

**BEFORE THE OFFICE OF ATTORNEY GENERAL
COMMONWEALTH OF PENNSYLVANIA**

**AGRICULTURE, COMMUNITIES AND RURAL ENVIRONMENT (“ACRE”)
REQUEST FOR REVIEW OF [REDACTED]**

**POSITION STATEMENT OF ANTRIM TOWNSHIP
IN RESPONSE TO THE REQUEST FOR REVIEW OF
CHAPTER 70 OF THE ANTRIM TOWNSHIP CODE**

Submitted to: Robert A Willig, Esquire, Senior Deputy Attorney General, Agriculture, Communities and Rural Environment (ACRE) Unit, in response to the Office of Attorney General’s letter of September 4, 2026

I. INTRODUCTION

Antrim Township (the “Township”), by and through its counsel, [REDACTED] respectfully submits this Position Statement in response to the September 4, 2026 letter of the Office of Attorney General (“OAG”) regarding the request for review submitted under the Agriculture, Communities and Rural Environment Act, 3 Pa.C.S. §§ 311–318 (“ACRE”), by [REDACTED] (the “Complainants”) concerning Chapter 70 of the Township Code, “Food Processing Residual Land Application and Storage” (the “FPR Ordinance”). For the reasons set forth below, the FPR Ordinance is not an “unauthorized local ordinance” within the meaning of 3 Pa.C.S. § 313, and the Township respectfully requests that the OAG deny the request for review.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Adoption of the FPR Ordinance

The FPR Ordinance was adopted by the Township’s Board of Supervisors on April 8, 2025 as Ordinance No. 367 See Ex. A (FPR Ordinance). The FPR Ordinance establishes uniform standards for the storage and land application of food processing residual (“FPR”) in the Township, expressly recognizes that such activity is a normal agricultural operation, and directs

compliance with the Pennsylvania Department of Environmental Protection's ("PaDEP") Food Processing Residual Management Manual (the "FPR Manual"). FPR Ordinance, § 70-1(A) (Ex. A).

B. Prior PA DEP Enforcement History at the Complainants' Property

The Complainants' property, [REDACTED], [REDACTED] (the "Property"), has an independent, documented history of noncompliant FPR handling that predates The FPR Ordinance and is directly relevant to the reasonableness of the requirements the Complainants now challenge.

On February 5, 2024, PA DEP received a neighbor complaint reporting that "the farmer has been spreading manure that smells HORRIBLE...People are talking that it's FPR," and expressing concern about well-water contamination. See Ex. B (Feb. 21, 2024 PaDEP Resolved Investigation Right to Know Report). PaDEP performed an investigation which confirmed the responsible party as [REDACTED] operating at the Property, and that FPR supplied by [REDACTED] [REDACTED] was being land-applied in conjunction with the Property's existing dairy manure operation. See id.

On May 24, 2024, following further complaint investigations conducted May 15 and May 24, 2024, PaDEP inspected the Property and found a storage pile of FPR solids, approximately 30 by 30 yards, with "a large volume of solid wastes, in the form of rubber feather plucker fingers...found throughout the FPR sludge," uncontrolled runoff "running approximately 30 yds into the vegetated field," and no berm or other runoff control. Ex. C (May 24, 2024 PaDEP General Inspection Report for [REDACTED]) Ex. D (May 24, 2024 PaDEP General Inspection Report for [REDACTED]). On the basis of these findings, PaDEP

determined that the material “is a residual waste” and “cannot be used as a FPR in the course of normal farming operations according to 25 Pa Code § 287.101(b)(2)”. Id.

