Pennsylvania's Clean and Green Program

The Penn State Dickinson Agricultural Law Resource and Reference Center*

The purpose of this publication is to help you learn about and understand this important issue. This publication may be useful to you if you own agricultural or forestland and would like to pay lower property taxes. The material is general and educational in nature. It is not intended to be legal advice. If you need legal advice, you are encouraged to seek the aid of a competent professional in your area.

Anyone who is interested in the Clean and Green program is encouraged to read the Clean and Green statute and accompanying regulations in full. The statute, 72 P.S. 5490 (1999), can be accessed at http://members.aol.com/StatutesPA/Index.html. The regulations, 7 Pa. Code Chapter 137b, can be accessed at http://www.pacode.com. Anyone with questions about the Clean and Green program should first contact his county tax assessor.

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What's New Under the Most Recent Clean and Green Regulations?

- The Pennsylvania Department of Agriculture now sets the maximum use values for each county.
- Farmstead land now qualifies for a preferential assessment (lower use values).
- The rules relating to public access of Ag Reserve land have been modified (landowners may now place "reasonable restrictions" on public access to their land).

What is Clean and Green?

Clean and Green is a land conservation program that lowers the property tax rate for the vast majority of landowners who enroll in the program. Landowners are obligated to devote their land to agricultural use, agricultural reserve use, or forest reserve use in order

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to qualify for lower property taxes. Landowners who exit the program may be required to pay up to seven years' worth of "roll-back" taxes, plus interest. Roll-back taxes are described in greater detail later in this document.

Why Enroll in Clean and Green?

Enrolling farmland or forest land in the Clean and Green program is an effective way to save property taxes in Pennsylvania. The primary goal of the Clean and Green program is to encourage landowners to preserve agricultural and forest land by providing tax savings for preservation. Many farmers in Pennsylvania are facing financial difficulty, and the answer for some has been to sell some or all of their land for development. Clean and Green creates an incentive for landowners to continue to devote their land to agricultural use, agricultural reserve or forest reserve by giving reduced property tax rates to those who enroll in the program. The Clean and Green program establishes the preferential assessment value (Clean and Green use values), whereby land that is enrolled in the program is taxed at the **use** value of the land rather than the fair market value. Further, the program creates a disincentive for landowners to convert or sell their land or any portion of their land (with some exceptions) for development or commercial purposes after it is enrolled in the program by requiring that up to seven years of roll-back taxes be paid on the entire tract if the program's requirements are violated.

What Land is Eligible for Enrollment in Clean and Green?

To be eligible for enrollment in the Clean and Green program, land must be devoted to one of the following three qualifying uses: agricultural use, agricultural reserve use, or forest reserve use. The following definitions are helpful:

Definitions:

Agricultural Use — land which is used for the purpose of producing an agricultural commodity or is devoted to and meets the requirements for qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

i. The term includes any farmstead land on the tract.
ii. The term includes a woodlot
iii. The term includes land which is rented to another person and used for the purpose of producing an agricultural commodity.

Agricultural Reserve Use — noncommercial open space lands used for outdoor recreation of the enjoyment of scenic or natural beauty and open to the public for that use, without charge or fee, on a nondiscriminatory basis. [Note: Agricultural reserve land is the only category of land under the Clean and Green program that must be open to the public for recreational use].

i. The term includes any farmstead land on the tract.

ii. The regulation at 7 Pa. Code § 137b.64 now allows landowners to place reasonable restrictions on the public's access to a tract of land that is enrolled in Clean and Green as Agricultural Reserve land. These restrictions might include limiting access to the land to pedestrians only, prohibiting hunting or the carrying or discharging of firearms on the land, prohibiting entry where damage to the land might result or where hazardous conditions exist, **or other reasonable restrictions**.

Forest Reserve Use — land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products.

i. The term includes farmstead land on the tract.

Farmstead Land — any curtilage and land situated under a residence, farm building or other building which supports a residence, including a residential garage or workshop.

Woodlot - an area of less than 10 acres, stocked by trees of any size and contiguous to or part of land in agricultural use or agricultural reserve.

