

IN THE SUPREME COURT OF PENNSYLVANIA

---

121 MAP 2014

---

RALPH GILBERT, GLORIA GILBERT, MICHELLE TORGERSO, EDWIN TORGERSO,  
MELD A BITTORF, BEVERLY COX, WILLIAM COX, KIMBERLY MILES, CLEO  
FOCKLER, JOHN FOCKLER, LINDA ECKERT, SCOTT ECKERT, WILLIAM STRINE,  
KENNY JASINSKI, DENNIS JASINSKI, KATHRYN JASINSKI, JOSEPH JASINSKI,  
PATRICIA UNVERZAGT, MEGAN JACOBS, BARBARA UNVERZAGT, DONNA PARR,  
JEFF FODEL, WENDY FODEL, JENNIFER JASINSKI, JOHN JASINSKI, JUDY  
QUEITZSCH, JEAN FRY, RICK MCSHERRY, JOHN FREESE, DONNA LYNN FREESE,  
JEFF VANVOORHIS, SUSAN LEE FOX, TERRENCE FANCHER, AND DONNA FANCHE,  
Appellees

v.

SYNAGRO CENTRAL, LLC, SYNAGRO MID-ATLANTIC, GEORGE PHILLIPS,  
HILLTOP FARMS, and STEVE TROYER,  
Appellants

---

Appeal from the Order of the Superior Court dated April 15, 2014, at No. 119 MDA 2013,  
reversing and remanding the Order of the Court Common Pleas of York County, Civil Division,  
dated December 28, 2012, at No. 2008-SU-003249-01.

---

BRIEF OF *AMICUS CURIAE* OF THE CITY OF PHILADELPHIA IN SUPPORT OF  
APPELLANTS

---

CITY OF PHILADELPHIA LAW DEPT.  
Shelley R. Smith, City Solicitor

Mary Josephine Markle (PA No. 310740)  
City of Philadelphia Law Department  
1101 Market Street, 5th Floor  
Philadelphia, PA 19107  
(215) 685-6115  
Counsel for *Amicus Curiae*

Date: December 23, 2014

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
INTEREST OF <i>AMICUS CURIAE</i> .....	1
ARGUMENT IN SUPPORT OF REVERSAL .....	2
A. Philadelphia’s History of Recycling Biosolids .....	2
B. The City Has an Interest in an Interpretation of the Right to Farm Act that Reflects the Safe, Normal, and Beneficial Use of Biosolids as a Farm Fertilizer.....	4
CONCLUSION .....	7

## TABLE OF AUTHORITIES

<b>Statutes</b>	<b>Page(s)</b>
Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 (1977) .....	2
Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. §§ 1401- 1445, 16 U.S.C. §§ 1431-1447f, 33 U.S.C. §§ 2801-2805 .....	2
Right-To-Farm-Act, 3 Pa. Stat. §§ 951-957.....	1, 4, 5
3 Pa. Stat. § 951 .....	4
Solid Waste Management Act Amendment, 35 Pa. Stat. § 6018.104.....	5
 <b>Regulations and Other Authorities</b>	
25 Pa. Code 271, Subchapter J.....	4-5
25 Pa. Code 271.902 .....	4
25 Pa. Code 271.914 .....	5
25 Pa. Code 271.921.....	5
25 Pa. Code 271.932.....	5
25 Pa. Code 271.933 .....	5
40 C.F.R. Pt. 503 Standards for the Use or Disposal of Sewage Sludge.....	2

## **INTEREST OF *AMICUS CURIAE***

In processing the waste produced by approximately 2.3 million residents of the Philadelphia region, the City employs innovative industry practices that promote sustainable waste management. These practices ensure public health as well as clean rivers and streams. The recycling of wastewater solids or “biosolids” for a beneficial, agricultural purpose is one such practice.

Biosolids are the nutrient-rich organic material that have been sufficiently processed and have been deemed of high enough quality to be suitable for land application as fertilizer. At the City’s water pollution control plants, through a highly regulated and transformative process, the City converts its wastewater into biosolids. The City’s production of biosolids for use as fertilizer helps the City respond to extensive federal and state regulation, reduces the City’s use of landfill space, and creates an economically and ecologically sustainable wastewater management system.

