



**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD**

EAST PENN TOWNSHIP,)	
)	
Appellant,)	
)	EHB Docket No. 2018-037-M
v.)	
)	ELECTRONICALLY FILED
COMMONWEALTH OF PENNSYLVANIA,)	
DEPARTMENT OF ENVIRONMENTAL)	
PROTECTION,)	
)	
Appellee,)	
)	
and)	
)	
SYNAGRO,)	
)	
Permittee.)	

PERMITTEE’S MOTION TO STAY PROCEEDINGS

The core issue in this Appeal—whether biosolids may be applied as fertilizer on the Cunfer Farm—is the subject of parallel litigation in the Carbon County Court of Common Pleas that may render this matter moot. In order to preserve the Board’s and litigants’ resources, Synagro Central, LLC¹ files this Motion to Stay Proceedings pursuant to 25 Pa. Code § 1021.92 and, in support, states as follows:

1. Appellant East Penn Township (the “Township”) filed its Notice of Appeal on April 26, 2018, in which the Township challenges the Pennsylvania Department of Environmental Protection’s (the “Department”) approval of Synagro Central, LLC’s 30-Day Notice to apply biosolids to the Cunfer Farm in East Penn Township, Carbon County,

¹ Appellant East Penn Township named “Synagro” as the Permittee in this appeal, but no entity by that name exists. Synagro Central, LLC is the corporate entity that has proposed providing biosolids pursuant to the general permit PAG-08 for agricultural land application to the Cunfer Farm. See https://www.ahs.dep.pa.gov/eFACTSWeb/searchResults_singleSite.aspx?SiteID=828486.

Pennsylvania. The Notice of Appeal requests that the Board vacate the Department's approval of the 30-Day Notice, thereby prohibiting the land application of biosolids on the Cunfer Farm.

2. Five days after filing its Notice of Appeal, the Township filed a complaint in the Carbon County Court of Common Pleas alleging that "Synagro" and its farm partners, the Cunfer family, violated East Penn Township Ordinance No. 77 (the "Ordinance") by failing to obtain a registration certificate from the Township authorizing the land application of biosolids on the Cunfer Farm as currently required by the Ordinance 77.² Ex. A, Complaint. This lawsuit is referred to for the remainder of this Motion as the "Common Pleas Action."

3. The Township simultaneously filed an *ex parte* Emergency Application for Special Relief requesting a preliminary injunction prohibiting the land application of biosolids on Cunfer Farm. Ex. B, Emerg. App. for Special Relief. The Court granted the preliminary injunction *ex parte* on May 1, 2018. See Ex. C, May 1, 2018 Order.

4. The Township's claims in the Common Pleas Action lack merit because the Ordinance is preempted by Pennsylvania's comprehensive regulatory scheme governing the generation, storage and land application of biosolids. Synagro Central, LLC has raised this defense in its June 25, 2018 Answer and New Matter filed in the Common Pleas Action. Ex. D, Answer with New Matter ¶ 35. Thus, the merits of that case turn on a pure legal question that is amenable to resolution as a matter of law by the Court of Common Pleas.

5. All Defendants to the Common Pleas Action have agreed that the May 1, 2018 preliminary injunction prohibiting land application may remain in place pending the final disposition of that case, and the Court entered an order to that effect on June 1, 2018. See Ex. E,

² Just as it did in this Appeal, the Township has not named an actual Synagro corporate entity in the lawsuit brought in the Carbon County Court of Common Pleas.

June 1, 2018 Order. The Court of Common Pleas will likely adjudicate the validity of the Ordinance in a decision on a dispositive motion.

6. The disposition of the Common Pleas Action may render this Appeal moot. If the Court of Common Pleas upholds the Ordinance in its entirety, the Ordinance will likely function to prohibit the land application of biosolids on Cunfer Farm. Under the Ordinance, discretion whether to grant a registration permitting land application of biosolids rests with the Township's Board of Supervisors, which has demonstrated hostility toward this beneficial recycling and agricultural practice. Moreover, the Ordinance imposes onerous and potentially cost-prohibitive requirements on farmers seeking to land apply biosolids, which would further deter land application of biosolids by the Cunfers. Thus, if the Ordinance remains in effect, there may be no need to litigate the validity of the Department's approval of the 30-Day Notice because land application could be barred by operation of local law. If the Ordinance is struck down, then this Appeal likely will proceed.

7. Staying this appeal until the Court of Common Pleas rules on the validity of the Ordinance will serve the interests of judicial economy and justice. Neither the Parties nor the Board are served by litigating an appeal that may become moot in the near future. Continuing this Appeal, including discovery, will require all involved to devote substantial time and effort to a matter that may ultimately have no bearing on whether biosolids are applied at the Cunfer Farm. In such a circumstance, it is appropriate for the Board to stay this proceeding to await the outcome of the Common Pleas Action. *See Gwynedd Properties, Inc. v. Bd. of Supervisors of Lower Gwynedd Twp.*, 635 A.2d 714, 718 (Pa. Commw. Ct. 1993) ("The trial court has the inherent power to stay the proceedings in one case during the pendency of another case which may resolve or moot the case which has been stayed.").

8. A stay will also result in no prejudice to the Township; the Court of Common Pleas has preserved the status quo by leaving its injunction in place during the pendency of the Common Pleas Action.

9. The Permittee has conferred with the Department and the Township prior to filing this Motion. The Department does not oppose this motion and supports staying the proceedings pending the outcome of the Common Pleas Action. The Township does not support this motion; it would support the relief sought only if Synagro Central, LLC were to forego its right to land apply biosolids at the Cunfer Farm throughout the pendency of this Appeal. The Permittee's position is that the question of whether land application occurs during the Appeal can be addressed between the parties should the Ordinance be struck down and if this Appeal continues. The Township of course retains the right to seek a supersedeas to restrict land application should the Appeal continue and Synagro and the Cunfers decide to proceed with land application.

Date: June 27, 2018

Respectfully submitted,

/s/ Andrew C. Sifton

Andrew C. Sifton

Attorney I.D. No. 314716

Beveridge & Diamond, P.C.

1350 I Street NW, Suite 700

Washington, DC 20005

(202) 789-6078

asilton@bdlaw.com

Counsel for Permittee

Synagro Central, LLC



CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing MOTION TO STAY PROCEEDINGS was served on this 27th day of June, 2018 via electronic filing on the following:

Lauren M. Williams
Jordan B. Yeager
Curtin & Heefner, LLP
2005 S. Easton Road, Suite 100
Doylestown, PA 18901
LMW@curtinheefner.com
JBY@curtinheefner.com
Counsel for Appellant East Penn Township

Michael Ferrence
Assistant Counsel
Pennsylvania Department of Environmental Protection
Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18711
mferrence@pa.gov
*Counsel for Appellee Pennsylvania
Department of Environmental Protection*

/s/ Andrew C. Sifton



EXHIBIT A

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet CARBON

County

For Prothonotary Use Only:

Docket No:

18-1214

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

East Penn Township, Carbon County, PA

Lead Defendant's Name:

Synagro, Dennis Cunfer, Wanda Crostley, et al.