In addition to restricting land to qualifying uses, the Clean and Green program has minimum requirements for each qualifying use that must be met before land can be enrolled. Land eligible under the **agricultural use** category must have been in agriculture or devoted to a soil conservation program with the Federal government for 3 years preceding the application and be either 10 contiguous acres or more in area, or have an anticipated yearly **gross** income from the sale of an agricultural commodity of $2,000 or more. For example, if a landowner owns 10 acres of land that has been in agricultural use for 3 years, he may enroll his land in Clean and Green no matter how much income the land produces. If a landowner owns less than 10 acres of land, he must gross at least $2,000 dollars per year from the land in order to qualify for the Clean and Green program. (NOTE: Contiguous tracts of land are tracts of land that are beside each other and are part of the same operational unit. If a landowner has two tracts of land that are separated by a road and he uses both tracts of land to support the farm, the tracts are considered contiguous.)

The only requirement for both **agricultural reserve use** and **forest reserve use** is that the landowner must own at least ten acres. To meet the minimum acreage requirement for any of these uses, the regulations make clear that farmstead and woodlots are to be included and will be taxed at the use value for that particular subcategory.

Qualifying Uses

1. Agricultural use —

- 10 contiguous acre minimum; or
- If less than 10 acres, the land must have an anticipated yearly gross income of at least $2,000 from the production of an agricultural commodity.
- The land must have been in agriculture or devoted to a soil conservation program with the Federal Government for at least three years.
- Includes any Farmstead Land or Woodlot

2. Agricultural reserve use —

- 10 contiguous acre minimum
- Land must be open to the public on a limited basis without charge
- Includes any Farmstead Land or Woodlot

3. Forest reserve use —

- 10 contiguous acre minimum
- The land is presently stocked with trees
- Forest reserve land includes land that is rented to another person for the purpose of producing timber or other wood products
- Includes any Farmstead Land

How is Valuation Set?

Pennsylvania Department of Agriculture Now Sets Maximum Use Values — The use values that apply to Clean and Green are set by the Pennsylvania Department of Agriculture. The Department of Agriculture determines the land use subcategories and provides county assessors use values for each land use subcategory. Typically, these subcategories are based upon soil classifications (Class I through Class VII). The Department of Agriculture has until May 1st of each year to provide the county assessors with the use values.

Option of County Assessor to Establish Lower Use Values — A county assessor may establish use values for land use subcategories that are less than the use values established by the Department of Agriculture. A county assessor may use these lower use values in determining preferential assessments under the Clean and Green program. A county may not, under any circumstances, establish or apply use values that are higher than those use values established by the Department of Agriculture.

In addition, counties may not require that a landowner reside in the county before enrolling his land in the Clean and Green program. Further, county assessors are not permitted to add any other requirements or conditions of eligibility in addition to the ones given by statute and regulation. If the provisions of the statute and regulations are met, the county assessor must accept a person's Clean and Green application.

How is Land Enrolled into the Clean and Green Program?

Application Procedure

Landowners wishing to enroll in the Clean and Green program must make their application on a current "Clean and Green Valuation Application" form. This is a uniform preferential assessment application form developed by the Pennsylvania Department of Agriculture. County assessors are required to keep a supply of these forms on hand. Applications for the Clean and Green program are filed with the county board of assessment in which the land is located. If an application is filed with a county on or before June 1, the county must review and process the application for the next **calendar** year. For example, if a county receives an application on or before June 1, 2002, and the application is approved, the landowner must receive the Clean and Green tax rate for taxing years which begin in calendar year 2003. However, if an application is received on or after June 2, 2002, the landowner is not entitled to receive the Clean and Green tax rate until taxable year 2004. An exception exists if the county undergoes a countywide reassessment. When a countywide reassessment occurs, the application deadline is October 15th or 30 days after the final order of the county board for assessment appeals, whichever comes first.

The county board of assessment is limited to charging an application fee of no more than $50 for processing an application. This fee can be charged whether or not the application is approved. In addition to the application fee, the recorder of deeds may charge a fee for filing an approved application in a Clean and Green docket. The recording fee may only be charged if the Clean and Green application has been approved by the county board.

Enrollment of Multiple Tracts of Land

An additional requirement of the Clean and Green program is that all contiguous land described in **one** deed must be enrolled in the program. This means that if the deed describes two tracts of land that are next to each other and are part of one operational unit, both tracts of land must be enrolled in the program. However, if a landowner owns two tracts of land that are contiguous to each other but are described in separate deeds, he does not have to enroll both tracts. If the landowner has a single deed which describes two tracts of land that are not contiguous, he does not have to enroll both of the non-contiguous tracts.

Multiple Uses of One Tract of Land

If the landowner has several uses on a single tract of land but only some of the uses qualify for the Clean and Green tax rate, he may still enroll in Clean and Green. All of the tract must be included on the application, but only the portions of the tract that are devoted to a qualifying use will be given the Clean and Green tax rate. In such a case, the portion of land devoted to a qualifying use must meet the acreage and/or gross income requirements of the program.

