

## Clean and Green

The Pennsylvania Farmland and Forest Land Assessment Act of 1974,<sup>1</sup> better known as “Clean and Green” or Act 319, provides a real estate tax benefit to owners who have land in “agricultural use,” “agricultural reserve” or “forest reserve” and are enrolled in the “Clean and Green Program.” In essence, land enrolled in Clean and Green is assessed according to its use value rather than its prevailing market value.<sup>2</sup> Act 319 applies to all counties in Pennsylvania. Each county assessment office is responsible for administering the program within its jurisdiction.

### Clean and Green uses:

**Agricultural Use.** Land which is used for the purpose of producing an agricultural commodity<sup>3</sup> or is devoted to and meets the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government. The term includes:

- Any farmstead land on the tract.
- A woodlot.
- Any land that is rented to another person and used for the purpose of producing an agricultural commodity.
- Any land devoted to the development and operation of an alternative energy system if a majority of the energy generated annually is used on the tract.<sup>4</sup>

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<sup>1</sup> Act 319 of 1974 (72 P.S. § 5490.1 et seq.).

<sup>2</sup> *Id.* at § 4.1.

<sup>3</sup> Act 319, Section 2, defines “agricultural commodity” as any of the following:

- (1) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.
- (2) Pasture.
- (3) Livestock and the products thereof.
- (4) Ranch-raised furbearing animals and the products thereof.
- (5) Poultry and the products of poultry.
- (6) Products commonly raised or produced on farms which are:
  - (i) intended for human consumption; or
  - (ii) transported or intended to be transported in commerce.
- (7) Processed or manufactured products of products commonly raised or produced on farms which are:
  - (i) intended for human consumption; or
  - (ii) transported or intended to be transported in commerce.
- (8) Compost.

<sup>4</sup> Act 319 of 1974, § 2.

The land must be comprised of 10 or more contiguous acres,<sup>5</sup> including the farmstead land, or have an anticipated yearly gross income of at least \$2,000 from the production of an agricultural commodity.<sup>6</sup>

**Agricultural Reserve.** Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for use, without charge or fee, on a nondiscriminatory basis. The term includes any land devoted to the development and operation of an alternative energy system if a majority of the energy annually generated is used on the tract.<sup>7</sup> The land must be 10 or more contiguous acres in area, including the farmstead land.<sup>8</sup>

**Forest Reserve.** Land, ten acres or more, stocked by forest trees of any size and capable of producing timber or other wood products. The term includes any land devoted to the development and operation of an alternative energy system if a majority of the energy annually generated is used on the tract.<sup>9</sup>

The Pennsylvania Department of Agriculture (PDA) is responsible for determining the land use subcategories and issues to county assessors annual use values for each land use subcategory. The PDA must provide these land use subcategories and use values to each county assessor by May 1 of each year.<sup>10</sup> The county assessor is responsible for determining the total use value of land enrolled in Clean and Green and calculates the preferential assessment for the property.<sup>11</sup> Under the provisions of Clean and Green and supplementary regulations,<sup>12</sup> the county assessment office establishes preferential assessments for land enrolled in Clean and Green by one of three manners: (1) adopting the annual land use subcategories and current use values (current year) issued by the PDA;<sup>13</sup> (2) adopting base year use values (a previous year) issued by the PDA;<sup>14</sup> or (3) developing its own use values.<sup>15</sup> As amended by Act 89 of 2016, Section 4.2(c.4) of Act 319 prohibits the

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<sup>5</sup> Land area that is burdened by a public or private road, right-of-way or easement must be included in determining whether the condition of minimum contiguous area for Agriculture Use, Agriculture Reserve or Forest Reserve has been met. Section 3(a.2).

<sup>6</sup> Act 319 at § 3(1).

<sup>7</sup> *Id.* at § 2.

<sup>8</sup> *Id.* at § 3(2).

<sup>9</sup> *Id.* at §§ 2, 3(3).

<sup>10</sup> *Id.* at § 4.1.

<sup>11</sup> *Id.* at § 4.2.

<sup>12</sup> 7 Pa. Code Chapter 137b.

<sup>13</sup> Act 319 of 1974, § 4.1; 7 Pa.Code §§ 137b.51, 137b.53.

