ conduct in operating a poultry farm in an agricultural community.”



Agriculture, Communities, and Rural Environment Act (ACRE)



Pennsylvania Act 38 of 2005

*3 Pa. Cons. Stat.
§§ 311-318*



Background

- **Problems with Right to Farm Act:**
 - Only addresses nuisances
 - Lacks adequate remedy for violations
 - Requires farmers to bear costs of enforcement



Passage of ACRE

- **ACRE (Act 38 of 2005) took effect on July 6, 2005.**
- **ACRE addresses two issues:**
 - **Local regulation of normal agricultural operations**
 - **Odor management for CAFOs**



Basic Premise of ACRE

- ACRE addresses municipal regulation of **normal agricultural operations**.
- “A **local government unit** shall not adopt nor enforce an **unauthorized local ordinance**.” – 3 Pa. C.S.A. § 313(a)



Key Definitions

- **Local government unit**
- **Unauthorized local ordinance**
- **Normal agricultural operation**



“Local Government Unit”

- Any political subdivision of the Commonwealth
- Primary application of ACRE is to townships



“Unauthorized Local Ordinance”

- Any ordinance enacted by a local government unit that prohibits or limits a **normal agricultural operation** unless:
 - Local government unit has authority under state law to adopt the ordinance; and
 - Local government unit is not prohibited nor preempted by state law from adopting the ordinance.



“Unauthorized Local Ordinance”

- Also includes any ordinance that restricts or limits the ownership structure of a **normal agricultural operation**.



“Normal Agricultural Operation”

- The activities, practices, equipment, and procedures utilized in production, harvesting, and preparation for market
- Of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities
- For operations that are at least ten acres in size or produce annual gross income of at least \$10,000



Procedure Under ACRE

- **Producer submits written request to Attorney General's Office for review of ordinance.**
- **Attorney General has 120 days to determine whether to accept case.**



Procedure Under ACRE

- **If Attorney General accepts case, municipality is given opportunity to discuss ordinance before suit is filed.**
- **Attorney General will file suit in Commonwealth Court if unable to resolve issue with municipality.**



Procedure Under ACRE

- **Costs of action are borne by Attorney General's Office not landowner.**
- **Litigation in Commonwealth Court establishes statewide precedent.**



Private Right of Action

- **Producer is authorized to bring action before Commonwealth Court to invalidate an ordinance.**
- **ACRE authorizes fee shifting for a private right of action where:**
 - **Local government acts with negligent disregard;**
 - **Plaintiff brings action without substantial justification.**



Attorney General Reports

- 7/6/05 to 7/6/06 – 16 requests for review
- 7/6/06 to 7/6/07 – 19 requests for review
- 7/6/07 to 7/6/08 – 8 requests for review
- 7/6/08 to 7/6/09 – 15 requests for review
- 7/6/09 to 7/6/10 – 10 requests for review
- 7/6/10 to 7/6/11 – 11 requests for review



Attorney General Reports

- **As of November 13, 2011, 78 requests for review had been received by Attorney General.**
 - **10 requests were pending review.**
 - **37 requestors were advised that no legal action would be taken.**
 - **31 municipalities were advised of legal problems with ordinance.**
 - **7 cases in litigation.**
 - **1 case in negotiation.**
 - **23 cases resolved.**



Cases Accepted by Atty General

- Regulated intensive animal agriculture
- Restricted composting operations
- Regulated biosolid applications
- Restricted timber harvesting
- Restricted roadside markets
- Prohibited corporate ownership of farms
- Required greenhouse to comply with UCC



Cases Not Accepted by AG

- Regulated stray animals
- Prohibited farm animals within borough
- Imposed a setback for livestock housing
- Restricted timber harvesting
- Diminished property values through re-zoning
- Excluded aquaculture from definition of agriculture
- Regulated the storage of materials



ACRE Case Law

- **ACRE is constitutional.**
- **Attorney General has standing to bring actions under ACRE.**
- **Attorney General need not receive a request for review to challenge an ordinance.**
- **Attorney General need not present challenge of land use ordinance to zoning hearing board.**
- **ACRE applies to pre-existing ordinances regardless of enforcement action.**

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Agricultural Area Security Law 3 Pa. Stat. §§ 901-915





Legislative Findings

- It is the declared policy of the Commonwealth
- “to conserve and protect and to encourage the development and improvement of its agricultural lands for the **production of food** and other agricultural products”
- “to conserve and protect agricultural lands as valued natural and ecological resources which provide needed **open spaces** for clean air, as well as for aesthetic purposes.”



Agricultural Security Areas

- **AASL provides certain protections and benefits to landowners within an Agricultural Security Area.**
 - **Limitation on local regulations**
 - **Limitation on power of eminent domain**
 - **Participation in Agricultural Conservation Easement program**



Benefits of AASL

Limitation on local regulations

- Municipality is not permitted to enact laws that would unreasonably restrict farm structures or practices within ASA.
- Municipality shall exclude normal farming operations within ASA from definition of public nuisance.

Municipality is permitted to act for benefit of public health and safety.



Benefits of AASL

Limitation on power of eminent domain

- **Approval must be granted by Agricultural Lands Condemnation Approval Board (ALCAB)**
- **ALCAB shall approve condemnation only if there is “no reasonable and prudent alternative.”**



Benefits of AASL

Agricultural Conservation Easements

- **Landowners within ASA are permitted to sell developmental rights to property.**
- **The term of the easement is perpetual.**



Creation of ASA

- Landowners initiate process by submitting proposal to local government unit.
- Proposal is submitted to Planning Commission and ASA Advisory Committee
- Municipality holds public hearing.
- Municipality makes decision.



Criteria for ASA

Municipality shall consider:

- Whether **soils** are conducive to agriculture;
- Whether ASA is compatible with **comprehensive plan**.
- Whether land is **viable agricultural land**;
- **Additional** factors including farm improvements, trends in economics and technology, and other relevant factors.



- **Penn State Law**
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