

**ELEVENTH ANNUAL REPORT OF THE  
ATTORNEY GENERAL TO THE GENERAL ASSEMBLY  
PURSUANT TO SECTION 318 OF ACT 38 OF 2005  
“ACRE”  
AGRICULTURE, COMMUNITIES AND RURAL ENVIRONMENT**

**September 2016**

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The Agriculture, Communities and Rural Environment (ACRE) statute, Act 38, took effect on July 6, 2005. The central purpose of ACRE is to protect normal agricultural operations from unauthorized local regulation. ACRE furthers that purpose by conferring upon the Attorney General: (1) the power and duty, upon the request of an owner or operator of a normal agricultural operation, to review local ordinances for compliance with State law; and (2) the authority, in the Attorney General's discretion, to bring a legal action against a local government unit in Commonwealth Court to invalidate or enjoin the enforcement of an unauthorized local ordinance.

In response, the Office of Attorney General (OAG) developed and implemented a process for receiving requests for review of ordinances, for completing such reviews within the 120-day time period prescribed by the Act, and for bringing legal action when such action is warranted. Consistent with ACRE, all requests for review received during the year ending July 6, 2016, were completed within 120 days (or required an extension of the 120-day review period to obtain additional information or provide the time required for OAG to complete the review) or were still within the 120-day review period.

When the OAG receives a request for review of an ordinance, the OAG sends the owner/operator who requested the review an acknowledgement that the request was received, and the municipality whose ordinance is the subject of the request for review a notice that the request has been received and that the ordinance will be reviewed.

When the OAG completes its review, the OAG advises both the owner/operator and the municipality in writing whether or not it intends to bring legal action to invalidate or enjoin the enforcement of the ordinance. If the OAG advises the municipality that it intends to bring legal action, it affords municipal officers an opportunity to discuss the legal problems identified in the review and to correct such problems before a legal action is brought.

## **I. ANNUAL DATA**

Between July 6, 2015, and July 6, 2016, the OAG:

- Received 9 requests for review of local ordinances;
- Completed review of 2 ordinances (includes 1 review completed between July 6, 2016, and the date of this Report);
- Sent 2 responses to owner/operator advising that no legal action would be filed;
- Sent 0 notices to municipalities of legal problems with ordinances.

## **II. AGGREGATE DATA**

Between July 6, 2005, and July 6, 2016, the OAG:

- Received 131 requests for review of local ordinances (1 request was submitted, but withdrawn in 2006 and is excluded from the AGGREGATE DATA);
- Completed review of 113 ordinances (includes 3 additional reviews completed between July 6, 2016, and the date of this Report);
- Sent 59 responses to owner/operators advising that no legal action would be filed (includes 2 responses of no legal action sent after July 6, 2016);
- Sent 54 notices to municipalities of legal problems with ordinances (includes 1 notices of legal problems sent after July 6, 2016);
- 6 requests for review of a local ordinance were withdrawn due to either a resolution between the owner/operator and the municipality while the OAG's review was pending or the owner/operator ceasing operations;
- Brought 7 legal actions against municipalities to invalidate or enjoin the enforcement of an unauthorized local ordinance (1 of those legal actions remains active);
- Resolved 39 out of the 54 reviews that were accepted due to legal problems with ordinances.
- Re-opened a prior accepted review that had been resolved through ordinance amendments because the Township subsequently enacted new ordinance amendments creating legal problems.
- Received 2 requests for reconsideration from OAG's denial of a request for review.

### **III. REQUESTS FOR REVIEW, NATURE OF COMPLAINTS AND ACTION TAKEN**

#### **A. Status of 7 Legal Actions**

##### **1. Locust Township, Columbia County**

The owner/operator requested review of Ordinance No. 4-2001, which regulates “intensive animal agriculture.” The owner/operator complained that the ordinance conflicts with State law. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. After the Township failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance. On preliminary objections, the Commonwealth Court held that Act 38 does not apply to a pre-existing ordinance unless the municipality acts to enforce it. The OAG appealed that decision to the Pennsylvania Supreme Court. On April 29, 2009, in a published opinion, the Supreme Court reversed the Commonwealth Court’s ruling and held that the Attorney General is explicitly empowered to bring action to invalidate enacted local ordinances without regard to enforcement. The case was remanded to the Commonwealth Court.

