

IN THE SUPREME COURT OF PENNSYLVANIA

No. 121 MAP 2014

RALPH GILBERT, GLORIA GILBERT, ET AL.

Appellees

v.

**SYNAGRO CENTRAL, LLC, SYNAGRO MID-ATLANTIC, GEORGE
PHILLIPS, HILLTOP FARMS AND STEVE TROYER,**

Appellants

**JOINT BRIEF OF THE ATTORNEY GENERAL OF
PENNSYLVANIA AND THE PENNSYLVANIA DEPARTMENT
OF AGRICULTURE AMICI CURIAE**

APPEAL FROM SUPERIOR COURT ORDER DATED APRIL 15, 2014 AT DOCKET NO. 119
MDA 2013 REVERSING ORDER THE ORDER OF COURT OF COMMON PLEAS YORK
COUNTY ENTERED DECEMBER 28, 2012 AT NO. 2008SV-003249-01

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE

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INTEREST OF THE AMICI CURIAE

On July 6, 2005, the Agricultural Communities and Rural Environment Act, Act 38, also known as ACRE, 3 Pa. C.S. §§ 311-318 (Act 38) went into effect. The General Assembly in Act 38 declared as its objective “ensuring the long term sustainability of normal agricultural operations in a manner that is consistent with State policies and statutes.” 3 Pa. C.S. § 311. To achieve that objective, Act 38 protects normal agricultural operations from unauthorized local regulation that is prohibited or preempted by state law. Act 38 confers upon the Attorney General: (1) the power and duty to review local ordinances for compliance with State law as well as (2) the authority to bring a legal action against a local government unit in Commonwealth Court to invalidate or enjoin the enforcement of an unauthorized local ordinance. 3 Pa. C.S. §§ 314, 315.

The Pennsylvania Department of Agriculture is the executive agency that is charged to perform a variety of regulatory and other duties regarding all aspects of agricultural production and practices in the Commonwealth of Pennsylvania under the Administrative Code of 1929, 71 P.S. §§ 441-455; *see also*, Titles 3 P.S. *Agriculture* and 3 Pa. C.S. *Agriculture* in their entirety. Among the Department of Agriculture’s duties, pursuant to Act 38, is to provide input to the Attorney General on the nature of normal agricultural operations. 3 Pa. C.S. § 314(d).

Resolution of the issue presented to the Court in this action—whether the determination of what activities (in this instance the land application of biosolids) constitute normal agricultural operations pursuant to the Right to Farm Act is a question of fact or a question of law—will have a profound impact on a comprehensive agricultural regulatory framework, including how Act 38 is administered and enforced. The Attorney General’s Office and the Department of Agriculture therefore have a substantial interest in the outcome of this case.

SUMMARY OF ARGUMENT

This action concerns the proper interpretation and application of the Right to Farm Act, 3 P.S. §§ 951-957 (RTFA). A divided panel of the Superior Court determined that, despite the term “normal agricultural operations” being statutorily defined, it need not be bound by the statutory language at issue to determine whether a particular activity was a normal agricultural operation as a matter of law. Instead, the Superior Court held that the determination was a question of fact to be made by a fact finder. This was error.

The Superior Court’s error stems from its failure to apply the principles of statutory construction. Including that statutory language be placed in its proper context. The RTFA is part of a comprehensive regulatory framework. Consistent with other statutes within that framework, the RTFA is a sweeping anticipatory statute aimed at protecting agricultural land and operations from public nuisance actions. The General Assembly chose to use words with correspondingly broad meaning in defining the “normal agricultural operations” that would be protected from such suits.

The Superior Court, instead of placing the statutory language in context and interpreting it, as written, to serve the objectives of the RTFA, sought to narrow the statutory language in direct contradiction of those objectives. Not only does this interpretation not look to the statutory language as the best expression of the

General Assembly's legislative intent, but it specifically ignores that language based on the supposition that the Superior Court knew what the General Assembly meant to say, when it said something entirely different. This was a fundamental error.