On June 14, 2024, PaDEP issued formal Notices of Violation to both the Complainant, as landowner, and to [REDACTED] as hauler/applicator, citing violations including operating a residual waste disposal or processing facility without a permit (25 Pa. Code § 287.101(a)); unlawfully dumping solid waste onto the ground (35 P.S. § 6018.610(1)); operating a solid waste storage, treatment, processing, or disposal facility without a permit (35 P.S. § 6018.610(2)); and causing or assisting in violations of the Solid Waste Management Act generally (35 P.S. § 6018.610(9)). Ex. E (June 14, 2024 PaDEP Notice of Violation to [REDACTED]); Ex. F (June 14, 2024 PaDEP Notice of Violation to [REDACTED]). PaDEP conducted a follow-up inspection on October 17, 2024, which found the parties had removed and disposed of approximately 144 tons of residual waste closing the matter. Ex. G (Oct. 17, 2024 PaDEP General Inspection Report for [REDACTED]); Ex. H (Oct. 17, 2024 PaDEP General Inspection Report for [REDACTED]).

Two features of this history bear directly on the Complainants’ challenge. First, PaDEP’s own determination establishes that the material the Complainants land-applied was not, as handled, protected agricultural activity at all: PaDEP found the material “is a residual waste” that “cannot be used as a FPR in the course of normal farming operations according to 25 Pa Code § 287.101(b)(2).” See Ex. C & Ex. D. That determination is significant because the field Section 1334 will ultimately occupy is limited to the “use of food processing residuals in normal farming operations,” Act 21, § 1334, and the Complainants therefore cannot establish that the specific activity they conducted falls within either the protection or the preempted field they invoke.

Second, PaDEP and the OAG have a documented, ongoing history with [REDACTED] the OAG

announced criminal charges against Jones stemming from a 2021 spill of FPR residuals at the [REDACTED] in the Township that contaminated multiple surrounding drinking water wells that remain contaminated to this day. Ex. I (June 3, 2026 OAG Press Release). This history is directly relevant to the Complainants' challenge to the FPR Ordinance. It confirms, from PaDEP and the OAG, that serious concerns exist about water quality impacts of FPRs raising legitimate health and safety concerns.

C. The Township's Compliance Letter and Compliance Assistance Materials

The Township continued to receive complaints from Township residents expressing concerns regarding the ongoing land application of FPRs by Complainants and [REDACTED]. By certified letter dated July 27, 2026, the Township notified the Complainants that FPR "may have been recently land applied" on the Property, identified by Parcel No. 01-0A07.-007.-000000, without the notifications and approvals required by the FPR Ordinance, and directed the Complainants to submit a Food Processing Residual Land Application and Storage Compliance Review Form, postmarked no later than August 31, 2026. Ex. J (July 27, 2026 Compliance Letter from [REDACTED] to [REDACTED]). The letter enclosed the Compliance Review Form/Application, the FPR Ordinance, an FPR Land Application and Storage Compliance Guide prepared by Triad Engineering, Inc., and an FPR Shipping Manifest. See id. at 1–2.

The Township's FPR Compliance Guide, see id. at 14, cross-references each FPR Ordinance requirement to its specific ordinance subsection – for example, FPR laboratory analytical testing (Ord. 70-6.C.1–3), on-site storage provisions (Ord. 70-6.B), and storage tank and land use permit requirements (Ord. 70-7.A–B). This guide demonstrates that the Township's compliance program was developed with specific reference to, and consistency with, the FPR

Manual and applicable PaDEP methodologies, rather than as an ad hoc or arbitrary local requirement. See id. at 4.

D. The Complainants' Response and Subsequent Correspondence

By email dated August 31, 2026, [Melissa Keefer] responded to the Township, confirming that the Complainants had filed "an ACRE complaint with the Attorney General's office, as your Ordinance potentially violates Act 38 - ACRE." Ex. K (Aug. 31, 2026 Email from [Melissa Keefer to Sylvia House]). By email dated September 2, 2026, the Township's Zoning Officer, [Sylvia House], responded that the Board of Supervisors "are able to consider your request to empty your storage tank and spread the remaining FPR one last time in order to discontinue the use of FPR," requested a reasonable timeframe from the Complainants' consultant, and requested any information the Complainants could provide regarding other farms receiving FPR so that the Township could extend the same compliance information to them. Ex. L (Sept. 2, 2026 Email from [Sylvia House to Barron and Melissa Keefer]). These exchanges confirm that the Township has approached the Complainants' compliance in a cooperative, good-faith, and non-discriminatory manner, extending deadlines in an effort to work with the landowner.

