PA House Agriculture and Rural Affairs Committee July 15, 2008
Testimony of Secretary Dennis C Wolff, PA Department of Agriculture
Act 319 / Clean and Green

Chairman Hanna, Chairman Hershey and distinguished members of the Committee, good afternoon. Thank you for the opportunity to speak with you today about the Clean and Green Program – a program that is essential in the effort to enable farms to keep operating by making property taxes affordable. Governor Rendell successfully implemented property tax relief throughout the Commonwealth, including to Pennsylvania's farmers. That said, farmers have had another resource available to them since its inception in 1974, Clean and Green. The Clean and Green program has prevented hundreds of farms from being converted to non-agricultural uses over the past thirty years. Affordable property taxes are an essential tool in the overall effort to preserve farmland. To date, it is estimated that over eight million acres are enrolled statewide in the Agricultural Use, Agricultural Reserve or Forest Reserve categories of eligibility within the Clean and Green program. The program is far-reaching – now with fifty-five participating counties.

The Clean and Green program is a state program designed to preserve agricultural and forest land. The purpose of the program is to provide a real estate tax benefit to owners of agricultural or forest land by taxing that land on the basis of its "use value" rather that its market value. This act provides preferential assessment to any individuals who agree to maintain their land solely devoted to agricultural use, agricultural reserve, or forest reserve use. Property owners who have at least ten acres of farm, forest or open land can participate in the program. Landowners who have less than ten acres can qualify if they can prove they earn at least $2,000 annual gross income from farming their land. The program is administered by county assessment offices. Land taken out of the permitted use becomes subject to a rollback tax, imposed for up to seven years, and an interest penalty.

The Pennsylvania Department of Agriculture has two main functions related to Clean and Green. First, the department distributes annual use values to the County Assessors. Second, we provide for uniform interpretation of the Act. The department works closely with County Assessors on program issues as they arise. There are several issues that are pertinent when considering the Clean and Green program.

First, a property may qualify for Agricultural Use if it is less than ten acres in size and generates at least $2,000 in annual income. This threshold has been in existence since the program's inception and has not been adjusted for inflation. Consideration should be given to raising the income requirement to reflect the potential revenue of a legitimate farming operation.

The second issue involves the enrollment of "mini-estates" into the program – something that was never intended when the bill was established but has become a tax loophole. The ability for such properties to be enrolled continues to jeopardize public support of the program. There are properties ten to twenty acres in size with a home site enrolled in either the Agricultural Reserve or Forest Reserve category and receiving a use value assessment. While the land meets the requirements of the Act, there is no intent to farm or forest the property in the future. The tax relief shifts the burden to other taxpayers in the district and understandably causes the public to question whether the program is fair and equitable. Act 235 of 2004 addresses this to a degree by allowing the farmstead land (otherwise known as "base acre") to be assessed at market value, but further consideration should be given to eliminate "mini-estates" from eligibility altogether.

One timely - and particularly challenging - issue is the leasing and drilling of enrolled Clean and Green lands for oil and natural gas. Traditionally, oil and gas activity was viewed as a *temporary* use of the land that did not impede on the ability to farm or forest the property. In fact, thousands of acres enrolled in the Clean and Green program are currently subject to leases and drilling activity in the northern and western counties. The marcellus black shale layer gas leases have brought this issue to the forefront; potentially two-thirds of land in the state could be subject to this activity. The surface impacts of this type of drilling are greater than existing shallow wells.

Drilling in the marcellus black shale layer presents a tremendous opportunity to not only reduce our dependence on foreign energy and provide jobs for Pennsylvanians, but it will potentially provide farmers with a chance to invest capital into their farming operations. However, the challenge related to the Clean and Green program has been the uniform administration of leases and drilling and the question of whether this activity triggers rollback tax consequences for properties subject to preferential assessment. The first question of uniform administration is whether the execution of a lease in and of itself triggers rollback taxes without a change in use of the surface. One Commonwealth Court case says the "character" of the surface use must be changed before rollback. A recent survey of county assessors found an overwhelming majority of counties align their program administration with this concept and do not impose rollback upon execution of a lease. Only one county imposes a rollback penalty when the lease is signed. In fact, eleven counties allow for leases and drilling without any rollback tax penalty of any kind.

