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BUREAU OF
FARMLAND PRESERVATION

Attention: Douglas M. Wolfgang, Director
Department of Agriculture, Bureau of Farmland Preservation
2301 North Cameron Street,
Harrisburg, PA 17110-9408

7 PA. CODE CH. 137b]

**Preferential Assessment of Farmland and Forest Land under the Clean
and Green Act**

I am writing to make a comment on department regulations for implementation of the Pennsylvania Clean and Green Act (CG)

Comments:

I am requesting that the Department of Agriculture go through a thorough investigation as to how the Department is arbitrarily and capriciously implanting the CG act for the Forest Reserve section of the law and deciding what sections are relevant to Forest Reserves and which are to be ignored. The investigative team should be made up of governmental oversight personnel, legislative personnel, Forest industry and the North Central Forest Landowner Group which is a non-profit forest landowner group in NW Pennsylvania with the largest membership of such an organization in the State. If found that the Department is not implementing this act toward the forest landowner in a fair and equitable manner that another state governmental body be recommended to oversee the implementation of this act.

In addition, I am requesting that the Department re-implement to the letter of the law and to present regulation that county assessors **HAVE** to accept at a minimum any Forest Reserve landowner who has proof of timber type make up of their specific property in developing their assessments. I strongly recommend that as per Agricultural Reserve assessment procedures that the county be required to do an appraisal for each and every enrolled forest reserve property delineating each property's Forest subcategories (timber types).

Below is my reasoning for these statements/comments:

§ 137b.51. Assessment procedures.

Under this provision the county assessor is to:

"(a) Use values and land use subcategories to be provided by the Department. The Department will determine the land use subcategories and provide county assessors use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year."

This section of the regulations specifically states the Department will determine the land use subcategories which by departmental definition are:

"Land use subcategory—A category of land in agricultural use, agricultural reserve or forest reserve, established by the Department and assigned a particular use value in accordance with sections 3 and 4.1 of the act (72 P. S. § § 5490.3 and 5490.4a). A land use subcategory may be based upon soil type, forest type, soil group or any other recognized subcategorization of agricultural or forest land."

The department is doing this for Agricultural Reserve by utilizing soil type property specific for each and every enrolled property under Agricultural Reserve. For Forest Reserve enrollees the Department gives use values by subcategories **BUT** in addition, is also giving an average county value which is **NOT** a legally defined subcategory as outlined in regulations above. It should be noted that nowhere in the forestry literature, CG act nor in regulation is an average use value a "recognized subcategorization of forest land" or a "forest type" and thus does not meet the letter or intent of the law to utilize subcategories. The forest types listed at the end of this comment and which is utilized by the Department in developing use values are listed for forest reserves. Average values given by the Department are assessments, which the Department is not allowed to give by law or regulation, and is the responsibility of the county assessor within the law (see below about values above Departmental use values derived) and the Department is only allowed to give the use values **BASED ON** "recognized subcategorizations of forest land" (i.e. forest type). Forest Reserves need to be treated as Agricultural Reserves are by the Department, immaterial of the capability of the county assessors or cost, in developing subcategories specific to each and every enrollee's property enrolled in the Forest Reserve category. This is being required for those properties under the Agricultural Reserve section of CG (soil types are utilized for agricultural reserves enrollees for their specific properties **NOT** average values by county which again an average value is not stated in regulation or law).

In addition the Department is allowing, with no oversight, the counties to utilize this non-subcategory average value that **MAY** be of a higher value, of specific individual enrolled Forest Reserve properties, than what the Department has given as subcategories (Forest Types). The legally defined subcategories for Forest Reserve are attached at the end of this comment letter. There is no where listed an average use value as a legally defined subcategory and use values need to be tied into the specific property being assessed and not a general average of all properties that includes public lands and non-Clean and green enrolled properties.

The county may use other use values BUT within the context of regulation:

"§ 137b.53. Calculation and recalculation of preferential assessment.

(c) Required recalculation of preferential assessment if current assessment is based upon use values higher than those provided by the Department. A county assessor shall calculate the preferential assessment of all enrolled land in the county using either the current use values and land use subcategories provided by the Department or lower use values established by the county assessor."