E. The ACRE Request for Review

By Email dated August 6, 2026, the Complainants submitted a request for review of the FPR Ordinance to the OAG, raising six specific objections to the FPR Ordinance. Ex. M (Aug. 6, 2026 Email from [Melissa Keefer] to acre@attorneygeneral.gov). By letter dated September 4, 2026, the OAG advised the Township of the request, which this response is now submitted in reply.

F. Enactment of Act 21

On July 12, 2026, the Governor signed Senate Bill 146 into law as Act 21, Act of July 12, 2026, P.L. 265, No. 21 (“Act 21”), adding Article XIII (“Food Processing Residuals”) to the Fiscal Code. Section 1334 of Act 21, on which the Complainants’ request for review principally relies, provides that Article XIII “occupies the whole field of regulation regarding the use of food processing residuals in normal farming operations...and preempts all local ordinances and regulations governing the use of food processing residuals in normal farming operations.” Act 21, § 1334. Importantly, as demonstrated in Section IV.A below, Section 1334 has not yet taken effect by the express terms of Act 21 § 37.

III. STANDARD OF REVIEW

ACRE does not render a local ordinance invalid merely because the ordinance concerns agriculture or affects an agricultural activity. Rather, the threshold inquiry is whether the challenged ordinance is an “unauthorized local ordinance” as defined by 3 Pa.C.S. § 313. That determination requires proof that the ordinance prohibits or limits a “normal agricultural operation” and that the local government lacked authority under State law to enact the particular restriction. See 3 Pa.C.S. §§ 312, 313; Commonwealth, Office of Attorney General ex rel. Corbett v. Locust Township, 49 A.3d 502, 516–19 (Pa. Cmwlth. 2012). The analysis is therefore both activity-specific and provision-specific. It does not permit the wholesale invalidation of an ordinance merely because some of its provisions touch upon a subject that is also regulated by the Commonwealth. In Locust Township, the Commonwealth Court separately analyzed each challenged provision, granted relief as to some provisions, upheld others, and declined to grant summary relief where the record did not permit the Court to determine whether the ordinance unreasonably restricted farm practices or prohibited a normal agricultural operation. Id. at 509–19.

The party seeking to invalidate an ordinance bears the burden of establishing each element necessary for relief. Commonwealth, Office of Attorney General ex rel. Corbett v. East Brunswick Township, 956 A.2d 1100, 1114–16 (Pa. Cmwlth. 2008); Commonwealth, Office of Attorney General ex rel. Kelly v. Packer Township, 49 A.3d 495, 499–500 (Pa. Cmwlth. 2012). Thus, even though ACRE authorizes the Attorney General to bring an action in the Commonwealth’s own right, that authority does not eliminate the Attorney General’s burden to establish that the particular activity being limited is a normal agricultural operation and that the particular local requirement is unauthorized or preempted. See 3 Pa.C.S. §§ 312–315.

Pennsylvania courts do not presume that the General Assembly has displaced local authority merely because the Commonwealth has legislated concerning the same general subject. Preemption requires a clear expression of legislative intent, and the scope of any preemption must be determined from the text, purpose, and structure of the particular statute. Hydropress Environmental Services, Inc. v. Township of Upper Mount Bethel, 836 A.2d 912, 918–19 (Pa. 2003). Hydropress held that the Solid Waste Management Act did not occupy the entire field of waste regulation because it contained no express preemptive mandate and instead contemplated state and local coordination. Although the Court separately invalidated particular provisions that exceeded the township’s delegated powers, it did not invalidate the entire ordinance or hold that every local measure touching waste management was preempted. Id. at 918–21.