The lack of uniformity lies primarily in how the *drilling* is addressed. Six counties report rollback penalty on the *entire property* when the drilling occurs; two counties impose rollback *on the area of the drill site* when the drilling occurs; and six counties reported *other ways* of addressing the issue. The implications to taxpayers and enrollees are widespread, and it is understandably a challenge for county assessors to address this in a way that is both fair to enrollees and consistent with the intent of the program. There are currently several pieces of proposed legislation that would address this issue.

House Bill 656 (Bastian) would provide for commercial wind energy production on enrolled lands. The bill amends the law to allow an enrollee to lease her property for commercial wind production under certain conditions. The land may not be subdivided or conveyed. Rollback taxes would be due only with respect to the portion leased for placement of the turbine. Under the existing statute, a wind turbine is permitted on an enrolled tract of land provided the energy is for use on the farm. Additionally, excess energy can be net metered and sold back to the energy company as part of the "rural enterprise" clause. Wind energy is a viable opportunity for farmers to supplement their income and contribute toward our energy needs. This bill encourages the production of clean and renewable energy sources and is consistent with our commitment to the production of alternative energy.

House Bill 1960 (Hershey) would change the Clean and Green program to allow for assistance payments to be made from the Department of Community and Economic Development to local taxing authorities (county, municipality and school district) that experience 10% or greater revenue loss due to Clean and Green. Such payments would put an unfair burden on Pennsylvania taxpayers, especially taxpayers in counties that have not been reassessed or that do not operate a Clean and Green Program. On top of that, the state budget should not be a vehicle to support local tax issues surrounding the Clean and Green Program. (It should be noted that, although Clean and Green reduces the local tax revenue, farmlands, forestlands and open spaces also place less demands on services than residential lands.)

House Bill 667 (Sonney) provides for the voluntary withdrawal from the Clean and Green program without a change in use of the property. Under the existing statute, a landowner may not voluntarily remove a property without first changing the use and triggering rollback taxes. This bill would allow a property owner to remove land by notifying the assessor in writing on or before June 1 of the year immediately preceding the tax year for which removal is requested. The entire tract would be removed and the landowner would be required to pay seven years' worth of rollback taxes plus interest on the entire acreage. The bill also provides for voluntary withdrawal from the program without a change in use, *and without payment of rollback taxes*. This would be permitted if a statutory amendment results in an increased overall assessment -- and has likely come about as the result of Act 235 of 2004. Act 235 amended to the law to allow assessors to value the farmstead land for Agricultural Reserve and Forest Reserve categories of Clean and Green at its market value rather than use value. In many cases, this has resulted in an increase to overall assessment that offsets nearly all the savings otherwise experienced under Clean and Green.

Allowing for property owners to opt out without a change in use by paying rollback taxes may not be in the best interest of the program, however if the ultimate goal of the landowner is to change the use of the property regardless, rollback taxes will be due at a later time. The Department recognizes a statutory change, such as Act 235, may result in an increased assessment. Landowners may be in a situation where there are little if any tax savings, yet all of the restrictions of the program. Clean and Green was meant

to provide property tax relief. If that is no longer occurring for some landowners as a result of an amendment, then it is only fair they be given the opportunity to withdrawal. The third component of House Bill 667 provides for the continuation of preferential assessment under certain circumstances. In particular, if a statutory amendment causes a tract to no longer be eligible, the tract shall remain under the covenant and no rollback taxes are due. It is unclear what scenario this is attempting to address, however it appears to protect the rights of the property owner in the event of an unforeseen amendment. The Department does not have a position on this bill.

In closing, it is important to reaffirm the positive aspects of Clean and Green. Because it bases taxes on the land's use value rather than market value, farmers are able to benefit from significant tax relief. The Program has worked hand in hand with the Commonwealth's nationally recognized Farmland Preservation Program by keeping farms viable. The savings in property taxes will continue to enable our farmers to invest more into the farm operation and keep the family farm in business for generations to come. With millions of acres enrolled statewide, the benefit to the farming community is far reaching and immeasurable. Thank you for the opportunity to present testimony today. I am happy to answer your questions.