The Superior Court rather than allowing the statutory language to control looked to case law as reason not to apply the principle of statutory construction to that language. Specifically the Superior Court relied on the Commonwealth Court's decision in *Com. v. East Brunswick Township*, 956 A.2d 1100 (Pa. Comwlth. 2008). In *East Brunswick*, the Commonwealth Court held that the determination of whether specific activity falls within the RTFA's definition of "normal agricultural operations" presents a question of fact. However, in *East Brunswick*, the Commonwealth Court also failed to interpret the statutory provisions in the context of their regulatory framework; the same error that the Superior Court makes here.

The Commonwealth Court also saw as significant that the Attorney General is allowed to seek expert opinions regarding the nature of agricultural operations. It is not. That the Attorney General may consult experts on the details of the nature and inherent features of agricultural operations does not transform the determination of what constitutes "normal agricultural operations" as a matter of statutory construction from a question of law into a question of fact.

The Commonwealth Court in *East Brunswick* also suggested that because there is no reference to biosolids in the Agricultural Communities and Rural Environment Act, 3 Pa. C.S. §§ 311-318 (Act 38), there is no legal recognition that land application of biosolids is a “normal agricultural operation.” The Commonwealth Court is wrong. Act 38 does specifically include reference to biosolids. Had the court been aware of that language, it would have understood that the General Assembly recognized that land application of biosolids is a “normal agricultural operation.”

Finally, Superior Court erred in the determining that what activities constitute “normal agricultural operations” pursuant to statutory definition is a question of fact rather than law. The RTFA is a statute of repose, the Superior Court acknowledges that statutes of repose are jurisdictional in nature and that their scope, determined by statutory interpretation, presents a question of law for the courts to decide. The Superior Court nevertheless held that this action presented issues concerning what it called the applicability of the RTFA rather than the scope. The Superior Court was again wrong. The only question presented here is whether the land application of biosolids (or any other agricultural practice) is a “normal agricultural operation” as statutorily defined. Resolution of that question requires only the application of principles of statutory construction to the statutory language at issue. A pure question of law.

ARGUMENT

I. THE LAND APPLICATION OF BIOSOLIDS IS A NORMAL AGRICULTURAL OPERATION UNDER THE RIGHT TO FARM ACT AS A MATTER OF LAW.

This action concerns the proper interpretation and application of the Right to Farm Act. 3 P.S. §§ 951-957 (RTFA). A divided panel of the Superior Court determined that, despite the term “normal agricultural operation” being statutorily defined, it need not be bound by the broad statutory language at issue to determine what is a normal agricultural operation as a matter of law. Instead, the Superior Court determined that whether land application of biosolids was a normal agricultural operation was a question of fact to be determined by a fact finder.¹ This was error.

A. The Superior Court Failed to Correctly Interpret and Apply the RTFA in this Action.

The Superior Court failed to correctly interpret and apply the RTFA in this action. Its error stems from a failure to apply or a misapplication of principles of statutory construction. The cardinal rule of statutory construction is to determine and carry out the intent of the General Assembly. The best indicator of that legislative intent is the plain and ordinary meaning of the statutory language. *Bowser v. Blom*, 569 Pa. 609, 807 A.2d 830, 835 (2002); *see also*, 1 Pa. C.S. §

¹ Judge Platt dissented, concluding that the application of the RTFA’s statute of repose presented no question of fact and that the statute barred the present action.

1903.² To determine the General Assembly's intent, statutory language is not to be read in isolation; it must be read with reference to the context in which it appears. *O'Rourke v. Commonwealth*, 566 Pa. 161, 778 A.2d 1194, 1201 (2001); *see also*, 1 Pa. C.S. § 1921(a); *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-133 (2000).