Pennsylvania recognizes express, conflict, and field preemption, but each form requires careful examination of the precise local provision and the precise field occupied by the state enactment. Hoffman Mining Co. v. Zoning Hearing Board of Adams Township, 32 A.3d 587, 592–96 (Pa. 2011). Even a broadly worded state preemption provision does not necessarily displace a municipality’s traditional regulation of a distinct local subject. In Hoffman Mining,

the Supreme Court upheld a 1,000-foot local zoning setback despite a 300-foot state setback because the local requirement regulated the location of a land use rather than the technical operation of surface mining, compliance with both requirements was possible, and the state statute did not confer an affirmative right to conduct mining wherever the state minimum could be met. Id. at 596–602. Thus, the existence of statewide operational standards does not by itself establish that every local setback, land-use, water-protection, or emergency-response measure falls within the preempted field.

Conflict preemption likewise requires more than a showing that the Commonwealth and the Township regulate related subjects or that the local provision is more protective. The challenger must identify an actual, irreconcilable conflict, demonstrate that simultaneous compliance is impossible, or show that the local provision stands as an obstacle to the accomplishment of a specific legislative objective. Hoffman Mining, 32 A.3d at 595–600. Conversely, where the General Assembly has expressly made a state requirement voluntary, established a different maximum standard, or reserved a regulatory determination exclusively to a Commonwealth agency, a municipality may not convert the voluntary requirement into a mandate or impose an inconsistent local standard. Locust Township, 49 A.3d at 509–15. The analysis therefore must compare each provision of FPR Ordinance with a corresponding operative requirement of State law, rather than treating the FPR Ordinance as invalid in its entirety. Pennsylvania courts do not presume that the Commonwealth has preempted a field merely by legislating in it. Hydropress Environmental Services, Inc. v. Township of Upper Mount Bethel, 836 A.2d 912, 918 (Pa. 2003). Preemption will be found only where the General Assembly “clearly express[es] its intent to preempt a field in which it has legislated,” applying a well-established test: “either the statute must state on its face that local legislation is forbidden,

or indicate an intention on part of the legislature that it should not be supplemented by municipal bodies.” Id. (quoting Western Pennsylvania Restaurant Association v. Pittsburgh, 77 A.2d 616, 620 (1951)). The consequence of a finding of preemption is severe, and the test is applied rigidly for that reason. Hydropress, 836 A.2d at 918.

Separately, the party invoking ACRE’s protection bears the burden of proving that its own, specific activity “was conducted in accordance with normal agricultural operations”; it is not enough to show that the general category of activity is agricultural. East Brunswick Township, 956 A.2d at 1115; Boswell v. Skippack Township, 2012 WL 8670346, at *6 (Pa. Cmwlth. June 27, 2012) (ordinance presumed valid; challenger “bore a heavy burden” and failed to prove that its particular use was a normal agricultural operation). That burden is dispositive here. As set forth in Section II.B above, PaDEP determined that the material the Complainants actually handled “is a residual waste” that “cannot be used as a FPR in the course of normal farming operations ” Ex. C & Ex. D. On this record, the Complainants cannot carry their burden of proving that the specific activity they conducted is a protected normal agricultural operation, and the Township does not waive this defense.

Finally, the reasonableness of the FPR Ordinance is reinforced by Article I, Section 27 of the Pennsylvania Constitution (the “Environmental Rights Amendment”), which recognizes the right of Pennsylvania’s citizens to “clean air, pure water, and...the preservation of the natural, scenic, historic and esthetic values of the environment,” Pa. Const. Art. I, § 27, and which confirms that all levels of government, including the Township, act as trustees of the Commonwealth’s public natural resources. Pennsylvania Environmental Defense Foundation v. Commonwealth, 161 A.3d 911, 932–33 (Pa. 2017); Robinson Township v. Commonwealth, 83 A.3d 901, 957–63 (Pa. 2013). The Township does not contend that Section 27 overrides an

otherwise-valid preemption clause; it invokes Section 27 for the narrower and well-supported proposition that an ordinance enacted to protect residents' drinking water from a documented contamination risk addresses a legitimate, constitutionally recognized public purpose and cannot be dismissed as arbitrary, vague, or an unreasonable burden on normal farming operations.

