

THE GOVERNOR

Title 4—ADMINISTRATION

PART I. GOVERNOR'S OFFICE

[4 PA. CODE CHS. 5 AND 6]

[EXECUTIVE ORDER NO. 2003-13]

Governor's Advisor for Hunting, Fishing and Conservation; Governor's Advisory Council for Hunting, Fishing and Conservation; Governor's Youth Council for Hunting, Fishing and Conservation

September 22, 2003

Whereas, the Constitution of this Commonwealth proclaims that Pennsylvania's public natural resources are the common property of all people, including generations yet to come, and commands the Commonwealth to conserve and maintain our natural resources for the benefit of all the people; and

Whereas, Pennsylvania has been blessed with abundant natural resources, which have created widespread recreational opportunities; and

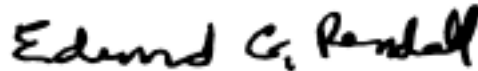
Whereas, Pennsylvania's rich outdoor heritage, including activities such as hunting, fishing, trapping, nature photography, bird and wildlife watching, and hiking, are enjoyed by more than half of Pennsylvania's population—almost six million people; and

Whereas, these recreational activities annually generate incomes totaling more than \$5 billion and support more than 100,000 jobs in this Commonwealth; and

Whereas, watchable wildlife generates \$70 million per year in sales tax revenue for this Commonwealth and another \$86.8 million per year in federal taxes; and

Whereas, I have determined that the Governor and other Commonwealth officials and agencies would benefit from the advice and counsel of an official representative body created from a broad range of dedicated hunters, anglers, trappers, and other conservationists.

Now, Therefore, I, Edward G. Rendell, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby establish the position of the Governor's Advisor for Hunting, Fishing and Conservation; the Governor's Advisory Council for Hunting, Fishing and Conservation; and the Governor's Youth Council for Hunting, Fishing and Conservation, as hereinafter set forth.



Governor

Fiscal Note: GOV 03-14. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 5. COUNCILS AND COMMITTEES

Subchapter FFF. (Reserved)

§§ 5.821—5.824. (Reserved).

CHAPTER 6. ADDITIONAL COUNCILS AND COMMITTEES
Subchapter J. ADVISORY COUNCILS FOR HUNTING, FISHING
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GOVERNOR'S ADVISOR FOR HUNTING, FISHING AND
CONSERVATION

§ 6.131. Appointment.

There is hereby created within the Office of the Governor the position of Governor's Advisor for Hunting, Fishing and Conservation (Advisor). The Advisor will be appointed by the Governor and will be responsible for advising the Governor on matters pertaining to the conservation of the natural resources of this Commonwealth, for both consumptive and nonconsumptive uses, and on ways to protect, promote and enhance this Commonwealth's outdoor heritage.

§ 6.132. Powers and duties.

The powers and duties of the Governor's Advisor for Hunting, Fishing and Conservation (Advisor) are as follows:

(1) The Advisor functions as the Governor's principal advocate for hunters, anglers, trappers and other conservationists, and reviews both pending and existing laws, policies and programs affecting wildlife conservation and outdoors recreation. As the Governor's advocate, the Advisor acts as liaison between the Governor's Advisory Council for Hunting, Fishing and Conservation (Council) and the Governor, making recommendations based on a consensus of opinion from Council members and presenting the Governor with the Council's policy recommendations.

(2) The Governor will assign to the Advisor other related tasks and responsibilities that the Governor might deem appropriate, including: working to improve outdoor tourism opportunities; working on Federal and State initiatives that benefit hunters, anglers, trappers and other conservationists; and working on issues related to hunter, trapper, and angler recruitment and retention. The Governor also will direct the Advisor to represent him at meetings, events and other activities, as appropriate.

(3) The Advisor will help to promote the Governor's conservation agenda. In addition to working with other State agencies, the Advisor will develop and maintain a strong working relationship with the General Assembly, especially the members of the House and Senate Game and Fisheries Committees.

(4) The Advisor will direct the activities and agenda of the Council and conduct its meetings. In his sole discretion, the Advisor may delegate defined responsibilities to individual Council members, as necessary, and

may create committees within Council to accomplish specific goals or tasks, as deemed appropriate. With the approval of the Governor, the Advisor may remove and replace Council members.

(5) The Advisor, with the approval of the Governor, may employ other persons as needed for the proper administration of the program.

GOVERNOR'S ADVISORY COUNCIL FOR HUNTING, FISHING AND CONSERVATION

§ 6.141. Purpose.

