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PA Supreme Court: Biosolids Use Is a "Normal Agricultural Activity"

In late December, the Pennsylvania Supreme Court unanimously ruled in favor of biosolids management company Synagro and farmers who use biosolids, finding that biosolids recycling on farms is a "normal agricultural practice" and is therefore protected from untimely and burdensome litigation. The case, known as *Gilbert v. Synagro*, has been watched closely by biosolids managers and farmers, because it occurred in a large, agricultural state in the eastern U. S., where conflict over biosolids and other farming practices continue to fester in areas where suburban growth has spread into traditional farming areas. Right-To-Farm Acts exist in some form in every state. Municipalities everywhere are now clearly on notice that arbitrary ordinances interfering with agricultural uses of biosolids may be unlawful, depending on the specific provisions of a state's right-to-farm law.

NACWA, who filed a friend-of-the-court brief in the case, noted that the Pennsylvania decision "represents the first time that any state supreme court has addressed the role of biosolids land application practices under RTFAs.

To receive protection under the state RTFA, the operation must be a "normal agricultural operation." The Supreme Court held that the RTFA's definition of a normal agricultural operation calls for broad, categorical determinations "aimed at protecting farms now and in the future" and held that that the practice of biosolid land application does indeed fall within the definition even though the practice is not specifically identified in the Act. The court's opinion underscores both the breadth of the Pennsylvania RTFA's protections and the widespread use of recycled biosolids in the state and nationally."

According to James Slaughter, lawyer for Beveridge and Diamond, the legal firm defending Synagro, "the suit arose from farming operations in York County, Pennsylvania. Neighboring landowners complained of odors emanating from farmers' use of biosolids... and filed a lawsuit asserting claims of nuisance, negligence and trespass." Over years, the case wound through the court system, receiving differing opinions in trial and Superior courts.

The Supreme Court's unanimous, resounding decision clarified several key issues. First, it addressed an important procedural matter: the Court found that a judge - and not a jury - is the proper decision-maker regarding whether an activity, such as biosolids recycling, is covered by the RTFA.

Then, as Slaughter explains: "In terms that could have implications for interpretation of similar right-to-farm laws across the country, the decision confirmed that biosolids application is a normal agricultural operation entitled to protection by the RTFA. Citing numerous statistics and the briefs of a broad coalition of amici, the court acknowledged the widespread use of biosolids in agriculture, both in Pennsylvania and across the country. This opinion represents a clear statement by a state's highest court that biosolids use is an accepted and common practice in modern farming that is entitled to protection from untimely and burdensome litigation."

Biosolids professionals are hailing the decision and expressing appreciation to Synagro and friends of the court - as well as Mr. Slaughter and Beveridge & Diamond - for the exhaustive work that led to this positive outcome.

In a news release, Synagro extended its appreciation: "Numerous cities, farmers, trade associations and Commonwealth of Pennsylvania agencies filed briefs supporting Synagro's arguments and played a critical role in the successful outcome of this important case. Synagro thanks in particular the City of Philadelphia, ALCOSAN (Allegheny County/Pittsburgh), the Pennsylvania Farm Bureau, the Pennsylvania Municipal Authorities Association, the National Association of Clean Water Agencies (NACWA) and the Mid-Atlantic Biosolids Association (MABA) for their support and excellent advocacy for biosolids land application."

Steve Cole, Synagro's CEO, commented that "we are gratified the Supreme Court of Pennsylvania has agreed with us, and the many stakeholders around the Commonwealth, that the Right to Farm Act protects the valuable recycling practice of fertilizing farm fields with biosolids."

"This decision will be very influential nationwide in future RTFA cases involving land application of biosolids," wrote NACWA. Here in the Northeast, the right-to-farm concept is well established in all states. Last year, the New York Department of Agriculture & Markets determined farm use of biosolids is a normal agricultural practice under that state's right-to-farm provisions, and a New York court concurred. Municipalities everywhere are now clearly on notice that arbitrary ordinances interfering with agricultural uses of biosolids may be unlawful, depending on the specific provisions of a state's right-to-farm laws.