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits
(check one) ☐ outside arbitration limits

Is this a *Class Action Suit*? ☐ Yes ☒ No

Is this an *MDJ Appeal*? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Robert S. Frycklund, Esquire

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

- ☐ Employment Dispute:
Discrimination
☐ Employment Dispute: Other

☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

- ☐ Zoning Board
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
Restraining Order
☐ Quo Warranto
☐ Replevin
☒ Other:
Complaint Injunctive Relief

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:



Court of Common Pleas of Carbon County		For Prothonotary Use only (Docket Number)	
Civil Cover Sheet			
PLAINTIFF'S NAME: Enter names (last, first, middle initial) of plaintiff. If the plaintiff is a government agency or corporation, use the full name of the agency or corporation. In the event there are more than two plaintiffs, list the additional parties on a separate sheet of paper. Husband and wife should be listed as separate parties. East Penn Township, Carbon County, Pennsylvania		DEFENDANT'S NAME: Enter names (last, first, middle initial) of defendant. If the defendant is a government agency or corporation, use the full name of the agency or corporation. In the event there are more than two defendants, list the additional parties on a separate sheet of paper. Husband and wife should be listed as separate parties. Synagro, Dennis Cunfer, Wanda Crostley, Justin Cunfer, Katherine Hetherington-Cunfer, Deanna Cunfer and Cunfer Farm a/k/a Never Done Farm	
PLAINTIFF'S ADDRESS & TELEPHONE NUMBER: Enter the address and telephone numbers of the parties at the time of filing of the action. If any party is a corporation, enter the address and telephone number of the registered office of the corporation. 167 Municipal Road, Lehighton, PA 18235		DEFENDANT'S ADDRESS & TELEPHONE NUMBER: Enter the address and telephone numbers of the parties at the time of filing of the action. If any party is a corporation, enter the address and telephone number of the registered office of the corporation. Synagro 1600 Dooley Road, P.O. Box B, Whiteford, Maryland 21160; Dennis Cunfer and Deanna Cunfer 236 Smithlane Road, Lehighton, PA 18235; Wanda Crostley 3315 Mahoning Drive West, Lehighton, PA 18235; Katherine-Hetherington Cunfer and Justin Cunfer 351 Cunfer Lane, Lehighton, PA 18235; Cunfer Farm a/k/a Never Done Farm 366 Cunfer Lane, Lehighton, PA 18235	
ADDITIONAL PLAINTIFF'S NAME:		ADDITIONAL DEFENDANT'S NAME:	
ADDITIONAL PLAINTIFF'S ADDRESS/ TELEPHONE NO:		ADDITIONAL DEFENDANT'S ADDRESS/ TELEPHONE NO:	
TOTAL NUMBER OF PLAINTIFFS: Indicate the total number of plaintiffs and the total number of defendants in the action. 1		TOTAL NUMBER OF DEFENDANTS: Indicate the total number of plaintiffs and the total number of defendants in the action. 7	
STATUTORY BASIS FOR CAUSE OF ACTION If the action is commenced pursuant to statutory authority ("Petition Action"), the specific statute must be cited.			
RELATED PENDING CASES: (All previously filed related cases must be identified by docket number. Indicated whether they have been consolidated by Court Order or Stipulation.)			
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant. Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/APPELLANT'S ATTORNEY: Unrepresented filers must provide their name, address, telephone number and signature. Robert S. Frycklund, Esquire		ADDRESS 49 East Ludlow Street P.O. Box 190 Summit Hill, PA 18250	
PHONE NUMBER 570-645-2811	SUPREME COURT IDENTIFICATION NUMBER 82921	E-MAIL ADDRESS: Robert@frycklund.com	
		FAX NO. (OPTIONAL - FOR SERVICE): Providing the fax number shall authorize the service of legal papers by facsimile transmission. See Pa.R.CP.440(d) 570-645-4546	
DATE: 5/1/2018		SIGNATURE:	

2018 MAY -1 PM 1:17
CARBON COUNTY
PROTHONOTARY
FILED

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - EQUITY

EAST PENN TOWNSHIP, CARBON
COUNTY, PENNSYLVANIA,

Plaintiff

No.

vs.

SYNAGRO, DENNIS CUNFER, WANDA
CROSTLEY, JUSTIN CUNFER, KATHERINE
HETHERINGTON-CUNFER, DEANNA
CUNFER and CUNFER FARM a/k/a NEVER
DONE FARM,

Defendants

FILED
2018 MAY -1 PM 1:17
CARBON COUNTY
PROTHONOTARY

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

North Penn Legal Services
101 West Broad Street, Suite 713
Hazleton, PA 18201
Phone 1-877-953-4250
Fax (570) 455-3625

or

Carbon County Lawyer Referral
811 Blakeslee Blvd. Dr. East, Suite 130
Lehighton, PA 18235
Phone 1-610-379-4950
Fax (610) 379-4952

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - EQUITY

EAST PENN TOWNSHIP, CARBON
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Plaintiff

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SYNAGRO, DENNIS CUNFER, WANDA
CROSTLEY, JUSTIN CUNFER, KATHERINE
HETHERINGTON-CUNFER, DEANNA
CUNFER and CUNFER FARM a/k/a NEVER
DONE FARM,

Defendants

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CARBON COUNTY
PROTHONOTARY

AVISO

Le ban demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascantar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se dafiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

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IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - EQUITY

EAST PENN TOWNSHIP, CARBON
COUNTY, PENNSYLVANIA,
Plaintiff

No.

vs.

SYNAGRO, DENNIS CUNFER, WANDA
CROSTLEY, JUSTIN CUNFER, KATHERINE
HETHERINGTON-CUNFER, DEANNA
CUNFER and CUNFER FARM a/k/a NEVER
DONE FARM,
Defendants

COMPLAINT

FILED
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CARBON COUNTY
PROTHONOTARY

AND NOW comes the Plaintiff, East Penn Township, Carbon County, Pennsylvania, by and through its attorney, Robert S. Frycklund, Esquire, to respectfully file this Complaint against the above-named Defendants, and in support thereof states as follows:

1. Plaintiff East Penn Township is political subdivision of the Commonwealth of Pennsylvania located in Carbon County, Pennsylvania, having an address of 167 Municipal Road Lehighton, Carbon County, Pennsylvania 18235 (hereinafter, "East Penn Township" or the "Township").
2. Defendant Synagro is a biosolids and residuals management company that, in part, contracts with farmers to provide them with biosolids ("sewage sludge") to land-apply, having an address of 1600 Dooley Road, P.O. Box B, Whiteford, Maryland 21160 (hereinafter "Synagro").
3. Defendant Dennis Cunfer is an adult individual having an address of 236 Smithlane Road, Lehighton, Pennsylvania 18235 (hereinafter, "Dennis Cunfer").
4. Defendant Wanda Crostley is an adult individual having an address of 3315 Mahoning

Drive West, Lehighton, Pennsylvania 18235 (hereinafter, "Wanda Crostley").