Locust Township, 49 A.3d at 512 (an ordinance may not be "arbitrary, vague or unreasonable or inviting of discriminatory enforcement").

IV. RESPONSE TO THE OAG'S THREE QUESTIONS

The OAG's September 4, 2026 letter poses three questions, answered in order below: (1) whether the Township agrees it is precluded from regulating the Complainants' use of FPR in light of Section 1334 of Act 21; (2) what effect Section 1334 has on the FPR Ordinance; and (3) whether the Township has authority to regulate FPR use at all, partially, or completely in light of Section 1334. The Township responds to each in turn.

A. Does the Township agree that it is preempted from regulating the Complainants' use of FPR under Section 1334 of Act 21 when a landowner follows the standards and best management practices in PaDEP's FPR Manual?

Answer: The Township does not agree that it is precluded from regulating the Complainants' use of FPR.

The Township disagrees, for three independent reasons. First, the state legislature has only recently expressed any intent to preempt local FPR regulation by passing Act 21. However, most notably, Section 1334 of Act 21 has not yet taken effect. Section 37 of Act 21 – the Act's own effective-date provision – states, in full and verbatim:

“(1) The addition of sections 1312, 1313, 1314, 1315, 1316 and 1317 of the act and section 33 of this act shall take effect upon publication in the Pennsylvania Bulletin of the final-form regulations promulgated under section 1311(a) of the act

(2) The addition of sections 1322, 1323 and 1324 of the act shall take effect upon the publication in the Pennsylvania Bulletin of the temporary regulations promulgated under section 1325 of the act or upon publication in the

Pennsylvania Bulletin of the final-form regulations promulgated under section 1321(a)(2) of the act, whichever is earlier.

(3) The addition of sections 1331, 1332, 1333, 1334 and 1335 of the act shall take effect on the earlier of a publication under paragraph (1) or (2).

(4) The remainder of this act shall take effect immediately.”

Act 21, § 37(1)–(4) (emphasis added).

Section 1334 – the preemption clause – is addressed specifically by paragraph (3), and is therefore not part of the immediately effective “remainder” described in paragraph (4). Based on the Township’s review, as of the date of this Statement, neither the Section 1311(a) final-form regulations nor the Section 1325 temporary regulations have been published by the State Conservation Commission (the “Commission”) in the Pennsylvania Bulletin. Accordingly, Section 1334 is not yet law, and applying the well-established preemption test set forth in Section III above, there is presently no statute that “state[s] on its face that local legislation is forbidden” with respect to the FPR Ordinance. Hydropress, 836 A.2d at 918 (quoting Western Pa. Rest. Ass’n, 77 A.2d at 620).

The Commonwealth Court has squarely applied this principle to a preemption provision whose effective date, like Section 1334’s, was tied to the publication of implementing regulations. In Mitchell’s Bar & Restaurant, Inc. v. Allegheny County, 924 A.2d 730 (Pa. Cmwlth. 2007), the effective date of a statutory provision turned on “the publication of regulations,” and because that condition had not been satisfied, the court held the provision “never became effective” and the prior legal regime “remained in effect.” Id. at 736; see also 1 Pa.C.S. § 1977. The court further held that to treat such a provision as operative before the date the legislature specified “would be designating the effective date to be earlier than the date specifically mandated by the legislature, and essentially engaging in a legislative act.” Mitchell’s Bar, 924 A.2d at 737. The same reasoning governs here: because the regulations that trigger

Section 1334 under Act 21 § 37(3) have not been published, Section 1334 has no present force, and the FPR Ordinance cannot be found preempted by a provision that is not yet law.