This Court has repeatedly emphasized that such context includes, *inter alia*, ensuring that statutes are construed in harmony with existing law as part of a general uniform system of jurisprudence. 1 Pa. C.S. §§ 1921(c)(5), 1932, *PECO Energy Co. v. Pennsylvania Public Utility Com'n*, 568 Pa. 39, 791 A.2d 1155, 1160 (2002); *Casey v Pennsylvania State Univeristy*, 463 Pa. 606, 345 A.2d 695, 700 (1975)(this court is bound to consider other statutes upon the same or similar subjects); *Olson v. Kucenic*, 389 Pa. 506, 133 A.2d 596, 598 (1957)(a statute must be construed as an integral part of the whole structure affected and not as a separate matter having an independent meaning of its own). The RTFA is part of a comprehensive regulatory framework. We begin by placing RTFA in the context of that framework.

The RTFA was enacted in 1982 with the intent to provide protection to agricultural operations engaged in "normal agricultural operations" from nuisance suits and local ordinances defining public nuisance contrary to state law. 3 P.S. §§

² In addition to case law, the principles of statutory construction are codified in the Statutory Construction Act. 1 Pa. C.S. §§ 1501-1991.

953, 954. To that end, the RTFA contains a clear statement of the General Assembly's intentions for the Act:

§ 951. Legislative Policy

It is declared policy of the Commonwealth to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits and ordinances. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this act to reduce the loss to the Commonwealth of its agricultural resources by limiting the circumstances under which agricultural operations may be the subject matter of nuisance suits and ordinances.

3 P.S. § 951.

Consistent with its legislative objectives, the RTFA defines a “normal agricultural operation” in terms intended to encompass a wide-range of activities and practices, including *new* activities or practices.

Normal agricultural operation[s]:

The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. ...

3 P.S. § 952.

This language establishes that the RTFA is a broad and anticipatory statute aimed at protecting agricultural land and operations now and into the future. Selection of this language reflects the awareness that agricultural science encompasses an evolving body of knowledge and that practices and procedures that serve to protect the development and improvement of agricultural land and operations change over time. To effectuate this objective, the General Assembly did not enumerate any specific practices or procedures in the definition.

The RTFA is but one lattice in a comprehensive regulatory framework. That framework consists of a variety of statutes that define, regulate and protect agricultural operations.³ The Pennsylvania Department of Environmental Protection (DEP) regulates agricultural operations engaged in the beneficial use of biosolids to fertilize agricultural land pursuant to the Solid Waste Management Act, 35 P.S. § 6018.101, *et seq.* (SWMA). The SWMA defines “normal farming operation,” in pertinent part as follows:

³ There are many other statutes that comprise the lattice of regulatory framework for agricultural operations in this Commonwealth, including the Municipalities Planning Code, 53 P.S. § 10105 (limits municipal authority to regulate agriculture); Nutrient and Odor Management Act, 3 Pa. C.S. § 503 (preempts local regulations of nutrient and odor management); Agricultural Area Security Law, 3 P.S. § 903 (prohibits unreasonable regulation of farm practices or structures); Air Pollution Control Act, 35 P.S. § 4004.1 (exempts operations engaged in the “production of agricultural commodities” from air pollution regulations); Clean Streams Law regulations, 25 Pa. Code § 91.1 (regulates manure storage and land application).

The customary and generally accepted activities, practices and procedures that farms adopt, use, or engage in year after year in the production and preparation for market of poultry, livestock, and their products; and in the production, harvesting and preparation for market of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities; [I]ncluding the agricultural utilization of septic tank cleanings and sewage sludges which are generated off-site.

35 P.S. § 6018.103. Pursuant to this provision, a person who engages in the land application of biosolids is clearly engaging in a “normal farming operation” under the SWMA.