5. Defendant Katherine Hetherington-Cunfer is an adult individual having an address of 351 Cunfer Lane, Lehighton, Pennsylvania 18235 (hereinafter, "Katherine Cunfer").

6. Defendant Justin Cunfer is an adult individual having an address of 351 Cunfer Lane, Lehighton, Pennsylvania 18235 (hereinafter, "Justin Cunfer").

7. Defendant Deanna Cunfer is an adult individual having an address of 236 Smithlane Road, Lehighton, Pennsylvania 18235 (hereinafter, "Deanna Cunfer").

8. Defendant Cunfer Farm a/k/a Never Done Farm is a beef cattle farm and feedlot on land owned by Dennis Cunfer and Wanda Crostley, consisting of approximately one hundred twenty-three-point-three (123.3) acres located at or about 366 Cunfer Lane, Lehighton, East Penn Township, Carbon County, Pennsylvania 18235 (hereinafter, "Cunfer Farm").

9. Cunfer Farm is operated by Dennis Cunfer, his wife Deanna Cunfer, their son, Justin Cunfer, and their daughter-in-law, Katherine Hetherington-Cunfer

10. On or about August 24, 2017, Synagro submitted an application to the Commonwealth of Pennsylvania Department of Environmental Protection (hereinafter, "PA DEP") for a permit to store and land-apply biosolids ("sewage sludge") in and upon Cunfer Farm,

11. On or about March 23, 2018, PA DEP issued a thirty (30) day notice of approval of Synagro's application to store and land-apply sewage sludge in and upon Cunfer Farm (hereinafter, "Notice of Approval"), which said Notice of Approval was received by East Penn Township on March 28, 2018. A true and correct copy of the Notice of Approval is attached hereto and made a part hereof

as Exhibit "A".

12. Due to certain alleged substantive and procedural defects in PA DEP's issuance of the said Notice of Approval, East Penn Township timely and properly filed an appeal to the Environmental Hearing Board on April 26, 2018 (hereinafter, the "Appeal"), which said Appeal is pending before that tribunal. A true and correct copy of the Appeal, which is hereby incorporated as though set forth fully and at length herein, is attached and made a part hereof as Exhibit "B".

13. In 1996, in accordance with its governmental responsibility as trustee of public natural resources under Article I, Section 27 of the Pennsylvania Constitution (hereinafter, the "Environmental Rights Clause"), East Penn Township duly enacted Ordinance No. 77, which requires a proposed operator to apply to the Township for the issuance of a registration certificate for waste operations (including storage and land application of sewage sludge) so that the Township can evaluate and determine a proposed operation's potential impact on the community before those operations commence. A true and correct copy of Ordinance No. 77, which is hereby incorporated as though set forth fully and at length herein, is attached and made a part hereof as Exhibit "C".

14. To date, none of Defendants Synagro, Dennis Cunfer, Wanda Crostley, Justine Cunfer, Katherine Cunfer and Cunfer Farm (hereinafter, collectively, the "Defendants") has complied with any of the requirements of Ordinance No. 77 for the issuance of a registration certificate prior to the commencement of waste operations.

15. Instead, on February 22, 2018, Katherine Cunfer, a former employee of the Pennsylvania Attorney General's office and current high-ranking employee of the PA DEP, who is married to

Cunfer Farm co-owner Justin Cunfer, emailed her former colleague, Senior Deputy Attorney General Robert A. Willig (hereinafter, "Mr. Willig"), requesting that Mr. Willig conduct a legal review of Ordinance No. 77 and render an opinion concerning its enforceability under the Agricultural Code, Act 38 of 2005 (hereinafter, "ACRE").¹ A true and correct copy of Katherine Cunfer's email correspondence of February 22, 2018 to Mr. Willig is attached hereto and made a part hereof as Exhibit "D".

16. ACRE provides in relevant part that "[a] local government unit shall not adopt nor enforce an unauthorized local ordinance", which, in turn, is defined as any local ordinance which:

- (1) Prohibits or limits a normal agricultural operation unless the local government unit:
 - (i) has expressed or implied authority under State law to adopt the ordinance; and
 - (ii) is not prohibited or preempted under State law from adopting the ordinance.
- (2) Restricts or limits the ownership structure of a normal agricultural operation.

3 Pa.C.S. §§ 312, 313.

17. By email reply dated February 26, 2018, Mr. Willig declined Katherine Cunfer's request to conduct such a review or to render an opinion concerning Ordinance No. 77's enforceability vis-à-vis ACRE. A true and correct copy of Mr. Willig's email reply of February 26, 2018 to Katherine Cunfer is attached hereto and made a part hereof as Exhibit "E".

18. On March 1, 2018, following the previous evening's public meeting, at which hundreds of East Penn Township residents appeared and voiced to the Board of Supervisors their grave concerns about the negative health and safety impacts of the proposed land-application of sewage sludge upon

¹ ACRE specifically provides that "[a]n owner or operator of a normal agricultural operation may request the Attorney General to review a local ordinance believed to be an unauthorized local ordinance and to consider whether to bring legal action under section 315(a) (relating to right of action)." 3 Pa.C.S. § 314(a).

Cunfer Farm, Katherine Cunfer again emailed Mr. Willig to complain about the perceived unfairness of her family's situation, and again implored him to initiate a review of Ordinance No. 77. A true and correct copy of Katherine Cunfer's email correspondence of March 1, 2018 to Mr. Willig is attached hereto and made a part hereof as Exhibit "F".

19. By letter dated March 12, 2018 and received by East Penn Township on March 16, 2018, Mr. Willig informed the East Penn Township Board of Supervisors that it has commenced a review of Ordinance No. 77 to determine whether it unlawfully prohibits or limits a "normal agricultural operation", and requesting that the Township respond to Katherine Cunfer's claims within thirty (30) days.² A true and correct copy of Robert A. Willig's letter of March 12, 2018 is attached hereto and made a part hereof as Exhibit "G".

20. On April 20, 2018, East Penn Township timely and properly submitted to Mr. Willig its formal response to Katherine Cunfer's claims, via email. A true and correct copy of the said response, which is hereby incorporated as though set forth fully and at length herein, is attached and made a part hereof as Exhibit "H".

21. To date, the Pennsylvania Attorney General's office has not completed its review of Ordinance No. 77, has not made a determination or otherwise rendered an opinion as to whether or not it believes that the storage and land-application of sewage sludge on Cunfer Farm would qualify as a "normal agricultural operation" under ACRE, and has not made a determination or otherwise rendered

² Although the said letter was dated March 12, 2018 and received on March 16, 2018, Mr. Willig did not initially include copies of Katherine Cunfer's email correspondence, thereby rendering it impossible for the Township to respond to her

an opinion as to enforceability of Ordinance No. 77.

22. An ordinance is presumed to be valid and constitutional, and a challenger bears a heavy burden of proving otherwise. *Newtown Square E. L.P. v. Township of Newtown*, 101 A.3d 37 (Pa. 2014), *Upper Salford Township v. Collins*, 669 A.2d 335 (Pa. 1995).