Again I am stressing that nowhere in the law, regulation nor forestry literature is there a "recognized subcategorization of forest land" listed as average county values thus the average values can not be considered as a Departmental provided use value and only those forest types listed in attachment are to be utilized. The average values are actually an assessment value based on the subcategorization of Forest Types and acres of each subcategory. The Department is not mandated by law or regulation to develop the final assessment of a property that is the responsibility of the county assessor under the context of "§ 137b.53.

Thus the Department is knowingly allowing county assessors to utilize a use value, that in reality is an assessment value, in figuring out the assessment value and that is not within the definition of the forest type subcategories for the specific landowner. In addition, the Department is knowingly allowing in many cases the counties to develop a use value that is higher than the landowners specific use value based on Departmental calculations and landowners true Forest Type (subcategorization) by turning a blind eye and encouraging assessors to utilize this average value. The Department does not do this for Agricultural Reserves and thus is implementing the CG as a double standard system and not doing their due diligence in enforcing the law.

The Department in the past had told the counties that if a landowner could show that their forest types were not to the average values given, then they had to accept that (again the average value is NOT a "recognized subcategorization of agricultural or forest land" and is actually an assessment that is the responsibility of the county assessor and not the Department, but we were willing to accept this compromise agreed to in the past). Now the Department under pressure from the county assessors and other political forces is not enforcing both section "§ 137b.53 C and § 137b.51.

All agricultural lands are being assessed per law and Departmental regulation in that the county assessor is developing assessments based on a " recognized subcategorization of agricultural land", (soil types) for each individual property. There are no assessment values (average values) given by the Department and allowed to be utilized by the County assessor for Agricultural Reserves (i.e. average county values based on all soil types within a county).

The Department is choosing what to enforce, and their legal council is turning a blind eye to the enforcement of the law and regulation without any other reason than to appease

county assessors who want to circumvent the law and collect as much in revenues as possible without doing their due diligence required by law. The cost to counties to develop forest types for each and every enrolled Forest Reserve property should not and is not within the law a factor in implementing the CG law. This cost is no different than typing all the Agricultural Reserve enrollees to soil types for their specific property. Or for that matter any homeowner who pays property tax (outside of CG) whereby it is the legal responsibility of the county assessor to assess each and every property separately vs. doing an average value of all home values within a county.

In reality if there is not a mapped out timber type for each and every property that enrolls under the Forest Reserve, it is the legal responsibility of the county assessor to do an on-site appraisal of each property to assess the correct tax liability to that property based on the law and subcategories developed by the Department (Forest Types). I have to keep stressing that average values are not within the definition of subcategories of Forest Types and are in reality the Department developing an alternative assessment value (not a use value) based on other factors. This is the county assessors responsibility and this value per law/regulation can not be higher than the individual enrollee's property's actual "recognized subcategorization" (Forest types).

There is a double standard of how the Department has chosen to implement the Clean and Green law for Agricultural Reserves and for Forest Reserves.

I await your response.

sincerely,

Dave Lombardo
Dave Lombardo

CC Senator Scarnati
CC Representative Matt Gabler

Recognized subcategorization of forest land -forest types

FOREST LAND USE ASSESSMENT - DEFINITIONS

A. Forest Reserve -

Land of ten acres or more, stocked by forest tree of any size and capable of producing timber or other woods products.

B. Forest Type Classifications-

1. Softwood Stand - Forest is comprised mainly (>50%) of softwood species. This includes pine plantations, spruce plantations and larch plantations.

2. Select Oak Stands - Forest canopy is comprised mainly (>50%) of high quality oak such as Northern Red Oak and White Oak - .

3. Oak Stands - Similar to Select Oak classification but species such as Scarlet Oak, Black Oak and Chestnut Oak are present as dominant/ co-dominant species of canopy.

4. Northern Hardwood Stands - Predominant species of Sugar Maple~ Red Maple, American Beech, and Black Cherry at less than 40% relative cover with associate species of Red Oak, Yellow Birch, Sweet birch and White Ash.

5. Black Cherry (40% or More) Stands - Stand composition is at least 40% Black Cherry with mixed oak; birch and maple as associates.

6. Miscellaneous Hardwoods - Forest composition consists of pure Birch stands Aspen stands or of combinations of such species as Yellow Poplar, American Beech, Red Maple, Oak species, Black Locus and mesophytic species such as Basswood, Sugar Maple, Black Walnut and Eastern Hemlock.