The OAG filed a Motion for Summary Judgment. On July 17, 2012, the Commonwealth Court issued an en banc decision granting in part and denying in part the OAG’s summary judgment. The Court held that the Township cannot require smaller animal operations to comply with the Nutrient and Odor Management Act because the Act makes compliance for these operations a voluntary option. The Court held the Nutrient and Odor Management Act preempted setback requirements that exceeded those under the Act and the setbacks also exceeded the Township’s authority under the Municipalities Planning Code. The Court held that the requirements for a water impact study, water usage monitoring and recording were preempted by the Water Resources Planning Act. Finally, the Court held that a requirement for a

site plan for a proposed operation was not preempted by the Nutrient Management Act. The OAG continues to litigate the undecided issues that remain following the summary judgment ruling.

## **2. Lower Oxford Township, Chester County**

The owner/operator requested review of Ordinance No. 2004-1, which regulates composting activities. The owner/operator complained that the ordinance unlawfully restricts mushroom compost preparation. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. After the Township failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance. On preliminary objections, the Commonwealth Court held that Act 38 does not apply to a pre-existing ordinance unless the municipality acts to enforce it. The OAG appealed that decision to the Pennsylvania Supreme Court. The Pennsylvania Supreme Court issued a per curiam order affirming the Commonwealth Court's ruling, and the OAG filed a Petition for Reargument, which the Court ordered held pending the outcome of *Locust Township*. On November 10, 2009, the Supreme Court granted the petition and vacated its per curiam order based on its reversal of the Commonwealth Court's decision in *Locust Township*. Following negotiations, Lower Oxford Township enacted ordinance amendments to resolve the legal problems with the ordinance and the OAG withdrew the lawsuit in July 2011.

## **3. Heidelberg Township, North Heidelberg Township, Robesonia Borough, Womelsdorf Borough, Berks County**

The owner/operator requested review of the Joint Municipal Ordinance, which regulates "intensive raising of livestock or poultry" in four municipalities. The owner/operator complained that the ordinance conflicts with State law. The OAG notified the municipalities of legal problems

with the ordinance and offered the municipalities an opportunity to discuss and correct them. After the municipalities failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance. On preliminary objections, the Commonwealth Court held that Act 38 does not apply to a pre-existing ordinance unless the municipality acts to enforce it. The OAG appealed that decision to the Pennsylvania Supreme Court. The Pennsylvania Supreme Court issued a per curiam order affirming the Commonwealth Court's ruling. The OAG filed a Petition for Reargument, which the Court ordered held pending the outcome of *Locust Township*. On November 10, 2009, the Supreme Court granted the petition and vacated its per curiam order based on its reversal of the Commonwealth Court's decision in *Locust Township*. In 2011, the OAG filed an Amended Petition for Review to challenge additional ordinance provisions.

Following negotiations, the four municipalities enacted joint ordinance amendments to resolve the legal problems with the ordinance and the OAG withdrew the lawsuit in September 2016.

#### **4. Richmond Township, Berks County**

The owner/operator requested review of Ordinance No. 81-2000, which regulates "intensive agricultural activity." The owner/operator complained that the ordinance conflicts with State law. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. After the Township failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance. The Township filed a Motion for Judgment on the Pleadings, which the Commonwealth Court denied in its entirety in a published opinion on May 22, 2009.

The OAG filed a Motion for Summary Judgment. On May 28, 2010, the Commonwealth Court granted the Motion for Summary Judgment on all six counts of the Petition for Review and enjoined Richmond Township from enforcing the provisions of the ordinance relating to intensive agriculture. On August 10, 2010, the Commonwealth Court granted the OAG's motion to designate the summary judgment decision as a reported opinion. Following the Commonwealth Court's grant of summary judgment, the OAG negotiated with Richmond Township on amendments to the ordinance to resolve the legal problems. The OAG approved Richmond Township's proposed ordinance amendments and Richmond Township enacted those amendments in December 2011.

#### **5. East Brunswick Township, Schuylkill County**

The owner/operator requested review of Ordinance No. 1 of 2006, which regulated land application of biosolids and prohibited land application of biosolids by corporations. The owner/operator complained that the ordinance conflicted with State law. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. After the Township failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance, along with an Application for Summary Relief. The Township filed preliminary objections to the lawsuit.