23. By information and belief, notwithstanding their knowing and deliberate failure and refusal to comply with Ordinance No. 77, Defendants intend to immediately commence waste operations in and upon Cunfer Farm, including the storage and land-application of sewage sludge, without having first applied for and obtained a registration certificate from East Penn Township.

24. At public meetings which were held by the East Penn Township Board of Supervisors on March 1, 2018, March 29, 2018 and April 26, 2018, multiple residents of the immediate vicinity of Cunfer Farm shared that they have documented health issues, including breathing problems.

25. Airborne exposure to biosolids constituents, including endotoxins, fungi, viruses, and industrial contaminants, is a risk at any sludge application site, but is particularly pronounced when children, the elderly, and other immunocompromised individuals are located nearby, such as in the Township.

26. Airborne exposure to contaminants from the site will likely worsen the health conditions of the residents living near Cunfer Farm, and will negatively affect the quality of life of those living around the site.

27. Defendants' knowing and deliberate violation of Ordinance No. 77 will thus have a direct

unknown claims. Mr. Willig subsequently provided the missing attachments on March 21, 2018 and confirmed that the Township would have thirty (30) days from that date to submit a response.

negative impact on the health, safety and welfare of the residents of East Penn Township.

28. Defendants' unauthorized and illegal actions as aforesaid are so deliberate and outrageous as to warrant the award of reasonable attorneys' fees and costs in favor of East Penn Township and against Defendants.

**COUNT I
INJUNCTIVE RELIEF**

29. East Penn Township hereby incorporates by reference the averments of Paragraphs 1 through 28 as though set forth fully and at length herein.

30. East Penn Township has no adequate remedy at law to compel Defendants to refrain from commencing the storage and land-application of sewage sludge in and upon Cunfer Farm without a registration certificate, in deliberate violation of Ordinance No. 77.

31. It is imperative that this Honorable Court issue an injunctive Order to prevent irreparable damage and/or harm to the health, safety and welfare interests of the residents of East Penn Township.

32. East Penn Township believes, and therefore avers, that greater injury would result from the non-issuance of such an injunctive Order than from issuing it.

WHEREFORE, Plaintiff, East Penn Township, Carbon County, Pennsylvania, respectfully requests the issuance of an Order of Court and entry of judgment against Defendants Synagro, Dennis Cunfer, Wanda Crostley, Justine Cunfer, Katherine Cunfer and Cunfer Farm, as follows:

- a. An injunctive Order of Court directing Defendants to refrain from the commencement of any waste operations in and upon Cunfer Farm, including but not limited to the storage and land-application of sewage sludge, without having first duly

applied for and obtained a registration certificate from East Penn Township;

- b. An injunctive Order of Court directing Defendants to immediately and completely remediate, remove and properly dispose of any and all sewage sludge which has already been applied in or upon Cunfer Farm prior to the entry of the said injunctive Order;
- c. An injunctive Order of Court directing Defendants to immediately cease and desist of any waste operations in and upon Cunfer Farm, including but not limited to the storage and land-application of sewage sludge, unless and until such time as Defendants have duly applied for and obtained a registration certificate from East Penn Township in accordance with Ordinance No. 77;
- d. A judgment in favor of Plaintiff and against Defendants for reimbursement of all legal costs and reasonable attorneys' fees and costs incurred by Plaintiff as a result of Defendants' unjust and unlawful actions as set forth hereinabove;
- e. An Order of Court specifically retaining this Court's jurisdiction over this matter to ensure that the Court's directives are strictly adhered to by Defendants, and to hear any and all claims for contempt of same; and
- f. Such other and further relief as this Court deems to be equitable, just and appropriate.

Respectfully submitted,

DATE: 5/1/2018



ROBERT S. FRYCKLUND, ESQUIRE

Attorney for Plaintiff

49 East Ludlow Street

P. O. Box 190

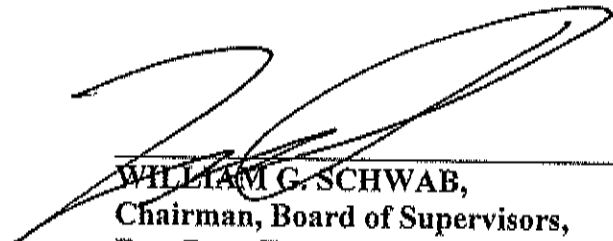
Summit Hill, PA 18250

(570) 645-3100

Attorney I.D. No. 82921

VERIFICATION

I, **WILLIAM G. SCHWAB**, hereby state that I am the Chairman of the Board of Supervisors of East Penn Township, Carbon County, Pennsylvania, the Plaintiff in this action. I hereby certify that the statements contained in the foregoing Complaint which are within my personal knowledge are true, and those which are based on information received from others, I believe to be true. I understand that any false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.



WILLIAM G. SCHWAB,
Chairman, Board of Supervisors,
East Penn Township, Plaintiff



EXHIBIT B



**CARBON COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION
MOTION COURT COVER SHEET**

IN RE: East Penn Township, Carbon County, PA
Plaintiff

NO: 18-1214

vs.

Synagro, Dennis Cunfer, Wanda Crostley,
Justin Cunfer, Katherine Hetherington-Cunfer,
Deanna Cunfer and Cunfer Farm a/k/a Never
Done Farm

Defendants

☐ Assigned Judge
☐ Court Action Taken
☐ Returned to Attorney
for Deficiencies
☐ Action Deferred by Court
(For Court Use Only)

FILING OF East Penn Township, Carbon County, PA
Movant (x) Respondent ()

474395

89



TYPE OF FILING (Check one):

- ☐ 1. Pretrial Discovery Motion (432)
- ☐ 2. Motion for Discovery in Aid of Execution (480)
- ☐ 3. Preliminary Objections to (576) _____
- ☐ 4. Motion for Summary Judgment (306)
- ☐ 5. Motion for Judgment on Pleadings (294)
- ☐ 6. Petition to Leave to Join Additional Defendant (403)
- ☐ 7. Petition for TRO of Preliminary Injunction (438)
- ☐ 8. Petition to Open or Strike Judgment (498)
- ☐ 9. Petition for Alternative Service (409)
- ☐ 10. Petition for Leave to Amend (465) _____
- ☐ 11. Petition to Consolidate Actions (424)
- ☐ 12. Petition to Compromise Minor's Action (435)
- ☐ 13. Petition to Leave to Withdraw (510)
- ☐ 14. Petition for Reconsideration (441)
- ☐ 15. Petition for Advancement on Trial List (404)
- ☒ 16. Other Motion or Petition (specify); Emergency Application for Special Relief
- ☐ 17. Response to: _____

FILED
2018 MAY -1 PM 1:18
CARBON COUNTY
PROthonotary

OTHER PARTIES:

Robert S. Frycklund, Esquire

Attorney's Name (Typed)

Attorney for: East Penn Township, Carbon County, PA

☒ Movant ☐ Respondent

Attorney's Name (Typed)

Attorney For: _____

☐ Movant ☒ Respondent

N.B. The Numbers after the Motion or Petition above are docket codes used in the Court Computer System. Please be precise when checking your Motion or Petition.