In 2014, Pennsylvania farmers will apply over a quarter of the biosolids produced by the City to their land as fertilizer. The use of those biosolids is a safe, normal, and beneficial agricultural practice Pennsylvania farmers and for the City. Therefore, the City has an interest in this Court applying the Right to Farm Act (3 Pa. Stat. §§ 951-957) in a manner that recognizes the everyday, practical context in which biosolids are used.

## ARGUMENT

### **A. Philadelphia's History of Recycling Biosolids for Farm Fertilizer.**

The City's biosolids program began in the late 1970s with the development of new federal laws providing protections to the environment. Until the 1970s, the City's standard practice had been to dump sewer sludge in the sea. In 1975, the Environmental Protection Agency ("EPA") issued directives mandating that the City stop that practice. *See e.g.*, Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. §§ 1401-1445; 16 U.S.C. §§1431 *et seq*; 33 U.S.C. §§ 2801-2805. Recognizing that reduced ocean dumping could lead to increased use of biosolids for land based application, Congress passed amendments to the Clean Water Act addressing sludge and EPA promulgated baseline regulations for biosolids. *See* 33 U.S.C. §1251 *et seq*. These regulations are currently codified at 40 C.F.R. Pt. 503.

When the City initiated its biosolids program, the lack of recycling options available for biosolids initially forced PWD to haul thousands of tons of biosolids each year to municipal solid waste landfills for co-disposal with City trash. In the late 1970s, the City began applying some of its processed biosolids to lands disturbed by strip-mining operations. Biosolids used for land reclamation helped promote vegetation growth, prevent erosion, and enable the reestablishment of native wildlife. Between 1978 and 2003, the City's program reclaimed about

4,000 acres of former mine and quarry lands. Biosolids produced in Philadelphia have also been used to improve soil at both the Palmerton and Blue Mountain Superfund sites.

In 1984, with the demonstrated success of biosolids for mine reclamation, the City expanded the use of biosolids into agriculture. With the completion of a new composting facility in 1988, the City began distributing increasing amounts of biosolids to farms in Pennsylvania. Over one-third of all biosolids produced by the City since 1990 have been used at farms in Pennsylvania and other states, with upwards of two million tons of biosolids applied as fertilizer, while another 500,000 tons have been marketed commercially as compost for landscaping and other horticultural applications.

In summary, for over thirty years the City has engaged in a successful biosolids utilization program in partnership with farmers throughout the Commonwealth. Allowing juries to determine whether or not the use of biosolids as fertilizer on a farm is a normal agricultural practice threatens both the ability of farmers to employ a well-established Pennsylvania farming practice and the success of the City's biosolids program.

**B. The City Has an Interest in an Interpretation of the Right to Farm Act that Reflects the Safe, Normal, and Beneficial Use of Biosolids as a Farm Fertilizer.**

The use of biosolids on farms as fertilizer is a safe, normal and beneficial agricultural operation. The General Assembly enacted the RTFA in order to prohibit nuisance suits against such agricultural operations. The City has an interest in the RTFA being interpreted to protect from nuisance suits the use of biosolids as farm fertilizer.

The General Assembly intended the RTFA to “encourage the development and improvement” of Pennsylvania’s farms by “limiting the circumstances under which agricultural operations may be the subject matter of nuisance suits and ordinances.” 3 Pa. Stat. § 951. The use of biosolids as fertilizer is an agricultural operation aiding the development and improvement of farmland. The land application of biosolids deserves the protection from nuisance suits intended by the RTFA.

