IN THE SUPREME COURT OF PENNSYLVANIA
Middle District

NO. 121 MAP 2014

RALPH GILBERT, GLORIA GILBERT, MICHELLE TORGERSON, EDWIN TORGERSON, MELDA 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 FANCHER,

Appellees

v.

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

Appellants

BRIEF OF AMICI CURIAE PENNSYLVANIA FARM BUREAU AND PENNAG INDUSTRIES ASSOCIATION IN SUPPORT OF APPELLANTS

Appeal from the Order Entered April 15, 2014 in the Superior Court of Pennsylvania at Docket No. 119 MDA 2013

John J. Bell, Esquire
Attorney I.D. No. 30918
P.O. Box 8736
510 S. 31st Street
Camp Hill, PA 17001-8736
Telephone: (717) 761-2740
Fax: (717) 731-3575
Email: jjbell@pfb.com
Attorney for Amici Curiae Pennsylvania Farm Bureau and PennAg Industries Association

TABLE OF CONTENTS

TABLE OF CITATIONS

Page

Cases

Statutes

Other Authorities

INTEREST OF AMICI CURIAE

Pennsylvania Farm Bureau ("Farm Bureau") is a Pennsylvania nonprofit agricultural trade organization whose purpose is to promote, facilitate and sustain the vitality of families commercially engaged in the business of farming and agriculture in the Commonwealth. Farm Bureau's membership is comprised of more than 59,780 farm and rural families in Pennsylvania.

PennAg Industries Association ("PennAg") is a Pennsylvania nonprofit agricultural trade organization whose purpose is to promote, facilitate and sustain the commercial engagement of persons and families in both farming enterprises and in agribusiness enterprises supporting and servicing the needs of agricultural production, such as fertilizer, agricultural chemicals and seed production. More than 600 farmers and agribusinesses are affiliated with PennAg.

Members of both Farm Bureau and PennAg are owners and operators of farms and agribusinesses that vary significantly in size and type of business operation. Farm Bureau and PennAg provide the political, educational and informational support for responsible engagement of persons in farming and agribusiness operations in a viable and feasible manner and in a legal and commercial environment free of unreasonable restriction or interference by government or by adverse political or ideological interests.

Agriculture and agribusiness comprise the leading sector of Pennsylvania's economy. Pennsylvania's farm families generate nearly 6.7 billion dollars annually in cash receipts from agricultural production – the highest among states in the northeastern United States. It is estimated that employment in agriculture, agribusiness and food services accounts for one in five jobs in the Commonwealth.

In recent years, encroaching development into Pennsylvania's rural areas has seriously threatened the future ability of farm families to sustain their farm operations. Increasing development and migration of urban and suburban residents into rural areas have created substantial conflict between farmers and their nonfarm neighbors. Neighbors who neither know, nor care to know, about the needs of farm families to adapt their farm operations to meet demands of a radically changing and continuously evolving agricultural economy, have attempted to impose severe and unworkable restrictions on farmers engaged in accepted farming practices through political pressure on local officials to enact prohibitive ordinances and through aggressive litigation strategies. Pennsylvania's farm families can ill afford to individually bear the cost of engaging in litigation in court to obtain the remedial relief to which they are entitled under law or to defend themselves or the agricultural practices performed on their farms against the aggressive litigation strategies being employed against agriculture.

Farm Bureau and PennAg have a strong interest in preserving the economic viability and integrity of farm families and of agriculture in the Commonwealth. It is vital to Pennsylvania's farm families that the compelling policy of the Commonwealth to encourage and protect their ability to pursue farming practices that sustain the current and future viability of their farms, which has been clearly established and fortified in a multitude of state agricultural statues, is not diminished.

STATEMENT OF JURISDICTION

Jurisdiction in this matter is conferred on this Court under 42 Pa.C.S. § 724(a), which provides:

> *(a) General rule.—Except as provided by section 9781(f) (relating to limitation on additional appellate review), final orders of the Superior Court and final orders of the Commonwealth Court not appealable under section 723 (relating to appeals from Commonwealth Court) may be reviewed by the Supreme Court upon allowance of appeal by any two justices of the Supreme Court upon petition of any party to the matter. If the petition shall be granted, the Supreme Court shall have jurisdiction to review the order in the manner provided by section 5105(d)(1) (relating to scope of review).*

ORDER OR OTHER DETERMINATION IN QUESTION

The determination at issue in this appeal is the Opinion and Order of April 15, 2014 issued by the Superior Court of Pennsylvania at Docket No. 119 MDA 2013, which reversed the Order issued on December 28, 2012 and filed on December 31, 2012 by the York County Court of Common Pleas at Trial Court Docket No 2008-SU-003249-01 granting Appellants' Motion for Summary Judgment to dismiss the action in nuisance and negligence initiated by Appellees as barred under Pennsylvania's Right to Farm Act.