Because Section 1334 is not in effect and no implementing regulations yet exist, there is presently no state regulatory scheme against which the FPR Ordinance can be measured, and no basis on the current record to find any provision of the Ordinance preempted. The Township therefore respectfully submits that the request for review should be denied without prejudice on the present record; if and when the Commission's regulations are published and Section 1334 takes effect, the effect of that clause can be assessed against the Ordinance on a provision-by-provision basis at that time.

Second, even once Section 1334 takes effect, it will not preempt the whole of the FPR Ordinance. By its own terms, Section 1334 occupies the field defined by the “use” of FPR in normal farming operations and hauler/broker certification – not every subject an FPR-related ordinance happens to touch. Act 21, § 1334. The Pennsylvania Supreme Court has construed a materially identical “occupies the whole field” clause narrowly. In Berner v. Montour Township Zoning Hearing Board, 217 A.3d 238 (Pa. 2019), the Court considered a Nutrient Management Act provision declaring that the chapter “occupy[ies] the whole field of regulation regarding nutrient management...to the exclusion of all local regulations,” 3 Pa.C.S. § 519(a), and held that — read together with the Act's other subsections — the clause does not bar all local regulation but preempts local rules only “to the extent that [they are] more stringent than, inconsistent with, or in conflict with” the Act and its regulations. Berner, 217 A 3d at 247–48. Section 1334 should be read the same way: it displaces only those local provisions that are inconsistent with or more stringent than the Commission's eventual regulations governing the “use” of FPR — not provisions that regulate distinct subjects or that mirror the state standards. As set forth in Section

IV.C below, several provisions of the FPR Ordinance fall outside that field entirely, including the Township’s water-supply-protection and financial-assurance requirements.

Third, the FPR Ordinance was validly enacted under the Township’s general police power. A second class township is authorized to adopt ordinances “necessary for the proper management, care and control of the township...and the maintenance of...health and welfare of the township and its citizens.” 53 P.S. § 66506; see also 53 P.S. § 66601. The FPR Ordinance recites exactly that authority as its basis. FPR Ordinance, § 70-1(A) (Ex. A). Because Section 1334 is not yet effective, that police-power authority is presently unqualified; and to the extent particular provisions regulate subjects Act 21 does not reach, the water-supply-replacement and financial-assurance requirements addressed below, that authority will continue to support them even after Section 1334 takes effect.

B. What is the effect of § 1334 on the Township’s FPR Ordinance?

Answer: Section 1334 presently has no effect on the FPR Ordinance, and will have only a provision-specific effect once it takes effect.

Because Section 1334 has not taken effect under Act 21 § 37(3), it has no operative effect on the FPR Ordinance today, and the FPR Ordinance remains fully valid and enforceable. The FPR Ordinance already anticipates the day Section 1334 does take effect: Section 70-10(F) provides that any portion of the Chapter later found inconsistent with governing state law “shall be null and void and automatically repealed.” The FPR Ordinance, § 70-10(F) (Ex. A). This is a self-executing conformity mechanism that will apply, without need for further Township action, to whichever specific provisions are ultimately shown to conflict with the State Conservation Commission’s (“Commission”) final regulations. Once Section 1334 does take effect, its reach will be provision-specific rather than total, as set forth immediately below.

C. Does the Township have the authority to regulate at all, or partially, or completely the use of FPR in light of § 1334?

Answer: The Township has full authority today, and will retain substantial authority going forward, on a provision-by-provision basis.

Today, the Township's authority to enforce every provision of the FPR Ordinance remains intact, because Section 1334 is not yet in effect. Going forward, once Section 1334 takes effect and the Commission's temporary or final regulations are published, the Township's authority will narrow only to the extent a specific provision of the FPR Ordinance is shown to conflict with those regulations. Applying Section 1334's own text – which reaches only the “use of food processing residuals in normal farming operations” and hauler/broker certification, Act 21 § 1334 – together with the criteria the General Assembly has directed the Commission to establish under Sections 1311(b) and 1312(b) of Act 21, the Township's position on each operative section of the FPR Ordinance is as follows:

Sections 70-2 (Required Minimum Distances) and 70-3 (Slopes). These set numeric setback and slope standards for FPR land application. FPR Ordinance, §§ 70-2, 70-3 (Ex. A). Section 70-3(B) expressly incorporates “PA DEP guidelines and regulations,” *id.* § 70-3(B), and both sections are consistent with, and no more stringent than, existing FPR Manual standards. The additional setbacks from environmental features are location-based requirements of the kind Pennsylvania courts have consistently treated as traditional local land-use regulation that survives even an express operational preemption clause. See Hoffman Mining, 32 A.3d at 596–602 (local zoning setback not preempted by state operational standards). They neither conflict with the FPR Manual nor prohibit any normal agricultural operation and remain valid.

Sections 70-4 (Ground Water, Seasonal High-Water Table, Bedrock) and 70-5 (Erosion and Sediment Control, Field Markings). These implement site-specific protections for groundwater and surface water. FPR Ordinance, §§ 70-4, 70-5(A) (Ex. A). Section 70-5 rests in part on 25 Pa. Code Chapter 102, which governs earth-disturbance activity independent of FPR

use and is not within the field Section 1334 occupies. The Township does not read Section 70-5(A) as asserting authority to issue or approve Chapter 102 permits, which remain with PaDEP; it reads the provision as a notice-and-coordination requirement ensuring the Township is informed of regulated earth-disturbance activity within its borders, and the Township is prepared to clarify the text to that effect. So construed, the provision is consistent with state law and imposes no restriction on any normal agricultural operation.

Section 70-6 (Quality, Sampling, Testing and Certification) and Section 70-10(B)–(C) (Compliance Review Form, neighbor notification). These provisions verify and document FPR quality and use. They impose reasonable recordkeeping and notification obligations, not a prohibition or limitation on any normal agricultural operation, and the documented 2024 PaDEP enforcement history at the Property, where uncontrolled runoff and non-FPR solid waste were found in the land-applied material, confirms that such verification addresses a genuine, site-specific risk and is not arbitrary. Section 70-6's laboratory-analysis requirements track current PaDEP analytical methodology and are consistent with the FPR Manual's objective of ensuring that only suitable material is land-applied. With respect to Section 70-6(D), the Township does not read the provision as authorizing warrantless, unannounced entry and is prepared to clarify that it requires reasonable advance notice except in genuine emergencies. Section 70-6(E), which requires a landowner to furnish copies of records the FPR Manual already requires the landowner to keep, imposes no additional substantive burden on any normal agricultural operation.

Section 70-7 (Storage of Food Processing Residual). This section requires an FPR Storage Plan and a Township land-use permit before construction or use of an FPR storage tank FPR Ordinance, § 70-7 (Ex. A). To the extent Section 70-7 imposes a land-use permit keyed to the location and siting of a storage facility, it is a traditional local land-use measure of the kind

that survives an operational preemption clause. See Hoffman Mining, 32 A.3d at 601–02 (state operational standards do not displace local regulation of where a use may be located). Section 1334 is in any event not yet effective, and should the Commission ultimately promulgate storage standards under Act 21 § 1311(b)(6) that conflict with any part of Section 70-7, the Ordinance’s self-executing conformity mechanism (Section 70-10(F)) resolves the conflict automatically without invalidating the balance of the section.

Section 70-8 (Water Supply Protection). This section requires a Water Supply Plan and financial security for replacement of a contaminated water supply. FPR Ordinance, § 70-8 (Ex. A). This provision falls outside the field Section 1334 occupies. Section 1334 reaches only the “use of food processing residuals in normal farming operations,” Act 21, § 1334, and neither Act 21 § 1311(b) nor § 1312(b) addresses water-supply replacement or financial assurance. Section 70-8 does not set any standard for how FPR may be applied; it establishes a remedy — a plan and security to restore a drinking-water supply — that operates only if FPR use in fact contaminates a water source. Regulating the consequences of contamination, rather than the agricultural use itself, is a distinct subject that the Township is independently authorized to address as part of its duty to protect the drinking water of its residents. See Pennsylvania Environmental Defense Foundation, 161 A.3d at 932–33; Robinson Township, 83 A.3d at 957–63. The history recited in Section II.B above, including the ongoing, unremediated well contamination from the 2021 Barr Farm spill, underscores that the risk this remedy addresses is concrete and documented.