On September 23, 2008, the Commonwealth Court issued a published Opinion denying the OAG's request for summary relief and denying the Township's Preliminary Objections. Also in September 2008, the Township repealed Ordinance No. 1 of 2006, and enacted a new ordinance regulating land application of biosolids, which also had legal problems. The OAG filed an Amended Petition for Review to challenge the new ordinance. The Township filed

Preliminary Objections. On August 21, 2009, the Commonwealth Court, in a published opinion, denied the Township's preliminary objections in their entirety.

Subsequently, the OAG negotiated with the Township on amendments to the Ordinance to resolve the legal problems. The Township enacted the amendments and the OAG withdrew the lawsuit in November 2009.

## **6. Peach Bottom Township, York County**

The owner/operator requested review of an existing ordinance that regulates concentrated animal operations and concentrated animal feeding operations (CAOs/CAFOs), a proposed amendment to the existing CAO/CAFO ordinance, and an ordinance regulating below ground manure storage facilities. The owner/operator complained that the ordinances conflict with State law and impede normal agricultural operations. The OAG notified the Township of the legal problems with the existing and proposed ordinances and offered the Township an opportunity to discuss and correct them. After the Township failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance in August 2009.

During the pendency of the litigation, Peach Bottom Township enacted a few amendments to some sections of the zoning ordinance challenged by the Attorney General that resolved certain issues; however, those amendments did not resolve issues with several of the sections challenged by the OAG, namely sections 202.2, 202.3, 336, and 501, thus the case continued to be litigated and the parties also continued to negotiate on proposed ordinance amendments to settle the action.

On February 4, 2013, Peach Bottom Township Board of Supervisors enacted substantive amendments to Sections 202.2, 336, and 501 of the zoning ordinance. The OAG determined that some of the legal problems from the prior version of the ordinance Sections remained despite the

amendments and the amendments also presented new legal problems by adding requirements that were not part of the original ordinance. On March 15, 2013, the OAG filed an Amended Petition for Review to challenge the newly enacted zoning ordinance provisions. The Township filed an Answer to the Amended Petition for Review.

In September 2014, following negotiations, the Township enacted ordinance amendments to resolve the remaining legal problems with the ordinance. However, the Township inadvertently omitted one section of the ordinance from the amendment package, so the case was not entirely resolved by the amendments. In November 2014, the Township corrected this omission through enactment of another amendment to remove the remaining single ordinance section and the OAG withdrew the lawsuit in December 2014.

#### **7. Packer Township, Carbon County**

The owner/operator requested review of the Packer Township Local Control, Sewage Sludge and Chemical Trespass Ordinance, which regulates biosolid land application and prohibits biosolid land application by corporations. The owner/operator complained that the ordinance conflicts with State law. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. After the Township refused to engage in negotiations to resolve the legal problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance in August 2009.

The Township filed preliminary objections and the OAG filed an Application for Summary Relief. On January 6, 2010, the Commonwealth Court denied all of the Township's Preliminary Objections. The Court denied the OAG's Application for Summary Relief. The Township filed an Answer to the Petition for Review.

Following discovery, Packer Township filed a Motion for Summary Judgment. The Commonwealth Court denied the motion in its entirety in July 2012. In August 2012, the Court scheduled a trial for January 2013. On September 4, 2012, Packer Township repealed the ordinance. Both parties immediately filed applications with the Court to assess the status of the lawsuit following the ordinance rescission. On December 17, 2012, the Court held that the lawsuit was moot and dismissed for want of jurisdiction.

**B. Matters Unresolved as of 2015 Report**

The following is an update on matters listed in our 2015 Report to the General Assembly, but unresolved as of the date of that Report, which, with respect to each such matter, identifies the ordinance submitted for review; the complaint about the ordinance asserted by the owner/operator who requested the review, the actions taken by the OAG, and the current status.

**1. Fayette County**

The owner/operator requested review of the application of a County sign ordinance to require the removal of truck trailers used for hay storage from the farm property. The owner/operator complained that the ordinance violates State law and impedes normal agricultural operations. Upon request, the owner/operator and County submitted additional information to the OAG and the ordinance review is pending.