The purpose of the Governor's Advisory Council on Hunting, Fishing and Conservation is to provide a forum through which an open and forthright dialog might be fostered among a diverse group of conservation minded individuals, to provide the Governor with sound advice on matters pertaining to the conservation of the natural resources of this Commonwealth for both consumptive and nonconsumptive uses, and on ways to protect, promote and enhance the outdoor heritage of this Commonwealth.

§ 6.142. Responsibilities.

The powers and duties of the Governor's Advisory Council for Hunting, Fishing and Conservation will be to:

(1) Review and make written recommendations to the Governor's Advisor for Hunting, Fishing and Conservation (Advisor) regarding any issue that might affect the recreational use of this Commonwealth's natural resources.

(2) Review and make written recommendations to the Advisor regarding policies adopted or regulations promulgated by the Pennsylvania Fish and Boat Commission, the Pennsylvania Game Commission, the Department of Conservation and Natural Resources or the Department of Environmental Protection, that might affect the recreational uses of this Commonwealth's natural resources.

(3) Review and make written recommendations to the Advisor regarding pending legislation and proposed regulations that might affect the recreational uses of this Commonwealth's natural resources.

(4) Review with the Advisor, at the direction of the Governor, the qualifications of candidates for appointment to the Pennsylvania Fish and Boat Commission and the Pennsylvania Game Commission and to assist the Advisor in making recommendations to the Governor.

(5) Convene at least four times per year and at the call of the Advisor.

(6) Adopt rules of procedure consistent with this subchapter.

§ 6.143. Composition of the Governor's Advisory Council for Hunting, Fishing and Conservation.

(a) The Governor's Advisory Council for Hunting, Fishing and Conservation (Council) will consist of at least 12, but no more than 21, residents of this Commonwealth appointed by the Governor to serve at the pleasure of the Governor.

(b) Elected state officials and employees of the Department of Conservation and Natural Resources, the Department of Environmental Protection, the Pennsylvania Fish and Boat Commission, the Pennsylvania Game Commission and members of their immediate families are not eligible for membership on the Council.

(c) The Council shall represent a broad-based group of stakeholders, all of whom have an intrinsic interest in the wildlife resources of this Commonwealth. The members shall support hunting, trapping and angling as a valuable and accepted method of wildlife management.

§ 6.144. Terms of membership.

(1) Members of Governor's Advisory Council for Hunting, Fishing and Conservation will be appointed for a term of 1 year and will continue to serve thereafter until their successors have been appointed and qualified.

All members serve at the pleasure of the Governor and will be expected to contribute in a meaningful manner and attend meetings regularly.

(2) Members who compile more than two unexcused absences within the calendar year are subject to immediate removal by the Governor.

§ 6.145. Compensation.

Members of the Governor's Advisory Council for Hunting, Fishing and Conservation (Council) will receive no compensation for their services. Members will be reimbursed in accordance with established Commonwealth policy for expenses incurred in serving the Council.

§ 6.146. Cooperation by State agencies.

State agencies shall cooperate fully with the Governor's Advisor for Hunting, Fishing and Conservation and the Governor's Advisory Council for Hunting, Fishing and Conservation and, upon request, provide staff assistance and information, as appropriate.

§ 6.147. Reports.

The Governor's Advisory Council for Hunting, Fishing and Conservation (Council) and the Governor's Advisor for Hunting, Fishing and Conservation shall submit an annual report to the Governor outlining the Council's activities and accomplishments for the year.

GOVERNOR'S YOUTH COUNCIL FOR HUNTING, FISHING AND CONSERVATION

§ 6.151. Purpose.

The purpose of the Governor's Youth Council for Hunting, Fishing and Conservation (Youth Council) is to provide a forum through which an open and forthright dialog might be fostered among a diverse group of conservation minded youth, so that the Governor's Advisory Council for Hunting, Fishing and Conservation might receive the Youth Council's best advice regarding the conservation of the natural resources of this Commonwealth for both consumptive and nonconsumptive use, and on ways to protect, promote and enhance the outdoor heritage of this Commonwealth.

§ 6.152. Mission.

The mission of the Governor's Youth Council for Hunting, Fishing and Conservation will be to help enlist a new generation of individuals committed to protecting, promoting and enhancing the outdoor heritage of this Commonwealth.

§ 6.153. Responsibilities.

