



# QUESTIONS AND ANSWERS ABOUT THE “ACRE” PROGRAM

## (Act 38 of 2005, House Bill 1646)

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### Introduction

Act 38 of 2005 is the result of the Agriculture, Communities, and Rural Environment (ACRE) program unveiled by Governor Rendell at the 2004 Ag Progress Days. This act will significantly impact agriculture and rural communities by coordinating existing laws and regulations, primarily the Right to Farm law and the Nutrient Management Act, with several new initiatives. This fact sheet provides an overview of the key provisions of this new law by focusing mainly on significant changes to existing law; this is not a comprehensive coverage of nutrient management issues. For that information, refer to *Agronomy Facts 40: Nutrient Management Legislation in Pennsylvania: A Summary of the Regulations*.

### 1. What is the purpose of this act?

The main purposes are to:

- a. Ensure that local governments enact ordinances regulating normal agricultural operations that are consistent with authority given them by the laws of this Commonwealth to protect citizens' health, safety, and welfare;
- b. Provide timely review of potentially unauthorized local ordinances;
- c. Replace the Nutrient Management Act (Act 6) by retaining most of the current law and regulations and adding manure setback and buffer requirements; and
- d. Require certain farms to develop odor management plans.

### 2. Specifically, what does this law say about local ordinances?

Local government cannot adopt or enforce an ordinance limiting normal agricultural operations if it is not authorized to do so, or if it is prohibited or preempted from doing so under state law. Municipal restrictions or limits on the ownership structure of a normal agricultural operation are unauthorized acts for local government. Some of the laws that will be involved in determining whether a local government is authorized to address a problem include the Right to Farm law, the Nutrient Management Act (as amended by Act 38), and the Municipalities Planning Code, which gives local government the authority to pass zoning and subdivision laws. See question 6 below for additional details about these laws.

### 3. Are existing ordinances “grandfathered” and not affected by Act 38?

No, this act affects all local ordinances in place when the act was passed and local ordinances enacted and enforced after its effective date. Ordinances passed before the effective date are not “grandfathered.”

### 4. How is a question about an “unauthorized local ordinance” raised?

Owners or operators of a normal agricultural operation can ask the attorney general to review a local ordinance that they believe is unauthorized. The attorney general must review the ordinance within 120 days. The attorney general may bring legal action under this act in Commonwealth Court to invalidate or stop enforcement of the ordinance, or simply decide not to bring action against the ordinance.

In addition to legal review by the attorney general, individuals can take legal action in Commonwealth Court against a local government that they believe has passed an unauthorized ordinance that has adversely affected them.

### **5. What action can a court take after it decides the local ordinance is an “unauthorized local ordinance”?**

The court may invalidate the local ordinance or stop enforcement if it finds it to be unauthorized. Also, the court may require the local government to pay the plaintiff’s attorney fees and litigation costs if the court finds that the ordinance was passed in negligent disregard of the local government’s authority. If the court upholds the legality of the ordinance, it may require the plaintiff to pay the local government’s attorney’s fees and litigation costs if the complaint made against it did not have substantial justification.

### **6. What types of local government land-use authority are involved with this act?**

The Pennsylvania Right to Farm law protects farm operators from nuisance suits brought against their “normal agricultural operations.” This law encourages communities to support the viability of agricultural operations. Municipalities cannot define normal agricultural operations as public nuisances in local ordinances if these operations do not harm the public’s health and safety. Producers who sell their agricultural commodities directly to the public from their property should be able to do so without regard to municipal ordinance, public nuisance, or zoning prohibitions of local government.

The Municipalities Planning Code gives local government authority to pass zoning ordinances, but prevents local government from regulating commercial agricultural activities if the restrictions exceed the requirements imposed on producers under the Nutrient Management Act, the Agricultural Area Security law, the Right to Farm law, or that are preempted by other federal or state laws.

Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in local areas where agriculture has traditionally been present unless the agricultural operation adversely affects public health and safety.

### **7. What effect does this law have on the Nutrient Management Act of 1993 (Act 6 of 1993)?**

This law repeals Act 6. However, essentially all of the provisions of Act 6 are incorporated directly into the new act. Activities initiated under Act 6 will continue and remain in full force and effect and may be completed under the new law unless they are specifically modified by the new law, such as manure application setbacks. This includes all current regulations, policies, plan approvals, and contracts and obligations entered into under Act 6. The current process underway to revise the nutrient management regulations will continue under the new law.

### **8. What are the new manure setback and buffer requirements adopted in this law?**

A major change to existing Nutrient Management Act requirements is inclusion of mandatory manure application setbacks and buffer requirements under the new act.

No concentrated animal operation (CAO) or other agricultural operation receiving manure from a CAO directly or indirectly through a broker or other person may mechanically land apply manure within 100 feet of a stream, lake, or pond, unless a vegetated buffer no less than 35 feet in width and meeting standards established by the Natural Resources Conservation Service (NRCS) is used to prevent manure runoff into the water body.