**2. Heidelberg Township, Lebanon County**

OAG received requests from two separate owners/operators requesting review of Township ordinance provisions regulating concentrated animal operations (CAOs). The owners/operators complained that the ordinance provisions conflict with State law and impede the ability to engage in normal agricultural operations. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct

them. The OAG and Township are currently in negotiations seeking to resolve the matter without resorting to litigation.

### **3. Douglass Township, Montgomery County**

The owner/operator requested review of a Township ordinance regulating land application of biosolids. The owner/operator complained that the ordinance conflicts with State law and prohibits normal agricultural operations. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. Following negotiations, the Township repealed the ordinance, which concluded the OAG's involvement.

### **4. West Fallowfield Township, Chester County**

The owner/operator requested review of the Township ordinance provisions for signs at roadside stands and restrictions on the keeping of livestock. The owner/operator complained that the ordinance prohibits or limits normal agricultural operations. The OAG notified the owner/operator and the Township on two occasions it would not file a lawsuit. The owner/operator requested reconsideration of the OAG's decision and submitted additional information to prove that he is engaged in a normal agricultural operation on the property. After considering the additional information, the OAG notified the Township of the legal problems with its application of residential ordinance provisions to preclude the owner/operator's keeping of livestock on a normal agricultural operation and offered the Township an opportunity to discuss and correct those problems. With respect to the signs at roadside stands, the OAG notified the owner/operator that it would not file a lawsuit. This action was resolved with the Township without resorting to litigation.

## **5. Buffalo Township, Union County**

The owner/operator requested review of Buffalo Township's interpretation of the ordinance definition for "Agricultural Operation" to exclude the practice of processing biosolids through the addition of lime to produce agricultural lime for application to farm fields. The owner/operator complained that the Township's action violates State law and prohibits and limits a normal agricultural operation. The ordinance review is pending.

## **6. Limestone Township, Lycoming County**

The owners/operators of two separate agricultural operations requested review of Limestone Township's zoning ordinance requirements for "intensive agricultural use." The owners/operators complained that the ordinance requirements prohibited or limited their normal agricultural operations, including the ability to construct manure storage facilities. The OAG notified the Township of legal problems with the ordinance provisions. The OAG and Township are in negotiations seeking to resolve the matter without resorting to litigation. The Township also agreed to allow the owners/operators to proceed with construction of manure storage facilities in accordance with State standards during the pendency of the negotiations with the OAG.

## **7. Salem Township, Luzerne County**

The owner/operator requested review of Salem Township's zoning ordinance provisions for forestry activities. The owner/operator complained that the Township's ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The OAG notified the Township of legal problems with sections of the ordinance requiring a conditional use for forestry activities and imposing unreasonable restrictions on forestry activities and offered the Township an opportunity to discuss and correct them. The Township has agreed to enact

amendments to resolve the legal problems. The OAG and Township are negotiating on the proposed amendments to resolve the matter without resorting to litigation.

**8. Cumberland Township, Adams County**

The owner/operator requested review of Cumberland Township's ordinance provision that precludes concentrated animal operations in a zoning district that permits agricultural uses. The owner/operator complained that the ordinance provision violates State law and prohibits and limits a normal agricultural operation. The OAG notified the Township of legal problems with the zoning ordinance provision and offered the Township an opportunity to discuss and correct it. The OAG and Township are in negotiations seeking to resolve the matter without resorting to litigation.

**9. Wayne Township, Schuylkill County**

The owner/operator requested review of Wayne Township's zoning ordinance provisions regulating "intensive agriculture." The owner/operator complained that the ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The OAG notified the Township of legal problems with the zoning ordinance provisions and offered the Township an opportunity to discuss and correct them. The OAG and Township are in negotiations seeking to resolve the matter without resorting to litigation.

**10. Gratz Borough, Dauphin County**

The owner/operator requested review of Gratz Borough's zoning ordinance provisions requiring a special exception for "intensive agriculture" and a minimum of 30 acres for both agriculture and intensive agriculture, which prevented him from building poultry houses. The owner/operator complained that the ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The OAG notified the Borough of legal problems with the zoning ordinance provisions and offered the Borough an opportunity to discuss and correct them. The

OAG and Township are in negotiations seeking to resolve the matter without resorting to litigation. The Borough also agreed to suspend enforcement of the current ordinance provisions and permit the owner/operator to construct his proposed poultry houses.