The aforementioned Opinion and Order issued by Superior Court in this case, as well as the Dissenting Opinion, are contained in Appendix 1 to this Brief.

In granting Appellants' Petition for Allowance of Appeal, this Court has framed the legal issue to be considered in this appeal as whether the Superior Court's interpretation of the Right to Farm Act to require juries to determine whether activities performed on a farm fall within the Act's definition of a "normal agricultural operation" is contrary to the Act and Supreme Court precedent that statutes of repose and issues related to statutory interpretation present questions of law for resolution by courts, not juries.

SCOPE AND STANDARD OF REVIEW

The issue on appeal before this Court is one of statutory interpretation. In matters of statutory interpretation, this Court's standard of review is de novo and scope of review is plenary, with the objective to ascertain and effectuate the intention of the General Assembly in the statute under review. *Bowling v. Office of Open Records*, 75 A.3d 453 (Pa. 2013); *Whalen v. Commonwealth Department of Transportation, Bureau of Driver Licensing*, 32 A.3d 677 (Pa. 2011).

STATEMENT OF THE QUESTION INVOLVED

In determining whether an operational farm is entitled to protection under Pennsylvania's Right to Farm Act, 3 P.S. §§ 951 et seq., which precludes actions in nuisance against farming activities that are part of "normal agricultural operation," is the question whether a farming activity claimed to be the cause of nuisance is part of "normal agricultural operation" one of law for exclusive determination by courts, rather one of fact to be determined by juries?

(*The Court below answered in the negative.*)

STATEMENT OF THE CASE

Amicus Curiae accepts and incorporates herein the Statement of the Case contained in the Brief for Appellants.

The statute at issue in this appeal is the Act of June 10, 1982 (P.L. 454, No. 133), 3 P.S. §§ 951 et seq., officially entitled, "*An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances.*" While no short title has ever been formally assigned, this statute has become universally known and commonly referred to as Pennsylvania's "Right to Farm Act" or the "Right to Farm Law." The term "Right to Farm Act" shall be used throughout this Brief when referencing this statute.

Farms in Pennsylvania are predominantly owned and operated by individual families, under sole proprietorships and under partnerships and corporations whose principal owners or shareholders are members of the same immediately family. The nature of farming and the economics of agriculture pose serious financial risk and personal challenge for the farm families of the Commonwealth who are engaged in agriculture as a business enterprise. To sustain a farm and earn a viable family livelihood from farming, Pennsylvania's farm families must incur high capital and operational costs, and often incur significant periodic debt to finance these costs, just to provide the field and farm conditions suitable for viable agricultural production. Sudden, unpredictable and volatile forces of weather patterns and commodity prices can devastate the quantity or quality of farm products the farm generates, and can cause farm products to only be marketed at a serious financial loss. The adverse financial impact of volatile changes in weather and price can be felt by the farm business for years afterward.

The highly uncertain and volatile natural and economic impediments to financial viability faced by the families in operating their farms have been the impetus behind enactment of a multitude of statutory provisions by the General Assembly, including Pennsylvania's Right to Farm Act, that are designed to provide a meaningful degree of legal certainty, uniformity and protection to farm families who make an earnest effort to financially sustain their farms through engagement of agricultural practices that meet reasonable health and safety standards.

SUMMARY OF THE ARGUMENT

The Commonwealth has established, in the Right to Farm Act and a multitude of companion state statutes governing agriculture and the performance and regulation of farming practices, strong and clear policy objectives to preserve, protect and enhance the economic integrity of Pennsylvania agriculture; facilitate the economic needs of farm families in the Commonwealth to sustain current and future viability of their farms; and establish consistency and uniformity in regulatory standards applied to farming practices in response to local concerns while protecting farmers' ability to commonly adapt their farms and modify on-farm production practices to sustain the farm's viability. The agricultural statutes enacted by the General Assembly – which also include the Agricultural Area Security Act, the Nutrient Management Act, Domestic Animal Act, Pesticide Control Act of 1974, recodification of the Seed Act, the Commercial Manure Hauler and Broker Certification Act and the amendments to the Municipalities Planning Code provided under Act 68 of 2000 – establish a prevailing policy to protect farmers' need and ability to adapt their farms through modification and use of accepted farming practices to sustain the farm's economic viably without unreasonable legal intrusion by local governments and neighbors.