Subsequent to both the SWMA and RTFA, was the enactment of Act 38. Act 38 incorporates the RTFA’s definition of a normal agricultural operation and establishes a threshold requirement that any ordinance challenged by the Attorney General must be one that regulates a normal agricultural operation. Act 38 also explicitly identifies land application of biosolids as an agricultural practice that is encompassed under the Act, thus necessarily acknowledging that it is a practice that falls within the definition of normal agricultural operation. Specifically, Section 313(c) states in pertinent part:

Construction.--Notwithstanding the provisions of this section, nothing in this chapter shall be construed to diminish, expand or otherwise affect the legislative or regulatory authority of local government units under State law, including the following:

- (1) Chapter 5 (relating to nutrient management and odor management).
- (2) *The regulation, control or permitting procedures for the land application of class A or B biosolids.*

3 Pa. C.S. § 313(c) (emphasis added).

The Superior Court was presented with this regulatory framework, but specifically rejected the contention that the DEP’s regulatory definition of normal farming operations under the SWMA was relevant to the definition of “normal agricultural operation” in the RTFA. *Gilbert v. Synagro Cent., LLC*, 90 A.3d 37 (Pa. Super 2014), App. A20, 26.⁴ This was error. This Court has repeatedly reemphasized that, in determining legislative intent, it is presumed that when the General Assembly enacts a statute, it does so with full knowledge of existing statutes. *Fonner v. Shandon, Inc.* 555 Pa. 370, 724 A.2d 903, 906 (1999); *Policemen Pension Fund Bd. of City of Pittsburgh v. Frey*, 381 Pa. 487, 113 A.2d 232 (1955). Applying these principles to the present action, a farmer who engages in land application of biosolids in accordance with SWMA is engaging in a “normal farming operation” and it must be presumed that the General Assembly’s knowledge of the SWMA informed its choice of the subsequent statutory language in the RTFA. Accordingly, that same activity—the land application of biosolids—would also qualify as a normal agricultural operation under the RTFA.

The Superior Court also failed to interpret the RTFA within its historical context. This was also error. This Court has repeatedly held that, for purposes of

⁴ We will reference the Superior Court’s majority opinion below as Appellants do, citing to Appendix A of their Brief.

statutory construction, a statute must be placed in its historical context. Accordingly, a survey of previous iterations of an act sheds light on the meaning and intention of the General Assembly. No legislative enactment is created in a vacuum. *PECO Energy Co.*, *supra*, at 1160; *Casey Penn State Univ.*, *supra*, at 700 (this Court is bound to consider former law).

Applying these principles to the present action, the RTFA's definition of "normal agricultural operation" was amended in 1998 by: (1) deleting language requiring that the activities, practices, equipment and procedures comprising an agricultural operation be "customary and generally accepted" and engaged in "year after year" in order to be a normal agricultural operation; and (2) adding language specifying that the: "... term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry." Act of May 13, 1998 (P.L. 441, No. 58). The 1998 revision to the RTFA's definition of a "normal agricultural operation" expanded that definition to encompass an even more sweeping range of activities and practices, as well as adding that *new* activities, practices, and procedures are included in the statutory definition. Thus the General Assembly made an already broad definition even broader.

The Superior Court was presented with the historical context of the RTFA's statutory definition of "normal agricultural operations." Once again, the Superior Court discounted it. App. A19-20. Once again, this was error.

In addition to failing to place the statutory definition of normal agricultural operations under the RTFA in its proper regulatory and historical context, the Superior Court also failed to properly consider the objectives served by the statute.

The principles of statutory construction require that a statute be read in the manner which will effectuate its purpose. *Pennsylvania Human Relations Com'n v. Chester Sch. Dist.*, 427 Pa. 157, 233 A.2d 290, 295 (1967); *see also Casey v. Penn State Univ.*, *supra*, at 615 (this Court is bound to consider the object sought to be attained by the legislature); and also *O'Rourke v. Commonwealth*, *supra*, at 1201. Determining the object or purpose to be attained by a statute allows a court to consider other factors such as what the consequences of a particular interpretation would be. In doing so, it must be presumed that the General Assembly intends to favor the public interest. *Vitech Corp. v. W.C.A.B.*, 578 Pa. 574, 854 A.2d 481, 485 (2004); *see also Pennsylvania Fin. Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 664 A.2d 84, 87 (1995). It must also be presumed that the General Assembly does not intend an absurd or unreasonable

result. *O'Rourke v. Commonwealth*, *supra* at 1201; *Goodman v. Kennedy*, 459 Pa. 313, 329 A.2d 224, 232 (1974); *see also* 1 Pa. C.S. § 1921(c)(1)-(8).⁵

As detailed above, it is not difficult to ascertain the legislative objective of the RTFA as it is explicitly stated within it: “to conserve and protect and encourage the development and improvement [the Commonwealth’s] agricultural land for the production of food and other agricultural products. ...” 3 P.S. § 951.