**11. East Nantmeal Township, Chester County**

The owner/operator requested review of East Nantmeal Township's zoning ordinance provisions for forestry activities. The owner/operator complained that the Township's ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The OAG notified the Township of legal problems with the zoning ordinance and offered the Township an opportunity to discuss and correct them. The OAG and Township are in negotiations seeking to resolve the matter without resorting to litigation.

**12. Montour Township, Columbia County**

The owner/operator requested review of Montour Township's zoning ordinance provisions requiring a special exception for his proposed swine nursery operation which is neither a concentrated animal operation nor a concentrated animal feeding operation located in an agricultural zoning district and on property included in the Township's Agricultural Security Area. The owner/operator also requested review of the Township's imposition of conditions for the special exception, including well testing at the owner's expense, annual reports to prove the AEUs on the operation remain below 2 AEUs, and setback and odor control requirements. The owner/operator complained that the Township's ordinance provisions and imposed conditions for approval violate State law and prohibit or limit a normal agricultural operation. The OAG notified the Township of legal problems with the zoning ordinance and offered the Township an opportunity to discuss and correct them. The OAG and Township are in negotiations seeking to resolve the matter without resorting to litigation.

**13. Municipality of Monroeville, Allegheny County**

The owner/operator requested review of Municipality of Monroeville's zoning ordinance provisions for timber harvesting activities, including requiring conditional use approval and precluding harvesting on landslide prone soils. The owner/operator complained that the Township's ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The OAG notified the Township of legal problems with the zoning ordinance and offered the Township an opportunity to discuss and correct them. Following negotiations, the OAG approved amendments that resolved the legal problems and the Township enacted those amendments in July 2016.

**14. Mount Joy Township, Adams County**

The owner/operator requested review of Mount Joy Township's zoning ordinance provisions prohibiting the slaughtering and sale of poultry products produced from the poultry raised on their agricultural operation. The owner/operator complained that the Township's ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The OAG notified the Township of legal problems with the zoning ordinance and offered the Township an opportunity to discuss and correct them. The Township enacted amendments that resolved the legal problems with the ordinance. The Township also permitted the owner/operator to engage in the slaughtering and sale of poultry products while the parties negotiated the resolution to the OAG's action.

**15. Burnside Township, Centre County**

The owner/operator requested review of Burnside Township's sewage sludge ordinance provisions. The owner/operator complained that the Township's ordinance provisions violate

State law and prohibit or limit a normal agricultural operation. The OAG notified the owner/operator and Township that it would not file a lawsuit.

**16. Salem Township, Luzerne County**

OAG received requests from two separate owners/operators requesting review of Township ordinance provisions regulating concentrated animal feeding operations (CAFOs). The owners/operators complained that the ordinance provisions conflict with State law and impede the ability to engage in normal agricultural operations. The OAG notified the Township of legal problems with the zoning ordinance and offered the Township an opportunity to discuss and correct them. The OAG and Township are in negotiations seeking to resolve the matter without resorting to litigation.

**17. Franklin Township, Chester County**

The owner/operator of a mushroom farm requested review of Franklin Township's zoning ordinance provisions for mushroom growing operations, including the preclusion of such operations in the agricultural residential zoning district. The owner/operator complained that the Township's ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The OAG notified the Township of legal problems with the zoning ordinance and offered the Township an opportunity to discuss and correct them. The OAG approved amendments that resolved the legal problems and the Township enacted those amendments in May 2016.

**18. Buckingham Township, Bucks County**

The owner/operator requested review of Buckingham Township's application of its zoning ordinance provisions to preclude a mulch production operation on a preserved farm. The owner/operator complained that the Township's application of its ordinance provisions violate

State law and prohibit or limit a normal agricultural operation. The OAG notified the owner/operator and Township that it would not file a lawsuit.

**19. Straban Township, Adams County**

The owner/operator of a proposed poultry production operation requested review of Straban Township's zoning ordinance provisions regulating agribusiness and requiring a special exception. The owner/operator complained that the Township's ordinance provisions violate State law and prohibit or limit a normal agricultural operation. Following investigation, the OAG deemed the request as withdrawn because the owner/operator did not purchase the farm property.