Duration of Enrollment in Clean and Green

The general rule of the Clean and Green program is that after land is enrolled, the landowner is obligated to continue using the land in a qualified use indefinitely or face the penalty of roll-back taxes for the most recent seven years, plus interest. The roll-back tax is the difference between the taxes paid based on the Clean and Green rate and the taxes that would have been paid if the land were not enrolled in Clean and Green. Roll-back taxes are due for the year of the change of use and the six previous tax years for a total of seven years. Land that has been in Clean and Green for more than seven years is only subject to roll-back taxes for the seven most recent tax years, and, land that has been in Clean and Green for less than seven years is subject to roll-back taxes only for the years it has been in the program. In addition to the tax, interest is imposed on each year's roll-back tax at the rate of six percent per year.

Triggering Roll-Back Taxes; Sales, Separations and Split-Offs

Sales of Clean and Green Land

As stated above, under Clean and Green, it is a change in the use of enrolled land which will trigger liability for roll-back taxes. Additionally, if a landowner separates or "splits off" a portion of his land, these events may also trigger roll-back taxes.

A landowner whose land is enrolled in the Clean and Green program is able to sell his land without paying roll-back taxes or interest if he sells all of his land or follows the program's requirements for a "separation". Similarly, if a landowner follows the program's requirements for "split-off" of a portion of the land, roll-back taxes will only be due with respect to the portion that is split-off. "Separations" and "split-offs" are described in greater detail below. If a landowner sells all of his land, the buyer will be obligated to continue using the land in a qualified use or pay roll-back taxes and interest.

If a landowner plans to change the use of his land or sells his land, he needs to notify the county assessor thirty days prior to the proposed change. The change must be recorded in the Clean and Green docket at the landowner's expense. However, the county may not impose any additional fee, other than the recording fee, for amending the application for a split-off, a separation, a transfer or a change of ownership.

Certain transfers are exempt from roll-back taxes. These include land that is donated to school districts, municipalities, counties, volunteer fire companies, volunteer ambulance

service companies, religious organizations or non-profit corporations. For other transfers, counties have the option of not collecting roll-back taxes.

Separations

A separation of land is the division of Clean and Green land into two or more tracts of land, **each of which meets the minimum requirements of the program**. In essence, each tract is capable of being enrolled in Clean and Green because each tract meets the program's requirements. Separation does not trigger roll-back taxes or the loss of Clean and Green status as long as all of the land continues to be used in a qualified use. However, if the owner of a separated tract changes the qualified use, the owner faces the obligation to pay roll-back taxes on the separated tract **and the original tract from which it came** if the change in use is made within seven years after the separation. Abandoning the qualified use more than seven years after the separation subjects only the separated tract to roll-back taxes.

For example, if a landowner owns 100 acres that is enrolled in the Clean and Green program and he sells 50 acres to his neighbor, neither the owner nor his neighbor owes any taxes on the transfer. However, if the neighbor changes the use of her 50 acres to a non-qualified use within 7 years of separation, she owes roll-back taxes **on the entire 100 acres**. If, however, the neighbor waits seven years to change the use, she owes roll-back taxes only on her 50 acres.

Split-Offs

A "split-off" is a division of a tract of Clean and Green land into two or more tracts, where one or more of those tracts **do not** meet the program's requirements. For example, if a landowner sells four acres of land that will not gross $2,000 yearly of agricultural income for the buyer, this is a split-off because this four-acre tract could not be enrolled in Clean and Green. Split-offs generally subject both the split-off tract and the remaining tract to roll-back taxes. However, if the split-off tract results from condemnation, there is no liability for roll-back taxes.

The Clean and Green program allows certain split-offs to be made without roll-back taxes being due on the entire tract. However, roll-back taxes are due on the split-off portion in most cases.

The regulations describe the authorized split-offs as follows:

1. Each year, a landowner may split-off a tract of up to two acres for agricultural use, agricultural reserve use, forest reserve use, or for the construction of a residential dwelling to be occupied by the owner of the split-off tract. (In very limited circumstances the owner may be able to split-off up to three acres for a residential lot.) A maximum of 10% of the original tract under Clean and Green, or 10 acres, whichever is less, can be split-off under this provision. For these transfers, roll-back taxes apply only to the split-off tract. The remaining portion of

the land can remain enrolled in Clean and Green as long as it continues to meet the requirements of the program. However, if the remainder of the land no longer qualifies for the Clean and Green program, roll-back taxes are due **on the entire parcel that was originally enrolled**. Whenever a landowner is required to pay roll-back taxes, he or she has the option to terminate preferential assessment of the land with respect to which roll-back taxes are due.