In the service of this objective, the RTFA was drafted as a broad and anticipatory statute aimed at protecting agricultural lands and operations now and into the future. Accordingly, the General Assembly chose to use words with correspondingly broad meaning such as activities, practices and procedures in defining the “normal agricultural operations” that would be protected from nuisance suits.

The Superior Court, instead of interpreting the broad statutory language as written to serve the objective of the RTFA, sought to narrow the statutory language in direct contradiction of that objective. The Superior Court held that because the definition of “normal agricultural operations” did not enumerate specific examples of what was included within the definition they must not be included. With all due

⁵ Pursuant to 1 Pa. C.S. § 1921(c)(1)-(8), to place statutory language in its proper context, courts are *inter alia*: to look to the occasion that necessitated the statute, the circumstance under which it was enacted, what mischief was to be remedied, the former law, including other statutes on the same or similar subjects, the consequences of a particular interpretation, and contemporaneous legislative history and legislative and administrative interpretations.

respect this interpretation is not just unreasonable, or even incoherent, it is perverse. The General Assembly did not attempt to enumerate specific activities, practices or procedures that qualify as normal agricultural operations precisely because to do so would have been directly contrary to the object to be attained by the statute. Any list, whatever it might include, would almost immediately not include any new activities, practices, and procedures as agriculture develops into the future. Moreover, the absence of a particular agricultural activity, practice, and procedure, new or old, might be construed to mean that it was not a normal agricultural operation. The General Assembly specifically included the sweeping definition of “normal agricultural operation” to avoid that problem. Thus the Superior Court, rather than interpreting the RTFA to effectuate its objectives, read its provision to thwart its objectives. Such an interpretation, far from serving the public interest as defined by the General Assembly, is directly contrary to it. With all due respect, such an interpretation is legally absurd.

Finally, in addition to the above-referenced principles of statutory construction,⁶ the Superior Court’s interpretation of the RTFA violates the most

⁶ Yet another principle of statutory construction is worth noting. This Court has long held that the contemporaneous construction of a statute by those charged with its execution and application is entitled to great weight and should not be disregarded or overturned except for cogent reasons, if it is clear, that such construction is erroneous. *Alfa Auto Sales, Inc. v. Department of State*, 537 Pa. 353, 644 A.2d 153, 155 (1994). Here the Attorney General of Pennsylvania, the Pennsylvania Department of Agriculture, and DEP, as Amici Curiae below,

basic principle of statutory construction. It is contrary to the plain and ordinary meaning of the statutory language.

The most fundamental principle of statutory construction is that the best indicator of legislative intent is the plain and ordinary meaning of the statutory language. *Bowser v. Blom*, *supra*, at 835. In applying this principle, this Court has emphasized that when interpreting statutory language, courts “must accept that when the General Assembly selects words to use in a statute, it has chosen them purposefully. ... [N]or can we edit them based on the supposition that we know what the General Assembly meant to say when it said something different.” *Commonwealth v. Scolieri*, 571 Pa. 658, 815 A.2d 672, 673 (2002); *see also* 1 Pa. C.S. § 1921(b).

Here, the Superior Court took the broad statutory language selected by the General Assembly and suggested that if the General Assembly wanted land application of biosolids to be included within the definition of “normal agricultural operations,” it would have been specifically mentioned. Not only is this not looking to the statutory language as the best expression of the General Assembly’s

presented their consistent view that “normal agricultural operations” as defined within the RTFA includes the application of biosolids as matter of law. This administrative interpretation of the statutory language at issue is not only consistent among agencies; it is also entirely consistent with the objectives of the RTFA and the actual words chosen by the General Assembly to accomplish those objectives. Though presented with these administrative interpretations below, the Superior Court made no reference to them.

legislative intent, it is the Superior Court editing that language based on the supposition that it knew what the General Assembly meant to say (that each specific normal agricultural operation had to be listed) when it said something entirely different (using the broadest possible all-encompassing language). This was the Superior Court's most fundamental error.

