

Frequently Asked Questions (FAQ) on Act 15 of 2018 and Stormwater Management for High Tunnels used in Agriculture in Pennsylvania

What are high tunnels?

High tunnels are framed structures that have a solid floor and may be covered. High tunnels are used by the agriculture industry to produce, process, store or sell agricultural commodities and store agricultural equipment or supplies, most commonly on a temporary basis to extend the growing season.

What stormwater control measures are appropriate for high tunnels?

Like any structure that prevents rainfall from percolating into the ground, it is important that stormwater runoff from high tunnels is appropriately managed to prevent soil erosion and pollution to nearby waters. Since high tunnels are often used by agricultural operators as temporary structures and are typically fairly small in size, it may not be practical to use certain stormwater control measures (SCMs), like stone-filled drainage trenches, to manage stormwater runoff from a high tunnel as these SCMs may make it more difficult to return the land where the SCM is installed to agricultural use after the high tunnel is removed. Vegetative SCMs, like vegetated filter strips and earthen retentive grading berms, are often more practical in managing stormwater runoff from high tunnels since the land where they are installed can be more readily returned to agricultural use after the high tunnel has been removed.

What law was passed in Pennsylvania that changed some stormwater regulations for high tunnels?

[Act 15 of 2018](#) amended Pennsylvania's [Storm Water Management Act](#) (SWMA) by adding a definition of "high tunnel" to Section 4 and adding a new Subsection 11(c) exempting high tunnels that meet a very specific set of conditions (detailed below) from the provisions of the SWMA. Subsection 11(c) also directs municipalities to update any existing local ordinances or regulations that regulate high tunnels pursuant to a watershed stormwater plan developed in accordance with the SWMA.

Does Act 15 of 2018 exempt high tunnels from laws other than the SWMA?

No. The following state laws and regulations may still apply to high tunnels:

- The Clean Streams Law
- Dam Safety and Encroachments Act
- 25 Pa. Code Chapter 102, regarding erosion and sediment control, including post-construction stormwater management
- 25 Pa. Code Chapter 105, regarding water obstructions and encroachments

When the amount of earth disturbance associated with construction of a high tunnel triggers the need for Chapter 102 permit coverage (that is, when the total amount of earth disturbance is one acre or more, as required by 25 Pa. Code § 102.5(a)), erosion and sedimentation and post-construction stormwater management requirements will apply. Additionally, when a structure is being built along or across a waterway, Chapter 105 permitting requirements may also apply.

What conditions must be satisfied for a high tunnel to be exempt from the provisions of the SWMA?

For a high tunnel to be exempt from the provisions of the SWMA, it must meet the following four conditions:

1. **Usage:** As defined, a high tunnel must be used for one of the following purposes:
 - The production, processing, keeping, storing, sale or shelter of an agricultural commodity as defined in Section 2 of the [Pennsylvania Farmland and Forest Land Assessment Act of 1974](#).¹
 - The storage of agricultural equipment or supplies.
2. **Construction:** A high tunnel must be constructed as follows:
 - Having a metal, wood or plastic frame.
 - When covered, having a plastic, woven textile or other flexible covering.
 - Having a floor made of soil, crushed stone, matting, pavers, a floating concrete slab or a combination of these materials.
3. **Impervious Area:** A high tunnel or its flooring must not result in an impervious area exceeding 25% of all structures located on the owner's total contiguous land area.
4. **Siting:** A high tunnel must be sited as follows:
 - Located at least 100 feet from any perennial stream or other watercourse, public road or neighboring property line; OR
 - Located at least 35 feet from any perennial stream or other watercourse, public road or neighboring property line where the slope of the area where the facility is placed is not greater than 7 percent; OR

¹ **“Agricultural commodity.”** 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.

- With a diversion system or buffer built and managed consistent with the SWMA that ensures that runoff from the high tunnel does not directly drain into a stream or other watercourse.

What authority do local governments still have over stormwater for high tunnels?

The SWMA requires counties to prepare and adopt watershed or county-based stormwater management plans for the management of stormwater and periodically review and revise those plans. It also requires municipalities to adopt and implement ordinances and regulations to regulate development consistent with the stormwater management plans and SWMA. Therefore, any person engaged in development activities within the municipalities must be in compliance with any local ordinances and regulations implementing the stormwater management plans and SWMA.

The SWMA applies to all structures constructed within the Commonwealth, including high tunnels, which are defined to exist on agricultural lands. If a high tunnel is constructed and sited in accordance with the provisions of Act 15 of 2018, it is eligible for exemption from the provisions of the SWMA only. If a high tunnel is exempt from the provisions of the SWMA, that does not necessarily make it exempt from other federal, state and local laws regulating stormwater management, including the state laws noted previously in this FAQ.

Who can I contact with further questions or concerns related to Act 15 of 2018?

For general questions about agricultural high tunnels, please contact the Pennsylvania State Conservation Commission.

If you have concerns that a municipal ordinance may be regulating high tunnels in a way that is inconsistent with Act 15 of 2018, please contact the Pennsylvania Office of Attorney General (OAG) at ACRE@attorneygeneral.gov to request a review of the ordinance under the Commonwealth's Agriculture, Communities and Rural Environment (ACRE) Act. Also see [OAG's ACRE webpage](#).

For questions about other laws that may regulate stormwater from high tunnels, including 25 Pa. Code Chapter 102, please contact the Pennsylvania Department of Environmental Protection's Construction Stormwater Section at RA-EPChapter102@pa.gov.