

Agricultural Info Sheet

Avoiding ACRE Challenges Growing the Municipal/Agricultural Relationship

As with any relationship, communication is key. It would be great for municipal officials and agricultural producers to work together to support the agricultural industry, but that doesn't always happen. Municipal officials are not always sure what to do with agriculture or how to regulate it. This confusion or uncertainty can lead to unlawful ordinances and potential ACRE challenges.

Here are some practical considerations for both municipal officials and producers to foster successful relationships, encourage an environment in which agriculture can thrive, and ACRE challenges can be avoided.

Considerations for Municipal Officials

What is an ACRE challenge?

(Agriculture, Communities and Rural Environments Act)

An ACRE challenge occurs when an agricultural producer thinks that your existing ordinance is “unauthorized” and believes you are interfering with their normal agricultural operation - without any state-law authority to do so, or because that state-law authority has been preempted or prohibited by another state law.

The Municipalities Planning Code (MPC) provides you with a sort of “cheat-sheet” in Section 603(b) that identifies several state acts that may not be preempted by local zoning. These include:

- Agricultural Area Security Law (P.L. 128, No. 43) as amended [ASA Law](#)
- Right to Farm (P.L. 454, No.133) as amended [Right to Farm](#)
- The Nutrient Management Act (P.L. 12, No.6) as amended [Nutrient Management](#)





What is the process of an ACRE challenge/how does it happen?

The producer submits their concerns along with your ordinance to the PA Attorney General who then, within 120 days, determines if there is an issue with the local ordinance.

- If the Attorney General deems that the ordinance is lawful and does not violate ACRE that is generally the end of it unless the producer, at their own expense, brings suit against the municipality in the Commonwealth Court.
- If, however, the Attorney General determines that the ordinance does violate ACRE, then the Attorney General will contact your municipality and tell you to amend the ordinance to remedy the situation. If the municipality declines to do so (or no agreement can be reached), the Attorney General will file suit in the Commonwealth Court to invalidate it. This will cause the municipality to incur even more legal expenses.

So are we allowed to regulate agriculture at all?

Yes. You may regulate farming activities that are not normally part of a normal agricultural operation.

For example:

- Tree farming is a normal agricultural operation. However, blasting loud noises at 3:00 am to scare away deer is not normally a part of a tree farming operation. Therefore, you could regulate the blasting activity through a noise ordinance.

You may also regulate a normal part of a normal agricultural operation, as long as the ordinance does not violate state law.

For example:

- A barn is a normal part of a normal agricultural operation, but you may still regulate the structure through building and zoning permits because no state law preempts or prohibits you from doing so.
- However, you may not more stringently regulate the setback requirement for a manure management system because that aspect is established and preempted by the Nutrient Management Act.

Where can I learn more about ACRE?

For a more comprehensive explanation of ACRE, [Penn State Law's Center for Agricultural and Shale Law](#) provides a variety of [ACRE-related resources](#), including a comprehensive list of how past ACRE reviews have been decided.

In addition, [The Office of the Attorney General](#) has a [webpage](#) devoted to ACRE, including ordinances currently being reviewed, actual ACRE review requests, and instructions on how producers may file their own requests.



Now that we know what ACRE is, how can we avoid it?

Talk to your local producers! Talk with them when you update an ordinance or if they come to you with a concern about your existing ordinance. Developing local regulations in a vacuum can cause unintended consequences for the agricultural industry even if the ordinance does not, per se, violate ACRE.

Find out how agriculture works. Producers are industry experts and you will find they have a lot of information to share. They can tell you about the state and federal level regulations they follow. They can talk to you about their operations and explain common practices, as well as what they need for their businesses to thrive. Being open to conversation can save a lot of time, effort and energy for everyone.

If you find you still need another opinion on how to write (or not write!) a local regulation to avoid

a possible ACRE situation, you can contact [Shelly Dehoff](#), with the [PA Agricultural Ombudsman Program](#). Shelly helps municipalities and farmers find common ground, with the intention of promoting good agricultural practices and avoiding ACRE challenges.



Shelly Dehoff



But agriculture can be noisy and smelly. Why don't producers try to mitigate these issues?

Generally they do, probably even more than you realize. They try to avoid spreading manure on rainy days, wait for excessive wind to die down before applying chemical sprays, or fix fences immediately once they realize animals have gotten off of their property. They implement new technologies, often at significant costs, that help safeguard the environment. Most try to be good neighbors, but the fact is there are certain aspects of agriculture: noise, smells, loose animals, equipment on local roads, associated truck-traffic, etc. that are unavoidable consequences of the industry.

As municipal officials, you can help minimize these issues by implementing good planning practices for farm and non-farm uses.

Remember most farmers are required by law to have Ag Erosion and Sedimentation plans, as well as manure management or nutrient management plans in place. These plans, which are often written by certified planners, help producers address specific environmental impacts such as run-off and manure storage, and implement Best Management Practices that will help mitigate odors and other issues.



What if we need additional technical advice about agriculture?

Your experience with agriculture may be limited or vast, but regardless, it can be helpful to check your assumptions or gain additional perspective from agricultural service providers when undertaking an ordinance update or dealing with a farm-neighbor complaint.

In addition to Shelly Dehoff, agricultural service providers like [Penn State Extension](#) and the [Conservation District](#) can serve as valuable resources in understanding the regulations and farming activities taking place in your area. They can help you better understand if, when and/or how to regulate certain activities. They can help you determine if there is actually anything to be concerned with, or if the neighbor who made the complaint really just does not understand what happens in an agricultural operation.