**20. Solebury Township, Bucks County**

The owner/operator of an organic farming operation requested review of Solebury Township's zoning ordinance provisions regulating structures and requiring permits. The owner/operator complained that the Township's zoning ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The OAG notified the owner/operator and Township that it would not file a lawsuit.

**21. Newlin Township, Chester County**

A large group of individual owners/operators of horse farming operations requested review of Newlin Township's zoning ordinance provisions regulating equine operations, including mandatory horse stocking rates and special exception requirements. The owners/operators complained that the Township's ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The OAG notified the Township of legal problems with the zoning ordinance and offered the Township an opportunity to discuss and

correct them. The OAG and Township are currently in negotiations seeking to resolve the matter without resorting to litigation.

## **22. Highland Township, Chester County**

The owner/operator of a proposed turkey production operation requested review of Highland Township's zoning ordinance provisions regulating animal production operations and requiring a conditional use for intensive agricultural operations. The owner/operator also requested review of the Township's water supply ordinance provisions. The owner/operator complained that the Township's ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The OAG notified the Township of legal problems with the ordinance provisions and offered the Township an opportunity to discuss and correct them. The OAG approved amendments that resolved the legal problems and the Township enacted those amendments in May 2016. The Township also repealed the water supply ordinance. The Township suspended enforcement of the ordinance provisions pending the negotiations and permitted the owner/operator to proceed with constructing the turkey barn.

## **23. Union Township, Adams County**

The owner/operator of an alpaca farming operation requested review of Union Township's zoning ordinance provisions regulating direct commercial sales of agricultural commodities. The owner/operator complained that the Township's requirements for direct commercial sales violate State law and prohibit or limit a normal agricultural operation. The OAG notified the Township of legal problems with the ordinance provisions and offered the Township an opportunity to discuss and correct them. The OAG and Township are in negotiations seeking to resolve this matter without resorting to litigation.

**24. Brecknock Township, Berks County**

The owner/operator of a proposed landscape nursery operation requested review of Brecknock Township's application of a private residential declaration of covenants and a subdivision plan note to preclude the owner/operator's proposed operation. The owner/operator complained that the Township's interpretation and reliance on these documents to preclude the proposed nursery operation violates State law and prohibits or limits a normal agricultural operation. The OAG notified the Township that it exceeded its authority in relying on those documents to deny a zoning permit to the owner/operator. The Township agreed to issue a zoning permit to the owner/operator in accordance with the terms of its zoning ordinance, which resolved the OAG's involvement.

**25. Plumstead Township, Bucks County**

The owner/operator of an animal agricultural operation requested review of Plumstead Township's ordinance provisions regulating the keeping of animals. The owner/operator complained that the Township's application of the ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

**26. Maxatawny Township, Berks County**

The owner/operator of a proposed poultry operation requested review of Maxatawny Township's zoning ordinance provisions regulating animal agricultural operations and requiring a conditional use approval for intensive agriculture. The owner/operator complained that the Township's ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The ordinance review is pending.

**27. Woodward Township, Clinton County**

The owner/operator of a crop and animal production operation requested review of Woodward Township's zoning ordinance provisions regulating animal agriculture and prohibiting commercial animal agriculture in a zoning district that allows other forms of agricultural operations. The owner/operator complained that the Township's ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The OAG notified the Township of legal problems with the ordinance provisions and offered the Township an opportunity to discuss and correct them. The OAG and Township are in negotiations seeking to resolve this matter without resorting to litigation.

**28. Hamilton Township, Adams County**

The owner/operator of a crop and animal production operation requested review of Hamilton Township's zoning ordinance provisions regulating animal production operations and requiring a special exception. The owner/operator also requested review of the Township's ordinance requirements for greenhouses and agricultural road side stands. The owner/operator complained that the Township's ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The ordinance review is pending.

**C. New Matters**

The following is a summary of the requests for review of local ordinances received by the OAG between July 6, 2015, and July 6, 2016, which, with respect to each request, identifies the ordinance submitted for review; the complaint about the ordinance asserted by the owner/operator who requested the review, and the actions taken by the OAG up to the date of this Report.

**1. Hereford Township, Berks County**

The owner/operator of an animal agricultural operation requested review of Hereford Township's zoning ordinance provisions regarding fencing for agricultural operations. The owner/operator complained that the Township's application of its ordinance violates State law and prohibits or limits a normal agricultural operation. The ordinance review is pending.