Subject to the direction of the Governor's Advisor for Hunting, Fishing and Conservation (Advisor) and the Governor's Advisory Council for Hunting, Fishing and Conservation (Council), the Governor's Youth Council for Hunting, Fishing and Conservation shall endeavor to:

- (1) Advise the Council on wildlife conservation and outdoor recreation issues that pertain directly to the youth of this Commonwealth.
- (2) Identify barriers and obstacles preventing youth participation in wildlife conservation and recreation.
- (3) Recommend new strategies to interest youth in wildlife conservation and recreation to retain their interests and involvement.
- (4) Assist the natural resource agencies within this Commonwealth with youth programs and issues relating to wildlife conservation and recreation.
- (5) Convene at least four times per year and at the call of the Advisor.
- (6) Adopt rules of procedure consistent with this subchapter.

§ 6.154. Composition.

The members of the Governor's Youth Council for Hunting, Fishing and Conservation (Youth Council) will be appointed by the Governor and serve at the pleasure of the Governor. The membership of the Youth Council will consist of the following:

(1) At least 20 residents of this Commonwealth between the ages of 14 and 18.

(2) Appointees who are active in outdoor activities, such as hunting, fishing or trapping, or who are active in an outdoor or conservation-related organization or club.

§ 6.155. Officers.

(a) One member will be elected by the Governor's Youth Council for Hunting, Fishing and Conservation (Youth Council) to serve as chairperson for 1 academic year (September 1—August 31). Other officers may be elected by the members of the Youth Council and will serve for 1 academic year.

(b) The Governor's Advisor for Hunting, Fishing and Conservation (Advisor) may appoint one member of the Governor's Advisory Council for Hunting, Fishing and Conservation (Council) to serve as a Special Liaison for Youth. The Advisor may appoint other special liaisons from Council, as deemed appropriate.

§ 6.156. Terms of membership.

(a) Members of the Governor's Youth Council for Hunting, Fishing and Conservation will be appointed for a term of 1 year and will continue to serve thereafter until successors have been appointed and qualified. Members will serve at the pleasure of the Governor and will be expected to contribute in a meaningful manner and attend meetings regularly.

(b) Members who compile more than two unexcused absences within the academic year will be subject to immediate removal by the Governor.

§ 6.157. Youth mentors.

The Governor's Advisor for Hunting, Fishing and Conservation (Advisor) may appoint to the Governor's Youth Council for Hunting, Fishing and Conservation (Youth Council) any number of non-youth members (Mentors), but Mentors will not be counted as part of the Youth Council's total complement. Mentors will be responsible for helping the Youth Council fulfill the requirements of this subchapter, and will serve for 1 year or until a successor has been appointed and qualified. The Advisor may appoint no more than two former Youth Council members as Mentors.

§ 6.158. Reports.

By August 31, the Governor's Youth Council for Hunting, Fishing and Conservation shall submit an annual report to the Governor's Advisor for Hunting, Fishing and Conservation, outlining its activities and accomplishments for the year.

EFFECTIVENESS OF SUBCHAPTER

§ 6.161. Effective date.

This subchapter will take effect immediately.

§ 6.162. Termination date.

This subchapter will remain in effect until revised or rescinded by the Governor.

§ 6.163. Rescission.

Executive Order 2001-5 is rescinded.

[Pa.B. Doc. No. 04-82. Filed for public inspection January 16, 2004, 9:00 a.m.]

GOVERNOR'S OFFICE

Notice of Veto

December 31, 2003

To the Honorable House of Representatives
of the Commonwealth of Pennsylvania

I am returning herewith, without my approval, House Bill 1222, Printer's No. 3127, entitled "AN ACT" amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for identification of incorrect debtor; further defining "other specified offense" for purposes of DNA data and testing; and further providing for summary offenses involving vehicles, for law enforcement records, for duration of commitment and review; ESTABLISHING A CAUSE OF ACTION FOR UNAUTHORIZED ENACTMENT OR ENFORCEMENT OF LOCAL ORDINANCES GOVERNING AGRICULTURAL OPERATIONS; PROVIDING FOR CERTAIN ATTORNEY FEES AND COSTS; AND FURTHER PROVIDING for sentence of intermediate punishment and for assessments.

During my campaign for Governor the Pennsylvania Farm Bureau posed a question to me in a written questionnaire.

Do you believe municipalities and municipal officials should be penalized for passing ordinances against agriculture that they know state law prohibits them from passing? If so, what penalties should be assessed?