Example

- Farmer Jones owns 80 acres of land. He has 5 daughters.
- In **year 1**, Farmer Jones splits off 2 acres for daughter one. In **year 2**, he splits off 2 acres for daughter two. In **year 3**, he splits off 2 acres for daughter three. In **year 4**, he splits off 2 acres for daughter four. Each year roll-back taxes are due on the split-off tract but **not** on the entire tract.
- However, **by year 5**, Farmer Jones cannot split-off 2 more acres to daughter number five unless he pays roll-back taxes **on the entire 80 acres** because he reached the 10% maximum allowable split-off in year 4 (10% of 80 is 8; by year 4 he had split-off 8 acres, equalling10% of his total land).

2. A landowner may also split-off 2 acres or less of Clean and Green land for selling agricultural products or for a rural enterprise incidental to the operational unit. If 2 acres or less are used for the direct commercial sales of agriculturally related products or for a rural enterprise incidental to the operational unit, roll-back taxes are imposed only on the portion of the tract devoted to the commercial activity.
3. A special exception exists for a split-off for a wireless or cellular communication tower. Strict requirements must be met in order to qualify for this exception: first, the landowner may **lease** a maximum of one-half acre for this purpose; second, the tract of land leased may not have more than one communication tower; third, the tract of land must be accessible; and fourth, the tract of land cannot be sold or subdivided. In this situation, the owner must pay roll-back taxes on the tract of land that is leased for the communication tower but the remaining land continues to be eligible for the Clean and Green tax rate as long as it continues to meet the program's requirements.

Authorized split-offs:

2 acres or less *each year* for:

- Agricultural use, or
- Agricultural reserve use, or
- Forest reserve use, or
- Construction of a residential dwelling by the owner of the lot.

— A total of 10% of the original tract or 10 acres, whichever is less can be split-off.

— Roll-back taxes are due on the split-off portion.

2 acres or less for:

- Direct commercial sales of agricultural products and activities, or
- A rural enterprise incidental to the operational unit.

— Roll-back taxes are due on the split-off portion.

1/2 acre or less for:

One cellular communication tower.

- Tract must be accessible, and
- Tract cannot be sold or subdivided.

— Roll-back taxes are due on the split-off portion.

Penalties for Clean and Green Violations

A civil penalty of not more than $100 may be imposed for each violation of the Clean & Green law. The County Board of Assessment Appeals must notify the landowner by certified mail of the nature of the violation, the amount of the civil penalty, and the right to contest the civil penalty. If the landowner does not notify the county, in writing, of intent to contest the penalty within 10 days, the penalty becomes final.

Summary and Conclusion

Clean and Green is both an effective and popular way to lower landowners' property taxes in Pennsylvania. The number of counties with landowners participating in Clean and Green grew from 46 counties in 1997 to 56 counties in 2000. In addition, the total amount of land under Clean and Green has also grown dramatically from 5,300,000 acres in 1997 to more than 6,540,000 acres in 2000. The program is voluntary and generally requires that the land remain in one of three designated uses: agricultural use, agricultural reserve use and forest reserve use. Land taken out of the permitted use becomes subject to

a roll-back tax, imposed for up to seven years, and an interest penalty. Further, a civil penalty of not more than $100 may be assessed against a person for each violation of the Clean and Green Act.

The Clean and Green program has the potential to provide landowners with substantial tax savings because under Clean and Green's preferential assessment structure, enrolled land is taxed according to its use value rather than its actual fair market value. In areas that are facing heavy pressure from developers, a tract of land's use value could be substantially different than its fair market value and the subsequent tax savings will be significant to the enrolled landowner. The 2001 regulations to the Clean and Green Act do not dramatically alter the old regulations but do provide a few important new changes. Again, these include:

1. The Pennsylvania Department of Agriculture now sets the maximum use values for the counties.
2. Farmstead land now qualifies for a preferential assessment (lower use values) and;
3. "Reasonable restrictions" may now be placed on the publics' access to Ag Reserve land by enrolled landowners.

Pennsylvania's Clean and Green program is a forward-looking legislative act. With the program's continued support and success, we can rest assured that Pennsylvania's open spaces and agricultural industry will be preserved for future generations to both enjoy and benefit from.

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