Should we regulate first and ask questions later?

No! Contact a service provider before trying to regulate “one bad actor” into compliance. Amending ordinances too specifically may bring you closer to violating ACRE. While the Conservation District does not possess the same enforcement authority as the Department of Environmental Protection (see below), they work voluntarily with farmers to help them implement Best Management Practices (BMPs) and they can certainly help resolve complaints.



“Farmers know that if someone is not ‘following the rules’ it looks bad on all farmers...”

What if we have a “bad actor” and outreach efforts from agricultural service providers do not work?

While this may not always be an option, if you know another farmer in the municipality, reach out to him or her. They may be able to encourage change as a peer. Farmers know that if someone is not “following the rules” it looks bad on all farmers, and they may be very willing to step-in to resolve the issue.

If all else fails, you can contact the [Department of Environmental Protection](#) (DEP) to evaluate the situation if the producer is unwilling to make the necessary changes to solve the problem. DEP has the regulatory ability to require compliance.

Is there anything else we should know about agriculture in our community?

Yes. Most farmers are experienced conservationists and share your concerns for clean water and soil, and animal health. Therefore, supporting and encouraging agricultural operations in your municipality is not inherently inconsistent with preserving natural resources, or maintaining the health, safety and welfare of your residents. In addition, agriculture significantly contributes to our local economy, helps retain “open space” and a quality of life that most of your residents value.



Considerations for Producers

Is my municipality able to regulate my agricultural operation, or does ACRE provide a total protection from local regulations?



No, ACRE will not provide you with total protection from local regulations. Municipalities are able to regulate activities that are not part of a normal agricultural operation. They are also permitted to regulate a normal agricultural operation, as long as the ordinance does not violate an existing state law. (See examples on page 2.)

Our industry is so regulated at the state and federal levels, why do my local officials want to impose more regulations?

Municipal officials may not be aware of how strictly regulated you are by state and federal laws. Therefore, they may think that if they do not regulate various activities, environmental or neighbor impacts, degradation and nuisance complaints will occur.

In addition, they have the difficult job of interpreting and upholding rules and regulations for an often growing local population; trying to balance the health, safety and welfare of all of their residents in an increasingly complex world.



Would it help to talk to my local officials about the agricultural industry, my operation, best management practices and the regulations we must follow?

Yes. If you do not already know them, go and introduce yourself. It can be an informal meeting; just let them know you are a resource and would be happy to help them with agriculture-related questions. If you are not comfortable doing that, ask an officer of an agricultural association that you are a part of to come in and talk to your local officials. Knowing that assistance is available, if needed, can be a great help to local officials.



I want to expand or change my farm operation. Do I need to tell the municipality?



Yes. You should call your local municipality in advance of any changes you want to make to your operation. This will enable the municipality to confirm that the activity is a permitted use under the current ordinance, help you identify any necessary

permits and/or associated fees, and help them understand what you are planning so that they may better respond to inquiries from adjacent property owners or other concerned residents. Early communication can make for a smoother process.

Does my municipality have to notify me when they are amending local ordinances that may affect my agricultural operation?

Not necessarily. While some municipalities choose to notify property owners they are generally not required to do so. The notice requirements of Section 609 of the Municipalities Planning Code (MPC) only require public notice of public meetings with a designated time and place. The only time they would be required to specifically notify you would be if they are enacting a zoning map change and your property is affected by the proposed change.



Do I really have to be responsible for knowing what is in my local ordinances?

Yes, you should. As a business owner in the municipality, you should keep abreast of the regulations that affect your operation and relevant updates that could directly impact your business, even if you've been farming in your current location for a long time. Municipal officials may change every few years and the vision for land use in your municipality will evolve over time.

Luckily with today's technology keeping informed is not too difficult. While attending monthly municipal

meetings may be possible for some, many of you are too busy to do that. But, you can give a quick call to your municipality every few months to see if something pertinent is going on. Or perhaps you can sign up online to receive meeting agendas in advance of the meeting. Many municipalities also have websites where they post meeting minutes and other information. A few minutes a month may be all it takes for you to be informed about things that may affect your business.



I have tried to work with my municipal officials to amend an ordinance that is negatively impacting my agricultural business operation that I believe I am otherwise legally allowed to do. What else can I do?

Reach out to [Shelly Dehoff](#), a former Resource Conservation Specialist with the York County Conservation District and now with the [PA Agricultural Ombudsman Program](#). Shelly is a great resource and can help bring an outside perspective to a tense situation. She specializes in working through difficult circumstances and brokering resolutions that work for both parties.



If all else fails, what recourse do I have?

If your best efforts with your municipality have not secured a workable solution, you may request a free review of the ordinance from the PA Attorney General under Act 38, known as “ACRE” ([Agriculture, Communities and Rural Environments Act](#)). ACRE was enacted to ensure that ordinances adopted by local municipalities, that regulate normal agricultural operations, are not in violation of state law. A local ordinance cannot exceed, duplicate or conflict with state laws that already regulate farm operations.

The Office of the Attorney General has a [webpage](#) devoted to ACRE, including ACRE review requests and associated ordinances, and instructions on how producers may file their own requests.

Although ACRE is an important tool, it is advisable for all parties to do their best to work together to avoid resorting to it. ACRE decisions can take years to resolve and can be very costly in terms of time and money while the legal review process takes all of which can greatly hinder the success or viability of your business.