Land application of biosolids as fertilizer is a safe farming practice. Pennsylvania implemented a comprehensive regulatory scheme for the production and use of biosolids to ensure the safety of the use of biosolids as a fertilizer. Rules promulgated by the Pennsylvania Department of Environmental Protection (“DEP”) require that each Pennsylvania farm be specifically approved by DEP for land application of biosolids. 25 Pa. Code § 271.902. Subchapter J of those

regulations contains detailed quality standards which must be met before any biosolids may be used as a fertilizer, such as: pollutant limits (§ 271.914); pathogens (§ 271.932); and vector attraction reduction (§ 271.933). In addition, producers of biosolids intended for land application, such as the City, are required to prepare a “quality enhancement plan” detailing, among other things, the composition of the biosolids it produces, as well as a description of the steps taken to improve the “physical, chemical or biological” quality of the biosolids. 25 Pa. Code § 271.921. These regulations were promulgated in response to an amendment to the Solid Waste Management Act authorizing DEP to issue permits to allow for the beneficial use of biosolids in Pennsylvania. 35 Pa. Stat. § 6018.104(18).

Pennsylvania farmers actually use biosolids as a fertilizer, thus indicating its normalcy as an agricultural operation. In fiscal year 2014, 15,524 dry tons of City biosolids were applied as fertilizer on Pennsylvania farms. Since 1990, upwards of two million tons of biosolids produced by the City have been applied as fertilizer on farms in Pennsylvania and other states.

The use of biosolids is beneficial to farmers and to the City. Biosolids provide farmers with a nutrient-rich fertilizer. Most other fertilizers are composed of less nutrients and limestone than biosolids. Farmers using those fertilizers must



purchase supplemental nutrients and limestone. Therefore, biosolids provide farmers with a more affordable fertilizer.

The City also benefits from the use of biosolids by being able to sustainably dispose of its waste. Since 2008, the City has been recycling 100% of the biosolids it produces. Land application accounts for over 50% of the utilization of the City's biosolids. The reuse of biosolids saves the City the cost of hauling biosolids to landfills, as well as space in the landfills. The City has spent considerable resources to develop its biosolids program. As a result, the City's ability to distribute biosolids as fertilizer financially supports its investment in the infrastructure required for the processing of biosolids.

For over three decades, the City has invested in and developed a sustainable process of producing biosolids from its wastewater, and the use of those biosolids as fertilizer is safe and beneficial. Therefore, the City has an interest in biosolids being interpreted as a normal agricultural operation protected under the Right to Farm Act.

## CONCLUSION

Wherefore, for the foregoing reasons, the City of Philadelphia respectfully requests that this Court overturn the Order of the Superior Court dated April 15, 2014, and affirm the Order of the Court of Common Pleas entered on December 28, 2012.

Respectfully submitted,

CITY OF PHILADELPHIA LAW DEPT.  
Shelley R. Smith, City Solicitor



By: Mary Josephine Markle, Esq.  
City of Philadelphia Law Department  
1101 Market Street, 5th Floor  
Philadelphia PA 19107  
(215) 685-6115  
Counsel for *Amicus Curiae*

Dated: December 23, 2014

## PROOF OF SERVICE

I certify that I am today serving copies of the *Amicus Curiae* Brief of the City of Philadelphia in Support of Affirmance, by email to:

For Appellees:

John E. Kotsatos, Esquire  
Law Offices of Peter G. Angelos, P.C.  
60 W. Broad Street, Suite 200  
Bethlehem, P A 18018  
Tel. (610) 866-3333

Arthur H. Bryant  
Public Justice, P.C.  
555 12<sup>th</sup> St, Ste. 1230  
Oakland, CA 94607-4095  
(510) 622-8150

For Appellants:

Neil A. Slenker, Esquire  
Stock & Leader  
Susquehanna Commerce Center - East  
221 West Philadelphia Street, Suite 600  
York, PA 17401-2994  
(717) 846-9800

James B. Slaughter, Esquire  
Beveridge & Diamond, P.C.  
1350 I Street, N.W., Suite 700  
Washington, D.C. 20005  
(202) 789-6040

David R. Breschi, Esquire  
Breschi & Associates, LLC  
946 Lincoln Way East  
Chambersburg, Pennsylvania 17201  
(717) 263-9533

Kandice Kerwin Hull  
McNees Wallace & Nurick LLC  
100 Pine Street, PO Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000

Debra P. Furlas  
McNees Wallace & Nurick LLC  
100 Pine Street, PO Box 1166  
Harrisburg, PA 17108-1166  
(717) 237-5201

  
Mary Josephine Markle

December 23, 2014