### **9. Act 38 added a requirement for odor management plans. What is an odor management plan?**

An odor management plan is a written, site-specific plan identifying the practices, technologies, standards, and strategies to be implemented to manage the impact of odors generated from animal housing or manure storage facilities. Odor management plans will not affect activities associated with field application of manure.

Regulations for odor management plans must be developed and adopted by the State Conservation Commission by July 6, 2007. These regulations will establish practices, technologies, standards, strategies, and other requirements for odor management plans developed under the act. These plans will be site specific and based on reasonably available technology, practices, standards, and strategies to manage off-site

impacts of odors associated with these new facilities. The plans must consider both the practical and economic feasibility of installation and operation of odor management practices and the potential impacts from the facilities.

Before July 6, 2007, the State Conservation Commission and the Departments of Agriculture and Environmental Protection must establish interim guidelines for odor management on concentrated animal operations.

### **10. Who must have an odor management plan?**

- a. Existing CAOs and CAFOs when doing any of the following:
  - Building a new animal housing facility or a new manure storage facility.
  - Expanding an animal housing facility or a manure storage facility.

In these cases, the odor management plan must be developed and implemented only for the newly built or expanded portion of the facility.
- b. Existing agricultural operations, which, because of an increase in the number of animals maintained at the operation resulting from expansion or construction, become a CAO or CAFO. Odor management plans in these cases will be developed and implemented only for newly expanded or newly constructed portions of the operation.
- c. New agricultural operations that will be regulated as either a CAO or a CAFO will be required to have an odor management plan.
- d. Any agricultural operation that is not required to have a plan may voluntarily develop one and have it reviewed and approved.

### **11. Who will write odor management plans?**

Odor management plans must be developed by certified odor management specialists. Certification standards will be developed by the Department of Agriculture in conjunction with the State Conservation Commission similar to the program for certified nutrient management specialists. Farmers will be able to become certified for purposes of developing and certifying nutrient and odor management plans for their own operations.

### **12. How is an odor management plan approved?**

Odor management plans for those operations required above (see question 10) must be approved prior to building new or expanded animal housing facilities or expanded manure storage facilities.

Similar to the existing process for approval of nutrient management plans, odor management plans or plan amendments are to be submitted to the State Conservation Commission or, at the commission's discretion, to the appropriate local conservation district for review and approval. Plan reviewers must also be certified. The plans must be approved or disapproved within 90 days.

As with nutrient management plans, approval or disapproval of an odor management plan can be appealed.

### **13. When will odor management plans be implemented?**

Odor management plans must be fully implemented prior to using the new animal housing facility or manure storage facility.

### **14. Will financial assistance to implement nutrient and odor management plans be available?**

Yes. The act directs the State Conservation Commission to provide financial assistance in the form of loans, loan guarantees, or grants for implementation of these plans.

### **15. What are the benefits of preparing and implementing an odor management plan?**

Similar to nutrient management plans, an operator who is fully and properly implementing an odor management plan approved by the conservation district or the State Conservation Commission will be given consideration for the plan as a mitigating factor in any court action for penalties and damages.

### **16. How does the act affect state and local government authority regarding nutrient and odor management?**

As under the earlier Nutrient Management Act, the new law states that "it is legislation of statewide concern and occupies the whole field of regulation regarding nutrient management and odor management, to the exclusion of all local regulations." This law continues the preemption of local ordinances that regulate practices related to the storage, handling,

or land application of animal manure or nutrients or to the construction, location, or operation of facilities used for storage of animal manure or nutrients or practices covered under this law. These provisions will preempt a local ordinance if the ordinance is in conflict with Act 38 or the regulations or guidelines promulgated under it.

Local government authority to adopt ordinances or regulations to regulate or manage odors generated from animal housing or manure storage facilities is now subject to this preemption.

Local governments may adopt and enforce nutrient and odor management ordinances or regulations that are consistent with and no more stringent than the requirements of this law.

### **17. What is the timeline for implementation of this law?**

Most of the provisions of the act became effective when the governor signed the act on July 6, 2005. This is mainly the parts of this law that were taken from the previous Nutrient Management Act and the new process for reviewing unauthorized local government ordinances. Specific deadlines were established for the new odor management and setback requirements established in the law.

#### **Odor Management**

The act's provisions regarding odor management plans are effective on the act's effective date. However, since interim guidelines and final regulations are needed to describe what these plans should address, action by the State Conservation Commission to adopt these measures will be needed before new or existing operations required to have odor management plans can meet that obligation. Once interim guidelines for odor management plans are published, or final regulations for these plans become effective—whichever occurs first—local government authority to adopt ordinances for managing odors from animal housing or manure storage facilities will be preempted if the ordinance is inconsistent with Act 38.

#### **Manure Application Setbacks**

The manure application setback and buffer requirement will become effective January 3, 2006—180 days after the act was signed by the governor.

### **More information on the ACRE program is available on the following Web sites:**

Pennsylvania Department of Agriculture:

<http://www.acre.state.pa.us/>

Penn State Cooperative Extension:

<http://www.extension.psu.edu/>

Nutrient and Water Policy Update:

<http://agenvpolicy.aers.psu.edu/>

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