The Superior Court, rather than allowing the statutory language to control, looked to case law as a reason not to apply the principles of statutory construction to that language. We address that next.

B. The Commonwealth Court's Decision in *East Brunswick* is Erroneous. Accordingly the Superior Court's Reliance Upon it was also Error.

The Superior Court relied on the Commonwealth Court's decision in *Commonwealth v. East Brunswick Township*, 956 A.2d 1100 (Pa. Cmwlth. 2008) to support its conclusion that the question of whether the land application of biosolids is a "normal agricultural operation" as defined under the RTFA, is a factual determination rather than a legal determination. App. A21. This reliance on *East Brunswick* was misplaced because the Commonwealth Court's holding was based on erroneous reasoning that was contrary to the same principles of statutory construction discussed above.

In *East Brunswick*, the Attorney General filed an action to challenge a local ordinance regulating the land application of biosolids in a manner that was

preempted by the SWMA and its accompanying regulatory scheme. 956 A.2d. at 1103, 1113.

The Commonwealth Court denied the Attorney General's application for summary relief based on its decision that whether land application of biosolids is a normal agricultural operation, as defined under the RTFA, is a question of fact requiring an evidentiary record. 956 A.2d at 1115-16. The court's decision was based on three reasons, none of which are legally sound. We address each in turn.

First, the Attorney General contended that because the SWMA defines and regulates a "normal farming operation" to include the use of biosolids to improve condition of the soil, then, as a matter of law, land application of biosolids is a normal agricultural operation. 35 P.S. § 6018.103. The court rejected this contention holding that, in the absence of the SWMA being expressly incorporated into Act 38, it was irrelevant. *East Brunswick*, 956 A.2d at 1115.

As discussed above, statutory language is to be construed as part of a uniform system of jurisprudence. Also as discussed above, the SWMA and Act 38 are part of just such a comprehensive regulatory framework. The Commonwealth Court's failure, in *East Brunswick*, to interpret the statutory provisions in this context is the same error that the Superior Court makes here.

The Commonwealth Court also makes another error as it specifically relates to Act 38. None of the statutes and regulatory schemes implicated in the Attorney

General's review of ordinances under Act 38 is incorporated into Act 38. Act 38 merely creates the mechanism for the Attorney General to review an ordinance to determine if it is prohibited or preempted by State laws that regulate agriculture. There are many statutes and regulations implicated in an Act 38 review and each one defines terms similar to normal agricultural operation. Municipalities Planning Code, 53 P.S. § 10105 ("agricultural operation"); Nutrient and Odor Management Act, 3 Pa. C.S. § 503 ("agricultural operations"); Agricultural Area Security Law, 3 P.S. § 903 ("normal farming operation"); Air Pollution Control Act, 35 P.S. § 4004.1 ("production of agricultural commodities"); SWMA, 35 P.S. § 6018.103 ("normal farming operation"); Clean Streams Law regulations, 25 Pa. Code § 91.1 ("agricultural operations"). Again as detailed above, the legislative declaration regarding Act 38 explains that the General Assembly sought to ensure "the long-term sustainability of agriculture and normal agricultural operations *in a manner that is consistent with State Policies and statutes.*" 3 Pa. C.S. § 311 Historical and Statutory Notes (emphasis added). Accordingly, if a State statute defines and regulates certain practices as agricultural operations, then it is consistent with those statutes that those practices fall within the definition of normal agricultural operation as defined under the RTFA and Act 38.

Second, the court in *East Brunswick Township* opined that:

Act 38 directs the Attorney General to seek expert opinions from the Secretary and Dean of the College of Agricultural Sciences at Penn

State to determine what constitutes a “normal agricultural operation.” This suggests, at a minimum, that the determination of *what constitutes* a “normal agricultural operation” is an evidentiary, not a legal determination.