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - EQUITY**

EAST PENN TOWNSHIP, CARBON	:	
COUNTY, PENNSYLVANIA,	:	
Plaintiff	:	No.
	:	
vs.	:	
	:	
SYNAGRO, DENNIS CUNFER, WANDA	:	
CROSTLEY, JUSTIN CUNFER, KATHERINE	:	
HETHERINGTON-CUNFER, DEANNA	:	
CUNFER and CUNFER FARM a/k/a NEVER	:	
DONE FARM,	:	
Defendants	:	

ORDER OF COURT

AND NOW, this _____ day of _____, 2018, upon consideration of the within
Emergency Application for Special Relief filed by Plaintiff, East Penn Township, Carbon County,
Pennsylvania, and having determined that immediate and irreparable injury will be sustained before notice can
be given or a hearing held, it is hereby ORDERED and DECREED that Plaintiff's Emergency Application for
Special Relief is GRANTED, and the Defendant, Synagro, is hereby enjoined from conducting any waste
operations, including but not limited to the storage and land-application of biosolids materials, or sewage
sludge, in and upon the subject property located on approximately one hundred twenty-three-point-three (123.3)
acres at or about 366 Cunfer Lane, Lehighton, East Penn Township, Carbon County, Pennsylvania 18235,
pending further proceedings and Order of Court; and it is further

ORDERED and DECREED that a hearing is scheduled for the _____ day of _____,
2018, at _____ o' clock ____m., in Courtroom No. ____ of the Carbon County Courthouse, Jim Thorpe,
Pennsylvania.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - EQUITY

EAST PENN TOWNSHIP, CARBON
COUNTY, PENNSYLVANIA,
Plaintiff

No.

vs.

SYNAGRO, DENNIS CUNFER, WANDA
CROSTLEY, JUSTIN CUNFER, KATHERINE
HETHERINGTON-CUNFER, DEANNA
CUNFER and CUNFER FARM a/k/a NEVER
DONE FARM,
Defendants

FILED
2018 MAY -1 PM 1:18
CARBON COUNTY
PROTHONOTARY

EMERGENCY APPLICATION FOR SPECIAL RELIEF

AND NOW, comes the Plaintiff, East Penn Township, by and through its attorney, Robert S. Frycklund, Esquire, to respectfully file this Emergency Application for Special Relief, and in support thereof states as follows:

1. Your Applicant, East Penn Township, Carbon County, Pennsylvania (hereinafter, "East Penn Township" or the "Township"), is the Plaintiff in the above-captioned matter.
2. Respondent Synagro, (hereinafter, "Synagro"), a biosolids and residuals management company that, in part, contracts with farmers to provide them with biosolids ("sewage sludge") to land-apply, is a Defendant in the above-captioned matter.
3. Respondent Cunfer Farm a/k/a Never Done Farm is a beef cattle farm and feedlot on land owned by Defendants Dennis Cunfer and Wanda Crostley. consisting of approximately one hundred twenty-three-point-three (123.3) acres located at or about 366 Cunfer Lane, Lehighton, East Penn Township, Carbon County, Pennsylvania 18235 (hereinafter, "Cunfer Farm").
4. Cunfer Farm is operated by Respondents Dennis Cunfer, his wife Deanna Cunfer, their

son, Justin Cunfer, and their daughter-in-law, Katherine Hetherington-Cunfer

5. On or about Tuesday, May 1, 2018, East Penn Township filed a Complaint against Defendants Synagro, Dennis Cunfer, Wanda Crostley, Justine Cunfer, Katherine Cunfer and Cunfer Farm (hereinafter, collectively, the “Defendants”) to the docket number referenced in the caption hereinabove, which said Complaint and the exhibits thereto are hereby incorporated by reference as though set forth fully and at length herein.

6. East Penn Township Ordinance No. 77 (hereinafter, “Ordinance No. 77”), requires a proposed operator to apply to the Township for the issuance of a registration certificate for waste operations (including storage and land application of sewage sludge) so that the Township can evaluate and determine a proposed operation’s potential impact on the community before those operations commence.

7. To date, Defendants have not complied with any of the requirements of Ordinance No. 77 for the issuance of a registration certificate prior to the commencement of waste operations.

8. An ordinance is presumed to be valid and constitutional, and a challenger bears a heavy burden of proving otherwise. *Newtown Square E. L.P. v. Township of Newtown*, 101 A.3d 37 (Pa. 2014), *Upper Salford Township v. Collins*, 669 A.2d 335 (Pa. 1995).

9. By information and belief, notwithstanding their knowing and deliberate failure and refusal to comply with Ordinance No. 77, Defendants intend to immediately commence waste operations, including the storage and land-application of sewage sludge, in and upon Cunfer Farm, without having first applied for and obtained a registration certificate from East Penn Township.

10. At public meetings which were held by the East Penn Township Board of Supervisors on March 1, 2018, March 29, 2018 and April 26, 2018, multiple residents of the immediate vicinity of Cunfer Farm appeared and voiced their grave concerns about the application of sewage sludge at the site, and shared documented health issues, including breathing problems.

11. Airborne exposure to biosolids constituents, including endotoxins, fungi, viruses, and industrial contaminants, is a risk at any sludge application site, but is particularly pronounced when children, the elderly, and other immunocompromised individuals are located nearby, such as in the Township.

12. Airborne exposure to contaminants from the site will likely worsen the health conditions of the residents living near Cunfer Farm, and will negatively affect the quality of life of those living around the site.

13. Defendants' intended knowing and deliberate violation of Ordinance No. 77 will thus have a direct negative impact on the health, safety and welfare of the residents of East Penn Township.

14. East Penn Township has no adequate remedy at law to compel Defendants to refrain from commencing the storage and land-application of sewage sludge in and upon Cunfer Farm without a registration certificate in deliberate violation of Ordinance No. 77.

15. Pennsylvania Rule of Civil Procedure No. 1531 provides in relevant part that "[a] court shall issue a preliminary or special injunction only after written notice and hearing **unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held, in which case the court may issue a preliminary or special**

injunction without a hearing or without notice.” 231 Pa.Code Rule 1531 (emphasis added).

16. It is imperative that this Honorable Court issue an injunctive Order to prevent serious and irreparable damages, harms and/or losses to the health, safety and welfare interests of the residents of East Penn Township, and to prevent further such damages, harms and/or losses.

17. For the reasons set forth hereinabove, and as set forth in the Complaint for injunctive relief which was filed on or about May 1, 2018, East Penn Township believes, and therefore avers, that it is likely to prevail on the merits of the said Complaint.