**2. Upper Saucon Township, Lehigh County**

The owner/operator of an animal agricultural operation requested review of Upper Saucon Township's denial of a permit to build a barn to house animals on the operation. The owner/operator complained that the Township's application of its ordinance violates State law and prohibits or limits a normal agricultural operation. The ordinance review is pending.

**3. West Penn Township, Schuylkill County**

The owner/operator of timber harvesting operation requested review of West Penn Township's zoning ordinance provisions regulating silvicultural activities and requiring conditional use approval to engage in timber harvesting activities. The owner/operator complained that the Township's zoning ordinance violates State law and prohibits or limits a normal agricultural operation. The ordinance review is pending.

**4. Codorus Township, York County**

The owner/operator of a concentrated animal feeding operation requested review of Codorus Township's zoning, land development, and health ordinance provisions regulating concentrated animal feeding operations. The owner/operator complained that the Township's ordinance provisions violate State law and prohibit or limit a normal agricultural operation. The ordinance review is pending.

**5. Ferguson Township, Centre County**

The owner/operator of an equine operation requested review of Ferguson Township's zoning ordinance provision prohibiting livestock on parcels less than 50 acres and requiring conditional use approval for riding stables. The owner/operator complained that the Township's zoning ordinance violates State law and prohibits or limits a normal agricultural operation. The ordinance review is pending.

**6. North Sewickley Township, Beaver County**

The owner/operator of an agricultural operation requested review of North Sewickley Township's denial of a permit to build a mobile home on the farm property. The owner/operator complained that the Township's action violates State law and prohibits or limits a normal agricultural operation. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

**7. Latimore Township, Adams County**

The owner/operator of a plant nursery operation requested review of Latimore Township's zoning ordinance provisions limiting the sale of horticultural commodities to only those grown on the property. The owner/operator complained that the Township's zoning

ordinance violates State law and prohibits or limits a normal agricultural operation. The ordinance review is pending.

**8. Longswamp Township, Berks County**

The owner/operator of a crop farming operation requested review of Longswamp Township's application of its subdivision and land development and well drilling ordinances to the owner/operator's installation of a crop irrigation system. The owner/operator complained that the Township's zoning ordinance violates State law and prohibits or limits a normal agricultural operation. The ordinance review is pending.

**9. Wolf Township, Lycoming County**

The owner/operator of an agricultural operation requested review of Wolf Township's application of its zoning ordinance to require conditional use approval to engage in agritainment activities. The owner/operator complained that the Township's application of its zoning ordinance violates State law and prohibits or limits a normal agricultural operation. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

**D. Re-Opened Matters and Reconsideration Requests**

**1. Lehigh Township, Northampton County**

The OAG accepted a request for review of an ordinance that regulated "commercial livestock operations." In 2009, after negotiations, Lehigh Township enacted amendments that resolved the legal problems with the ordinance. In 2011, the OAG was notified that Lehigh Township enacted new ordinances in 2010 to regulate Concentrated Animal Feeding Operations. The OAG notified Lehigh Township of legal problems with the ordinances and offered the Township an opportunity to discuss and correct them. The OAG and Township are currently in negotiations seeking to resolve the matter without resorting to litigation.

## **2. Fairview Township, Erie County**

The owners/operators requested review of Fairview Township's ordinance and actions in re-zoning an agricultural zone to a residential zone and precluding a pre-existing agricultural operation. The owners/operators complained that the ordinance prohibits or limits normal agricultural operations. The OAG notified the owner/operator and the Township that it would not file a lawsuit. The owners/operators requested reconsideration of the OAG's decision and submitted additional information to prove they are engaged in a normal agricultural operation. The OAG is considering that additional information and the Township's written response.

## **3. Centerville Borough, Washington County**

The owner/operator requested review of a Borough ordinance defining commercial and non-commercial agriculture, requiring a permit for a private non-commercial use in the Agricultural Zoning Area, and imposing a fine for non-compliance. The owner/operator complained that he was engaged in commercial agriculture, but the Borough required that he apply for a non-commercial use permit, and then denied the permit. The OAG notified the owner/operator and the Borough that it would not file a lawsuit. The owners/operators requested reconsideration of the OAG's decision and submitted additional information to prove they are engaged in a normal agricultural operation. The OAG is considering that additional information.