956 A.2d at 1115 (emphasis added).

What Act 38 actually states is that the Attorney General may request expert consultation “*regarding the nature of* normal agricultural operations in this Commonwealth.” 3 Pa. C.S. § 314(d) (emphasis added). This provision was necessary because the Attorney General is not a studied regulator of agricultural operations, but rather an enforcer of the State laws that regulate and protect agriculture pursuant to the authority vested under Act 38.

To be sure, the Attorney General does not require expert consultation to determine that a practice defined and regulated as agriculture under State law falls within the definition of normal agricultural operation as a matter of law. However, Act 38 reviews sometimes involve activities that are not the subject of a State statute or regulatory program. In those rare situations, the Attorney General seeks expert consultation to ascertain whether a practice or activity is recognized within the field of agricultural science and normal agricultural practices.

Moreover, this provision for providing experts indicates that the General Assembly was aware that the Attorney General may seek expert consultation on occasion to learn the details of the nature, or inherent features, of agricultural operations in order to more fully understand how the operation is being prohibited

or limited by a local unauthorized ordinance. The Attorney General's Act 38 review mostly involves analyzing Statutes and regulatory schemes. Many regulatory schemes have regulations that incorporate by reference voluminous technical guides and best management practice manuals. The Attorney General uses expert guidance to learn and understand those practices in order to be able to explain to a municipality when its ordinance provisions conflict with or prohibit those mandated practices, thus rendering the ordinance unauthorized.

The Commonwealth Court was incorrect to suggest that the Attorney General's ability to consult with experts somehow transformed the determination of what constitutes "normal agricultural operations" as a matter of statutory construction from a question of law into a question of fact.

Third, the Commonwealth Court opined that "nowhere in Act 38 is there any mention of sewage sludge or its application to land [and] [s]imilarly ... [the definition for normal agricultural operation], which has been incorporated into Act 38, says nothing about sewage sludge." 956 A.2d at 1115. These two assertions are erroneous and, again, disregard rules of statutory construction to construe a statute to give effect to all of its provisions. 1 Pa. C.S. § 1921(a).

In fact, it is remarkable that the court asserted that Act 38 does not mention sewage sludge when in the very same opinion it ruled on Section 313(c) of Act 38

that specifically mentions sewage sludge. *East Brunswick*, 956 A.2d at 1109-1110.

Section 313(c) provides:

Notwithstanding the provisions of this section, nothing in this chapter shall be construed to diminish, expand, or otherwise affect the legislative or regulatory authority of local government units under State law, including the following:

- (1) Chapter 5 (relating to nutrient management and odor management).
- (2) The regulation, control or permitting procedures for the *land application of class A or B biosolids*.

3 Pa. C.S. § 313(c) (emphasis added).

Under the SWMA, biosolids are referred to as sewage sludge and are regulated with different requirements for the categories of Class A or B sewage sludge. 25 Pa. Code § 271.932. Though the court analyzed this section of Act 38 and addressed the extent of municipal authority to regulate land application of sewage sludge, it then stated that there was no mention of sewage sludge in Act 38. Id. at 1009-10, 1115.

The failure of the court in overlooking the inclusion of sewage sludge in Section 313(c) in turn caused its further failure to engage in correct statutory interpretation. It simply missed the mark. Had the court correctly analyzed the language of Section 313(c), it would have understood that the General Assembly recognized land application of biosolids as a normal agricultural operation by

specifically including it in Act 38. The sole purpose of Act 38 is to protect normal agricultural operations from unauthorized local ordinances. Thus, by including Section 313(c), the General Assembly acknowledged that land application of biosolids was a subject that could arise under an Act 38 review of an ordinance regulating a normal agricultural operation.