18. The injunctive relief requested is reasonably suited to abate the offending activity.

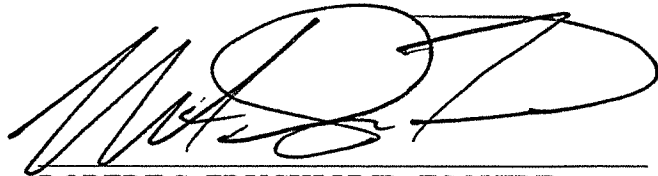
19. The injunctive relief requested will not adversely affect, and will in fact advance and protect, the public interest.

20. East Penn Township believes, and therefore avers, that a greater injury would result from the non-issuance of such an injunctive Order than from issuing it.

WHEREFORE, your Applicant, East Penn Township, by its undersigned counsel, respectfully requests that this Honorable Court enter the attached proposed Order enjoining Respondent from conducting any waste operations, including but not limited to the storage and land-application of biosolids materials in and upon Cunfer Farm pending further proceedings and Order of Court, and scheduling a hearing on the within Application for Emergency Special Relief as soon as is practicable.

Respectfully submitted,

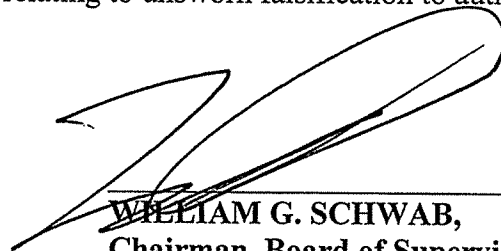
DATE: 5/1/2018

A handwritten signature in black ink, appearing to read 'R. Frycklund', written over a horizontal line.

ROBERT S. FRYCKLUND, ESQUIRE
Attorney for Plaintiff/Applicant
49 East Ludlow Street
P. O. Box 190
Summit Hill, PA 18250
(570) 645-3100
Attorney I.D. No. 82921

VERIFICATION

I, **WILLIAM G. SCHWAB**, hereby state that I am the Chairman of the Board of Supervisors of East Penn Township, Carbon County, Pennsylvania, the Plaintiff/Applicant in this action. I hereby certify that the statements contained in the foregoing Emergency Application for Special Relief which are within my personal knowledge are true, and those which are based on information received from others, I believe to be true. I understand that any false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.



WILLIAM G. SCHWAB,
Chairman, Board of Supervisors,
East Penn Township, Plaintiff

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - EQUITY

EAST PENN TOWNSHIP, CARBON
COUNTY, PENNSYLVANIA,
Plaintiff

No.

vs.

SYNAGRO, DENNIS CUNFER, WANDA
CROSTLEY, JUSTIN CUNFER, KATHERINE
HETHERINGTON-CUNFER, DEANNA
CUNFER and CUNFER FARM a/k/a NEVER
DONE FARM,
Defendants

FILED
2018 MAY -1 PM 1:18
CARBON COUNTY
PROTHONOTARY

CERTIFICATE OF SERVICE

I, ROBERT S. FRYCKLUND, ESQUIRE, do hereby certify that I served a true and correct copy
of the Emergency Application for Special Relief the following persons at the addresses listed, by
depositing the same in the U.S. Mail, first class, postage prepaid, on this 1st day of May, 2018:

Synagro
1600 Dooley Road
P.O. Box B
Whiteford, Maryland 21160

Dennis Cunfer
236 Smithlane Road
Lehighon, Pennsylvania 18235

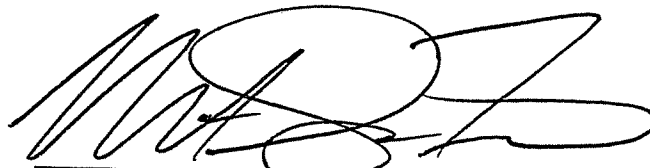
Wanda Crostley
3315 Mahoning Drive West
Lehighon, Pennsylvania 18235

Katherine Hetherington-Cunfer
351 Cunfer Lane
Lehighon, Pennsylvania 18235

Justin Cunfer
351 Cunfer Lane
Lehighon, Pennsylvania 18235

Deanna Cunfer
236 Smithlane Road
Lehighon, Pennsylvania 18235

Cunfer Farm a/k/a Never Done Farm
c/o Dennis Cunfer
236 Smithlane Road
Lehighon, Pennsylvania 18235



ROBERT S. FRYCKLUND, ESQUIRE
Attorney for Plaintiff/Petitioner



EXHIBIT C

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - EQUITY

EAST PENN TOWNSHIP, CARBON
COUNTY, PENNSYLVANIA,
Plaintiff

No. 18-1214

vs.

SYNAGRO, DENNIS CUNFER, WANDA
CROSTLEY, JUSTIN CUNFER, KATHERINE
HETHERINGTON-CUNFER, DEANNA
CUNFER and CUNFER FARM a/k/a NEVER
DONE FARM,
Defendants

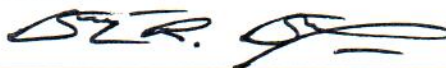
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2018 MAY -1 PM 3:12
CARBON COUNTY
PROTHONOTARY

ORDER OF COURT

AND NOW, this 1ST day of May, 2018, upon consideration of the within
Emergency Application for Special Relief filed by Plaintiff, East Penn Township, Carbon County,
Pennsylvania, and having determined that immediate and irreparable injury will be sustained before notice can
be given or a hearing held, it is hereby ORDERED and DECREED that Plaintiff's Emergency Application for
Special Relief is GRANTED, and the Defendant, Synagro, is hereby enjoined from conducting any waste
operations, including but not limited to the storage and land-application of biosolids materials, or sewage
sludge, in and upon the subject property located on approximately one hundred twenty-three-point-three (123.3)
acres at or about 366 Cunfer Lane, Lehighton, East Penn Township, Carbon County, Pennsylvania 18235,
pending further proceedings and Order of Court; and it is further

ORDERED and DECREED that a hearing is scheduled for the 11th day of May,
2018, at 1:15 o'clock p.m., in Courtroom No. 1 of the Carbon County Courthouse, Jim Thorpe,
Pennsylvania. Counsel for Plaintiff is directed to serve Defendants with
this Order and Emergency Application for Special Relief.

BY THE COURT:



J.



EXHIBIT D



FILED

2018 JUN 25 AM 9:51

CARBON COUNTY
PROTHONOTARY

**IN THE COURT OF COMMON PLEAS
OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION – EQUITY**

EAST PENN TOWNSHIP,

Plaintiff

v.

SYNAGRO, *et al.*,

Defendants.

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Case No. 18-1214

NOTICE TO PLEAD

To: East Penn Township
c/o Robert Frycklund
Law Offices of Velitsky & Frycklund
49 East Ludlow Street
P.O. Box 190
Summit Hill, PA 18250

PURSUANT TO PA. R.C.P. NO. 1361, YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

NOTIFICACION PARA HACER UN ALEGATO DE DEFENSA

To: East Penn Township
c/o Robert Frycklund

Law Offices of Velitsky & Frycklund
49 East Ludlow Street
P.O. Box 190
Summit Hill, PA 18250

POR ESTE MEDIO SE LE NOTIFICA QUE TIENE QUE PRESENTAR UNA RESPUESTA
POR ESCRITO AL DOCUMENTO ADJUNTO DENTRO DE VEINTE DIAS (20) A PARTIR
DE LA FECH EN QUE FUE NOTIFICADO DEL MISMO O DE LO CONTRARIO SE
DISPONDRA UN FALLO EN SU CONTRA.