Section 70-9 (Nuisance Prevention; Cleanup). Subsections (A), (B), and (D) track the FPR Manual’s own odor, environmental-impact, and contamination-response standards and are consistent with, and no more stringent than, those standards. FPR Ordinance, § 70-9(A), (B), (D)

(Ex. A). Subsection (C)'s temporary limitation on planting root vegetables in soils recently amended with FPR is a targeted food-safety and contamination-response measure directed at the documented risk that mishandled FPR poses to the food chain and to groundwater; it does not prohibit farming but conditions a discrete practice on the same public-health concerns the FPR Manual recognizes. Should the Commission's eventual regulations address this subject, Section 70-10(F) resolves any inconsistency automatically.

Section 70-11 (Violations and Penalties). This section is an enforcement mechanism; it does not independently regulate FPR use, and Subsection (B) expressly reserves – rather than expands – the Township's other lawful police powers. The FPR Ordinance, § 70-11(B) (Ex. A). Its continued application is derivative of whichever substantive provisions above remain valid at any given time.

Finally, even if the OAG were to conclude that some particular provision of the FPR Ordinance is or will be preempted, that conclusion would not warrant invalidating Chapter 70 as a whole. ACRE requires a provision-specific analysis, and Pennsylvania courts adjudicate such challenges provision by provision, invalidating only the specific sections shown to be unauthorized and leaving the remainder in force. Locust Township, 49 A.3d at 509–19 (declaring specified subsections invalid while denying relief as to the balance of the ordinance); see also Hydropress, 836 A.2d at 918–21. The FPR Ordinance reinforces that result through two express mechanisms: a savings clause stating the intent to supplement, and not to supersede or conflict with, state law; and Section 70-10(F), which provides that any portion later found inconsistent with governing state law “shall be null and void and automatically repealed ” FPR Ordinance, § 70-10(F) (Ex. A). Each substantive section of Chapter 70 — the setback and slope standards, the groundwater and erosion protections, the quality and recordkeeping requirements, the storage

provisions, the water-supply remedy, and the nuisance provisions — operates independently of the others, so severing any one provision leaves the rest fully operative. There is accordingly no basis to treat the Ordinance as an indivisible whole that stands or falls together.

V. CONCLUSION

For the foregoing reasons, the FPR Ordinance is not an “unauthorized local ordinance” under ACRE. Section 1334 of Act 21 has not taken effect under the Act’s own effective-date provision, Act 21 § 37(3), and under Mitchell’s Bar it cannot preempt the Ordinance while the triggering regulations remain unpublished. There is therefore no present state regulatory scheme against which the Ordinance can be measured, and the Complainants cannot carry their burden of showing that the specific activity they conducted — material PaDEP found to be residual waste that “cannot be used as a FPR in the course of normal farming operations” — is a protected normal agricultural operation. Even once Section 1334 takes effect, it will, under Berner, reach only those specific provisions shown to be more stringent than, inconsistent with, or in conflict with the Commission’s regulations; the Ordinance’s water-supply remedy and other independently grounded provisions fall outside that field, and Section 70-10(F) resolves any provision-level conflict automatically without disturbing the remainder. The Township adopted the Ordinance under its Second Class Township Code police power to protect a documented public-health interest recognized by the Environmental Rights Amendment. The Township respectfully requests that the OAG deny the request for review, without prejudice to revisiting the effect of Section 1334 on any specific provision once the Commission’s regulations are published.

Respectfully Submitted,

A thick, black, horizontal redaction bar obscuring the signature of the submitter.