The court was equally wrong in assigning meaning to the fact that the definition for normal agricultural operation does not mention the term sewage sludge. As detailed above, the RTFA definition is broadly worded, all encompassing, and does not enumerate any particular agricultural practice.⁷ 3 P.S. § 951. Thus, the absence of the term “sewage sludge” from the definition does not support a conclusion that it is not a normal agricultural operation.

C. The Superior Court Erred in Determining that Application of the RTFA’s Statute of Repose Presented a Question of Fact as Opposed to a Question of Law.

It is axiomatic that statutory interpretation is a question of law and that the object of such interpretation is to ascertain and effectuate the intent of the General

⁷ We note that the Superior Court mentioned the fact that the definition of normal agricultural operation includes a non-exclusive list of examples of agricultural equipment that are used in normal agricultural operations to opine that the legislature had the option to include biosolids as an agricultural practice, but did not. App. A21. This analysis is misguided. The General Assembly chose to leave agricultural *practices* broad-based and un-enumerated in the definition. The fact that definition identifies some types of *equipment* in a non-inclusive list does not in turn mean that certain agricultural *practices* should have been listed in the definition as well.

Assembly. *See, e.g. E.D.B. ex rel. D.B. v. Clair*, 605 Pa. 73, 987 A.2d 681, 684 (2009). This Court has also held that because statutes of repose completely extinguish a claimant's substantive rights, the issue of the proper construction of such provision presents a question of law. *Cozzone v. Ex Rel. Cozzone v. W.C.A.B.*, 621 Pa. 23, 73 A.3d 526, 535 (2013). The Superior Court acknowledged here that "statutes of repose are jurisdictional in nature, and thus their *scope*, as determined by statutory interpretation, presents a question of law for the courts to decide." App. A23-24 *citing Smith v. W.C.A.B.*, 543 Pa. 295, 300, 670 A.2d 1146, 1148-49 (1996).

Despite this acknowledgment, the Superior Court nevertheless held that this action presented issues concerning what it called the *applicability* of the RTFA rather than its *scope*; and that this in turn presented issues of fact to be resolved by a fact finder. App. A24. Respectfully, the Superior Court was simply wrong.

In support of its analysis, the Superior Court cited, *inter alia*,⁸ this Court's decision in *Connaughley v. Building Components, Inc.*, 536 Pa. 95, 637 A.2d 1331 (1994). In that action, the statute of repose protected those involved in the design, planning, supervision, construction or observation of construction of an

⁸ Superior Court also cited to *Pridgen v. Parker*, 974 A.2d 1166 (Pa. Super 2009)(where applying a statute of repose required the individualized assessment as to whether defendants knowingly misrepresented or fraudulently withheld information) and *Stewart v. Precision Automotive, LLC*, 7 A.3d 266 (Pa. Super 2010), *appeal denied*, 42 A.3d 294 (2012)(same).

improvement to real property. The question presented in that action was whether the individual appellee furnished construction or merely supplies. *Id.* at 1334-1335. Respectfully, that individualized question concerning the action or inaction of specific parties is nothing like the question presented in this action.

There is no dispute here that Appellants engaged in the land application of biosolids. The only question presented here is whether the land application of biosolids (or any other agricultural practice) is a “normal agricultural operation” as statutorily defined by the RTFA. As presented in significant detail above, resolution of that question requires no individualized assessment concerning the actions of specific parties. What is required is the application of principles of statutory construction to the statutory language at issue. A pure question of law.⁹

⁹ If such pure questions of law were presented to fact finders rather than courts for resolution, the results could vary widely; from lay fact finder to lay fact finder. This in turn would deprive those involved in agricultural production of the certainty and consistency concerning legal threats to their operations and would also create disincentives for farmers to adopt new practices all of which are contrary to the objectives of the RTFA.

CONCLUSION

The Court should reverse the Superior Court and hold that the determination of whether the land application of biosolids falls within the Right to Farm Act's definition of normal agricultural operation is a question of law.

Respectfully Submitted,

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DATE: December 23, 2014

CERTIFICATE OF SERVICE

I, J. Bart DeLone, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on DECEMBER 23, 2014, I caused to be served a true and correct copy of the foregoing document,

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