Pavlack Law Offices, P.C.

By:



Keith R. Pavlack, Esquire
Attorney for Synagro Central, LLC
Identification # 56545
1415 Blakeslee Blvd. Drive East
Lehighnton, PA 18235
(570) 386-3888



FILED

2018 JUN 25 AM 9:51

CARBON COUNTY
PROTHONOTARY

IN THE COURT OF COMMON PLEAS
OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION – EQUITY

EAST PENN TOWNSHIP,

Plaintiff

v.

SYNAGRO, *et al.*,

Defendants.

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Case No. 18-1214

**ANSWER WITH NEW MATTER OF DEFNDANT SYNAGRO
TO THE COMPLAINT OF EAST PENN TOWNSHIP**

Pursuant to Pennsylvania Rule of Civil Procedure 1017(a), Synagro Central, LLC

(“Synagro Central”) Answers Plaintiff East Penn Township’s Complaint as follows:¹

1. Denied. The allegations in Paragraph 1 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

2. Denied. No entity named “Synagro” exists.

¹ The Township named “Synagro” as a Defendant in this action, but no such entity exists. Synagro Central, LLC is the corporate entity that is approved for coverage and operates under the general permit PAG-08, and is the same entity that has proposed providing biosolids for agricultural land application in East Penn Township. See https://www.ahs.dep.pa.gov/eFACTSWeb/searchResults_singleSite.aspx?SiteID=828486. Synagro Central, LLC should be the defendant in this action. Counsel for Synagro Central, LLC communicated this information to counsel for East Penn Township, but the Township declined to amend its Complaint to identify the proper party.

3. Denied. The allegations in Paragraph 3 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

4. Denied. The allegations in Paragraph 4 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

5. Denied. The allegations in Paragraph 5 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

6. Denied. The allegations in Paragraph 6 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

7. Denied. The allegations in Paragraph 7 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

8. Denied. The allegations in Paragraph 8 pertain to parties other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

9. Denied. The allegations in Paragraph 9 pertain to parties other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

10. Admitted in part and denied in part. Synagro admits only that Synagro Central submitted to the Pennsylvania Department of Environmental Protection (“PADEP”) a completed

Form 3800-FM-WSFR0343, “Notification of First Land Application (30-Day Notice), which PADEP received on January 29, 2018, seeking authorization from PADEP to land apply biosolids for beneficial use on the Cunfer Farm under general permit authorizations held by Synagro Central. Synagro Central denies submitting any “permit” to PADEP concerning land application of biosolids on Cunfer Farm on August 24, 2017, and denies the allegations in Paragraph 10 to the extent they characterize biosolids as “sewage sludge” and assert that Synagro Central applied at any time for a *permit* to land apply or store biosolids on Cunfer Farm.²

11. Admitted in part and denied in part. Synagro Central admits only that PADEP issued a 30-Day Notice Approval dated March 23, 2018 (the “PADEP Approval”) in which PADEP approved the land application of biosolids for beneficial use on Cunfer Farm and that the document attached as Exhibit A to the Complaint is a copy of the PADEP Approval. Synagro Central denies the allegation that Plaintiff received a copy of the PADEP Approval on March 28, 2018 because Synagro Central is without knowledge or information sufficient to form a belief as to the truth of that allegation.

12. Admitted in part and denied in part. Synagro Central admits only that East Penn Township filed with the Environmental Hearing Board an appeal on April 26, 2018, that the appeal is currently pending, and that Exhibit B to the Complaint is a copy of the notice of appeal filed by Plaintiff in that matter. Synagro Central denies the remaining allegations in Paragraph 12, including the alleged assignments of error in Exhibit B. To the extent Paragraph 12 contains legal conclusions, no response is required.

² The complaint improperly refers to biosolids as “sewage sludge.” Synagro will use the correct term, “biosolids,” which is treated sewage sludge, throughout its Answer and New Matter.

13. Denied. Paragraph 13 contains legal conclusions and argument for which no response is required. Synagro Central is without knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 13.

14. Admitted in part and denied in part. Paragraph 14 contains legal conclusions and argument for which no response is required. To the extent Paragraph 14 alleges facts pertaining to parties other than Synagro Central, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies them. To the extent Paragraph 14 alleges facts pertaining to Synagro Central, Synagro Central admits only that it does not hold a registration certificate issued by East Penn Township under Ordinance 77 and denies all other allegations.

15. Denied. The allegations in Paragraph 15 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

16. Denied. Paragraph 16 contains statements of law to which no response is required.

17. Denied. The allegations in Paragraph 16 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations. Synagro Central further states that the referenced document speaks for itself.

18. Denied. Synagro Central is without knowledge or information sufficient to form a belief as the truth of the allegations in Paragraph 18. Synagro Central further states that the referenced document speaks for itself.

19. Denied. Synagro Central is without knowledge or information sufficient to form a belief as the truth of the allegations in Paragraph 19. Synagro Central further states that the referenced document speaks for itself.

20. Denied. Synagro Central is without knowledge or information sufficient to form a belief as the truth of the allegations in Paragraph 20.

21. Denied. Synagro Central is without knowledge or information sufficient to form a belief as the truth of the allegations in Paragraph 21.

22. Denied. Paragraph 22 contains a conclusion of law to which no response is required.

23. Admitted in part and denied in part. Synagro Central admits only that at some time in the future it may provide biosolids at Cunfer Farm for use as an effective organic fertilizer and soil amendment consistent with all state and federal laws governing the generation, storage and use of biosolids. Synagro Central otherwise denies the allegations in Paragraph 23.

24. Denied. Synagro Central is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24.

25. Denied. Synagro Central denies the allegations in Paragraph 25 to the extent they mischaracterize biosolids and the risks associated with their use as an organic fertilizer and soil amendment. Synagro Central denies the remaining allegations in this Paragraph because it is without knowledge or information sufficient to form a belief as to their truth.

26. Denied. Paragraph 26 mischaracterizes biosolids and the limited impacts they may have on neighboring properties when applied as an organic fertilizer and soil amendment on farms in compliance with applicable federal and state laws and regulations governing biosolids.

27. Denied. Paragraph 27 contains a conclusion of law to which no response is required. To the extent Paragraph 27 alleges facts, they are denied as mischaracterizing biosolids and Synagro Central's operations, all of which are conducted in conformity with the comprehensive state and federal schemes governing biosolids.

28. Denied. Paragraph 28 contains legal conclusions and argument to which no response is required. Synagro Central further denies that it has engaged in any activity that is unauthorized by law or illegal.

29. Denied. The allegations in Paragraph 29 are a restatement of the allegations in Paragraph 1-28 and no further response is required. To the extent a response is required, Synagro Central's responses to Paragraph 1-28 are incorporated by reference.