<sup>14</sup> *Id.* at § 4.2; 7 Pa.Code § 137b.53. *See also* the Pennsylvania Department of Agriculture's publication, *2019 Clean and Green Use Values* [https://www.agriculture.pa.gov/Plants\\_Land\\_Water/farmland/clean/Documents/2019%20CLEAN%20AND%20GREEN%20USE%20VALUES.pdf](https://www.agriculture.pa.gov/Plants_Land_Water/farmland/clean/Documents/2019%20CLEAN%20AND%20GREEN%20USE%20VALUES.pdf) and *2019 County Assessed Forest Values & Rates* [https://www.agriculture.pa.gov/Plants\\_Land\\_Water/farmland/clean/Documents/2019%20County%20Assessed%20Forest%20%20Values.pdf](https://www.agriculture.pa.gov/Plants_Land_Water/farmland/clean/Documents/2019%20County%20Assessed%20Forest%20%20Values.pdf) (accessed March 30, 2020)

<sup>15</sup> Act 319 at § 4.2.

application of a use value by a county assessment office that is greater than: (1) the assessed value that would apply if the land were not enrolled in Clean and Green, or (2) the county-specific use values established by the Pennsylvania Department of Agriculture. The use values may only be updated when there is countywide reassessment or when the use values drop below the base year figures established by the county. The values must be applied uniformly to all land eligible for preferential assessment under Act 319.<sup>16</sup>

## Frequently Asked Questions

The Pennsylvania Department of Agriculture, Bureau of Farmland Preservation, has developed a series of questions and answers<sup>17</sup> to better clarify the provisions of Clean and Green, some of which include:

### **What is the penalty for a change in use of land?**

A landowner who breaches the covenant is subject to seven years of rollback taxes at 6 percent interest per year. The rollback tax is the difference between what was paid under Clean and Green versus what would have been paid if the property had not been enrolled, plus 6 percent simple interest per year.

### **Can I remove my property from clean and green after it has been enrolled?**

Landowners may voluntarily remove their land from Clean and Green by notifying the county assessor by June 1 of the year immediately preceding the tax year for which removal is requested. Rollback taxes are due upon submission of the request.

### **May I sell or divide my property without having to pay rollback taxes?**

The program allows for two types of divisions or conveyances: split-offs and separations. A split-off is a division of land, by conveyance or other action of the owner, into two or more tracts for use of constructing a residence. No more than two acres may be split-off per year except if the municipality requires a minimum three-acre subdivision to construct the residence. Cumulative split-offs may never exceed the lesser of 10 acres or 10 percent of the total land originally enrolled. Rollback taxes would be due only with respect to the land split-off. Separation is a division of land, by conveyance or other action of the owner, into two or more tracts that continue to be in Agricultural Use, Agricultural Reserve or Forest Reserve. The tracts usually must be at least 10 acres in size and continue to meet the qualifications. No rollback taxes would be due.

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<sup>16</sup> *Id.*; 7 Pa. Code § 137b.51.

<sup>17</sup> See [https://www.agriculture.pa.gov/Plants\\_Land\\_Water/farmland/clean/Pages/default.aspx](https://www.agriculture.pa.gov/Plants_Land_Water/farmland/clean/Pages/default.aspx) (accessed March 30, 2020).

**May I build an additional home on my clean and green property?**

The split-off provision provides for the construction of a residence on enrolled property. Please check with the county assessment office.

**May I conduct nonagricultural activities on my clean and green property?**

The act allows for a "rural enterprise incidental to the operational unit." This is defined as a commercial enterprise or venture that is conducted on two acres or less of enrolled land, and when conducted, does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of enrolled land not subject to roll-back taxes. The two acres on which this enterprise is conducted would be removed from preferential assessment. Rollback taxes would be due with respect to those two acres.

**May I engage in energy development on my clean and green property?**

The program was recently amended to provide for oil and gas development with a limited rollback tax penalty. Rollback taxes are only due with respect to those areas of the property devoted to the activity as determined by the county assessor upon submission of a well production report to the Pennsylvania Department of Environmental Protection. Similarly, commercial wind production is now permitted with rollback taxes limited to those areas devoted to the activity. Tier one alternative energy systems, such as solar and biomass, are permitted without any rollback tax penalty if the majority of energy is utilized on the enrolled tract.

**May I engage in mining on my clean and green property?**

The program was recently amended to allow for one small noncoal surface mining permit on enrolled land. Rollback taxes are due on the affected areas.

**Must I allow public access to my clean and green property?**

Agricultural Reserve is the only category that needs to remain open to the public for passive recreational uses, free-of-charge on a nondiscriminatory basis. Nevertheless, a landowner may place reasonable restrictions, such as limiting access after dark, prohibiting hunting and restricting use of motorized vehicles.

For further information on Clean and Green, contact your local county tax assessment office. For more general information, you may also contact the Pennsylvania Department of Agriculture, Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408, (717) 783-3167.