This was my response:

There has been a harmful lack of leadership in Harrisburg resulting in penalties for farmers, township officials and local taxpayers. Pennsylvania's Right to Farm Law has been ignored all too frequently. Farm organizations like the Farm Bureau have been in court to fight unlawful ordinances from townships . . . the Nutrient Management Law provides for statewide preemption of local ordinances and the Right to Farm Law is supposed to protect farmers from local nuisance ordinances. But who protects farmers when those laws are ignored? I will direct members of my administration to address this issue in a comprehensive and progressive way. We will work to solve, not run from this issue and we will do so at the state level.

I am today vetoing HB 1222 because I do not believe it addresses this very complex issue in a "comprehensive and progressive" way.

No industry is more important to this state's heritage and tradition and to the vitality of our economy than agriculture. It is our state's single largest employer and generates \$45 billion in revenue each year for our state's economy, over 70% of which is related to livestock operations. We have over 59,000 farm families in Pennsylvania. The Legislature and several Governors have recognized these facts in creating and implementing Pennsylvania's landmark Farmland Preservation Program in which we have now invested over \$500 million. My proposed economic stimulus program recognizes emerging technologies and the diversification of agriculture and includes a new loan fund dedicated to assisting Pennsylvania farmers to become more productive and more profitable.

It is also undeniably true that agriculture in our state is changing. For many reasons, we are losing family farms and we have seen a significant increase in larger farming operations (often corporate) known as CAFOs (Concentrated Animal Feeding Organizations) or CAOs (Concentrated Animal Operations).

The Legislature has taken steps to balance the changing nature of agriculture and legitimate concerns about how these operations impact on our environment through both the "Right to Farm" Act and the Nutrient Management Act (the "NMA"). Section 1717 of the latter preempts the right of local governments to pass ordinances in contravention of the NMA.

Under adoption of the regulation authorized by section 4, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way 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 otherwise regulated by this act if the municipal ordinance or regulation is in conflict with this act and the regulations promulgated thereunder. Nothing in this act shall prevent a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of this act and the regulations promulgated under this act, provided, however, that no penalty shall be assessed under any such local ordinance or regulation for any violation for which a penalty has been assessed under this act.

Notwithstanding this express prohibition and the overall rationale of the "Right to Farm" Act, there have been significant instances of local governments enacting nuisance ordinances that directly violate state law.

Consider the case of Douglas Graybill and his daughter and son-in-law. They own a farm in Granville Township and operated a dairy farm exclusively until 1996 when they decided to erect two hog finisher barns. They built and populated these finishers in 1997. A small number of residents went to the Township seeking an ordinance prohibiting any manure storage within 1500 feet of any public road, property line, drilled well or body of water. This ordinance would have stopped any future expansion of any animal agriculture in the Township. In contrast, the NMA specifies 200 feet as the required setback for CAOs or CAFOs and, as stated above, bars any local government from passing any ordinances that are more restrictive than state law.

Mr. Graybill took a copy of the relevant sections of the NMA and the applicable regulations published in the PA Bulletin to the township supervisors and their attorney. Their response was "I hope we don't get sued." The Bradford County Planning Commission and the State Conservation Committee warned the supervisors that the ordinance was most likely in violation of the NMA. Despite this, the ordinance was passed. Mr. Graybill contacted the State Agriculture Department and the Attorney General asking for the Commonwealth to step in and enforce the NMA by telling the township that the ordinance was illegal. He was told the Commonwealth did not have the power and that he, the aggrieved citizen, had to sue the Township. He sued and won, but the cost was \$80,000 in legal fees.

Mr. Graybill wrote me about this experience and said that if municipalities prevail in implementing restrictive agricultural ordinances that farmers can challenge only through costly legal proceedings, then "we can kiss animal agriculture goodbye and the rural infrastructure of Pennsylvania will collapse." Mr. Graybill is correct. Unfortunately, his case is not an isolated one.

HB 1222 seeks to address the situation that confronted Mr. Graybill:

If the Court determines that the local agency enacted or enforced an unauthorized local ordinance governing normal agricultural operations willfully or with wanton disregard of the limitation of authority established under state law, the court may order the local agency to pay the plaintiff reasonable attorney fees and other litigation costs incurred by the plaintiff in connection with the action.

The standard of "willfully or with wanton disregard of the limitations of authority established under state law" is a difficult one to establish in a legal proceeding, so I do not believe it will chill township supervisors from enacting reasonable efforts to regulate agriculture operations not covered by state law. HB 1222 also allows local government to sue farmers and recover

costs when the farmers file a “frivolous” lawsuit. Therefore, I believe that the goal of that part of HB 1222 that allows farmers to recover court costs is a legitimate one that addresses a need to protect not just agribusiness but small farms as well.