30. Denied. Paragraph 30 contains a legal conclusion and argument to which no response is required.

31. Denied. Synagro Central denies that any injunctive relief is needed to prevent any irreparable damage or harm to the health, safety and welfare interest of East Penn Township's residents.

32. Denied. Paragraph 30 contains a legal conclusion and argument to which no response is required. Synagro Central further denies that any injury would result from the Court not issuing the injunctive relief requested in the Complaint.

NEW MATTER

On information and belief and subject to further discovery and investigation, Synagro sets forth the following affirmative defenses. Synagro reserves the right to supplement these defenses.

33. Plaintiff has failed to state any claim because the named defendant, “Synagro,” is not an entity that exists.

34. Plaintiff has failed to state any claim because it has alleged no underlying cause of action as the basis for its request for injunctive relief.

35. Plaintiff’s claim is preempted by state law, including Pennsylvania’s robust regulatory scheme governing the land application of biosolids to farmland in the Commonwealth.

36. Plaintiff’s claim is barred or limited by the doctrines of waiver, estoppel, or unclean hands.

37. Plaintiff’s claim is barred by the doctrine of primary jurisdiction.

38. Plaintiff exceeded its authority under the Second Class Township Code, 53 P.S. § 65101 *et seq.*, by enacting Ordinance No. 77.

39. The Agriculture, Communities and Rural Environment Act, 3 Pa. C.S. §§ 311-318, prohibits enforcement of Ordinance No. 77 against the land application of biosolids.

40. Synagro Central’s actions are authorized by federal and state law, including permits issued pursuant to federal and state law.

41. Synagro Central’s actions constitute reasonably prudent conduct without intent to harm, malice, recklessness, wantonness, or negligence.

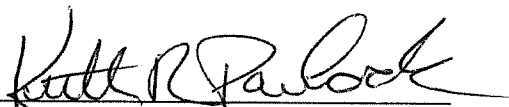
42. Plaintiff has failed to state a claim that it is entitled to recover its costs and attorneys' fees.

43. Synagro reserves the right to assert additional defenses after further investigation and discovery.

WHEREFORE, Synagro demands that judgment be entered in its favor, and against Plaintiff, and that Synagro be awarded the costs of suit and other such relief as this court deems appropriate.

Dated: June 25, 2018

Respectfully submitted,



Keith R. Pavlack
Attorney I.D. No. 56545
PAVLACK LAW OFFICES PC
1415 Blakeslee Blvd., Dr. E
Lehighton, Pennsylvania 18235
(570) 386-3888
keith@pavlacklaw.com

Andrew C. Siltan
Attorney I.D. No. 314716
James B. Slaughter (*pro hac vice*)
BEVERIDGE & DIAMOND, P.C.
1350 I Street, N.W., Suite 700
Washington, DC 20005
(202) 789-6000
asilton@bdlaw.com
jslaughter@bdlaw.com

Megan R. Brillault (*pro hac vice*)
BEVERIDGE & DIAMOND, P.C.
477 Madison Avenue, 15th Floor
New York, NY 10022
(212) 702-5400
mbrillault@bdlaw.com

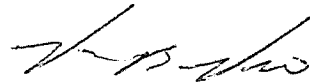
Counsel for Defendant Synagro Central, LLC

VERIFICATION

Subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, I hereby certify that I am a Technical Services Manager at Synagro Central, LLC and that I am authorized to make this Verification on its behalf. I further certify that I have read Plaintiff's Complaint and the foregoing Answer and New Matter, and based on a reasonable inquiry by Synagro and outside counsel retained in this matter, I verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge or information and belief.

Dated: June 22, 2018

Synagro Central, LLC



Peter Price

**IN THE COURT OF COMMON PLEAS
OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION — EQUITY**

EAST PENN TOWNSHIP,

Plaintiff,

v.

SYNAGRO, *et al.*,

Defendants.

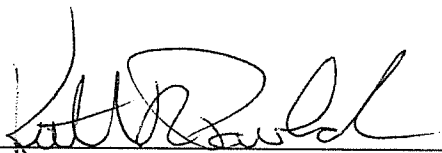
Case No. 18-1214

FILED
2018 JUN 25 AM 9:51
CARBON COUNTY
PROTHONOTARY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 25, 2018, copies of the foregoing Synagro's Answer with New Matter to Plaintiff's Complaint were served via first class mail on the following:

Robert Frycklund
Law Offices of Velitsky & Frycklund
49 East Ludlow Street
P.O. Box 190
Summit Hill, PA 18250
Counsel for Plaintiff

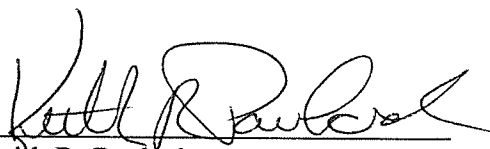


Keith R. Pavlack
Counsel for Synagro Central, LLC

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,



Keith R. Pavlack
Attorney ID #56545
1415 Blakeslee Blvd. Dr. E.
Lehighton, PA 18235
(570) 386-3888

Date: 6/25/18

EXHIBIT E

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

EAST PENN TOWNSHIP,

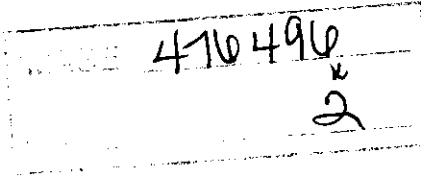
Plaintiff

v.

No. 18-1214

SYNAGRO, DENNIS CUNFER,
WANDA CROSTLEY, JUSTIN CUNFER,
KATHERINE HETHERINGTON-CUNFER,
DEANNA CUNFER and CUNFER FARM
a/k/a NEVER DONE FARM,

Defendants



FILED
2018 JUN -5 AM 8:53
CARBON COUNTY
PROTHONOTARY

ORDER OF COURT

AND NOW, to wit, this 1st day of June, 2018, following a pre-hearing conference among counsel and the undersigned on this same date, and upon agreement of the parties, it is hereby **ORDERED and DECREED** as follows:

1. The injunction issued by the undersigned via Order dated May 1, 2018 shall remain in effect pending final disposition of this action by this Court, and Defendant, Synagro, shall continue to be enjoined from conducting any waste operations, include, but not limited to, the storage and land application of biosolid materials, or sewer sludge, in and upon the subject property;

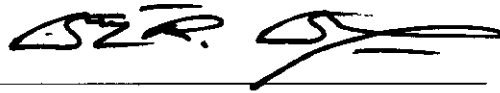
2. The hearing on Plaintiff's petition for preliminary injunction scheduled for July 19, 2018 and July 20,

2018 is rendered moot and stricken from the Court's calendar accordingly;

3. Defendants shall file a responsive pleading to Plaintiff's complaint no later than June 25, 2018; and

4. The instant action shall proceed on the standard track for administrative purposes.

BY THE COURT:



Steven R. Serfass, J.