So why am I today vetoing HB 1222? Because if we are to succeed in striking a balance between legitimate business interests of the agriculture community and the quality of life concerns of our municipalities, I believe we should and must take a comprehensive approach. Unfortunately, while meritorious as far as it goes, HB 1222 only addresses one aspect of the nutrient management problem the Commonwealth faces—it does not address the legitimate environmental concerns that have been fostered by a flawed and deficient system. In short, it does not deal with these problems in a “comprehensive and progressive way.”

Recently, we have seen some striking examples of the significant problems that can occur under our prevailing nutrient management system. For example, one of the larger hog farms in Pennsylvania, owned and managed by one of the larger swine producers in the state, was permitted to house 7,200 sows, piglets, gilts, and nursery pigs, severely polluting a drinking water source. (These animals produce 3.6 million gallons of hog manure each year.)

Currently, the only state law that addresses disposal of this type of sewage is the NMA. But the NMA is only concerned with the plant nutrient, or fertilizer, content of the manure, not other ancillary issues such as antibiotics and odor. Nor does the NMA prohibit animal sewage from being disposed of in late fall and winter when nothing is growing, and it allows livestock operations to send the manure to other farms that do not have nutrient management plans.

In the case of this particular hog farm, 11 farmers agreed to take some of the sewage. But even with those options, the manager still needed to dispose of some sewage in mid-November and hired an independent manure hauler to spread it on the fields of one of the farmers. The manure ultimately washed into the water supply, contaminating it with fecal coliform, which can cause illness. The residents of the Township then had to boil their water or use bottled water. The local elementary school had to bring in water and hand-washing stations to prevent the children from getting sick. So far, it has cost the municipality—which has an annual budget of \$54,750—at least \$3,000 to provide bottled water. Because the farm followed its nutrient management plan, however, no state laws were violated. Nothing in the law requires Pennsylvania’s largest hog corporation to reimburse the municipality or the school district’s expenses.

We simply cannot address the nutrient management issues in a piecemeal fashion, an unfortunate unintended effect of HB 1222. I am convinced that our Administration and the Legislature should work as quickly and thoroughly as possible to develop a comprehensive plan to upgrade our nutrient management system and to strike the proper balance between the right of farmers to conduct their business with a clear understanding of applicable legal restrictions and their ability to operate in a profitable manner that takes into account real and genuine environmental concerns about our current system. Let me be clear—such legislation should include the relevant language from HB 1222.

Accordingly, I have directed Secretary of Agriculture Dennis Wolff and Secretary of Environmental Protection Kathleen McGinty to contact the heads of the House and Senate Agriculture Committees to begin work on this comprehensive approach as soon as possible.

To that end, I will sign legislation that includes:

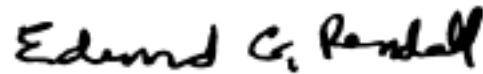
- the provisions of HB 1222 discussed above;
- provisions to close the manure export loophole by requiring farms importing manure from CAFO’s and CAO’s to have signed agreements, nutrient balances sheets documenting allowable application rates, accurate recordkeeping and the same manure application set backs and buffers as the farm that produced the manure;

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- provisions that extend the type of farms that are required to submit nutrient management plans detailing their manure management procedures and application locations to the local conservation district;
- provisions to require minimum buffer areas where no manure can be applied for all CAFOs and CAOs. Farms that import manure must meet the same buffer requirements as the farm that produces the manure;
- provisions that create new or improved financial incentives for farmers who need help in creating buffer areas or in obtaining new technology such as manure digesters; and
- provisions giving tax credits to any farmer for the costs of installing the technology necessary to convert manure to energy thus avoiding the need to apply manure to the soil when it is not being used for fertilizer. This technology is being used in Europe and we have already been contacted by an agribusiness that wants to install it in a new operation here in Pennsylvania.

Legislation including these provisions will provide a “comprehensive and progressive” solution to the balancing test before us while at the same time giving farmers the relief provided in HB 1222. I look forward to signing such legislation.

For the reasons set forth above, I must withhold my signature from House Bill 1222, Printer’s Number 3127.



Governor

[Pa.B. Doc. No. 04-83. Filed for public inspection January 16, 2004, 9:00 a.m.]