Interpretations of specific terms and provisions of the Right to Farm Act, including responsibility for determining the scope of activities on farms that are part of "normal agricultural operation" in the context of Section 4(a)'s statute or repose provisions, must be weighed by this Court in the context of this overriding policy to enhance and protect farmers' efforts to viably sustain their farms in agricultural production. The Act's definition of "normal agricultural operation" clearly directs application of a simple and straightforward analysis for determination of what is "normal," based on the perspective

of farmers and the farming industry. Assignment to juries the question of whether a particular on-farm activity is part of "normal agricultural operation" is much more likely to provoke parochial, arbitrary and inconsistent determinations than assignment of the question to courts, thwarting the policy objectives advanced in the Right to Farm Act and companion agricultural statutes to sustain and encourage the pursuit of viable farming practices in the Commonwealth and protect farm families pursuing viable agricultural practices from excessive legal actions.

ARGUMENT

1. The overriding public policy of the Commonwealth, as clearly established by the Right to Farm Act and companion agricultural statutes enacted by General Assembly, is to support and encourage the engagement of accepted agricultural practices that sustain economic viability for Pennsylvania's farms and farm families, and discourage legal intrusions by local governments and local citizens.

The sole issue before this Court is one of statutory interpretation Section 4(a) of the Right to Farm Act, which bars actions in nuisance against a farm that has been steadily engaged in accepted agricultural production practices. Section 4(a) provides:

> *No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation and are normal agricultural operations, or if the physical facilities of such agricultural operations are substantially expanded or substantially altered and the expanded or substantially altered facility has either: (1) been in operation for one year or more prior to the date of bringing such action, or been addressed in a nutrient management plan approved prior to the commencement of such expanded or altered operation pursuant to section 6 of the act of May 20, 1993 (P.L. 12, No.6), known as the Nutrient Management Act, and is otherwise in compliance therewith: Provided, however, That nothing herein shall in any way restrict or impede the authority of this State from protecting the public health, safety and welfare or the authority of a municipality to enforce State law.*

3 P.S. § 954(a)

As with all matters of statutory interpretation, the objective to be accomplished by reviewing courts is to ascertain and effectuate the intention of the General Assembly. 1 Pa.C.S. § 1921(a). Legislative intent is considered the polestar of statutory construction. *Child Instant Homes, Inc. v. Miller*, 416 Pa. Super. 602, 606, 611 A.2d 1208, 1210 (1992) ; *Mt. Laurel Racing Assn. v. Zoning Hearing Board*, 73 Pa. Cmwlth. 531, 536, 458 A.2d 1043, 1045 (1983).

In absence of explicit language on the point at issue, the intention of the General Assembly may be ascertained by considering, among other matters:

- The occasion and necessity for the statute;
- The mischief to be remedied;
- The object to be attained;
- The consequences of a particular interpretation; and
- The contemporaneous legislative history.

1 Pa.C.S. § 1921(c); *Hannaberry HVAC v. Workers' Compensation Appeal Board*, 575 Pa. 67, 834 A.2d 525 (2003).

While not explicitly stated in Section 4(a) that determination of whether a farming activity is part of "normal agricultural operation" is a matter of law to be made exclusively by courts, this conclusion emanates fundamentally from not only the nature of this provision itself but also the statutory purposes and objectives of the Right to Farm Act and a host of Pennsylvania statutes enacted by the General Assembly to legally facilitate and enhance the economic viability of existing farms and the engagement of viable farming practices in Pennsylvania, as a vital part of the Commonwealth's economy.

Farms and farming businesses in Pennsylvania continue to be predominantly family owned and operated. Sole proprietorships and family partnerships and corporations whose owners are closely related and have strong personal and family ties are the prevailing business types for operating farms in the Commonwealth.

The nature of farming poses serious economic and natural risks upon families of the Commonwealth who operate and try to earn a modest family livelihood from their farms. Pennsylvania's farm families must incur high costs to purchase fuel, seed, fertilizer, weed control products and other farm inputs needed for agricultural production, and to purchase and operate the farm machinery and capital equipment needed to produce, harvest and preserve their agricultural products in an economically viable manner. The cost for many farm inputs and operations are incurred months before any of farm products hoped for by the family are actually finished and ready to be marketed. In order to purchase the inputs at times that provide the optimum opportunity for agricultural production, the family must often incur significant periodic debt.

Farm families have little meaningful control of the volatile forces of weather or climate. A sudden and severe weather event or a prolonged weather pattern (such as drought or extreme rain) can destroy or severely reduce the quantity of agricultural products the farm will ultimately produce in a growing year, or so drastically affect the quality of growing products as to make them unmarketable. The occurrence of any significant weather setback will often cause farm families to extensively change their initial production plans and planned farming activities, even within the course of a single growing season. Farm families must often adapt to shortened growing seasons caused by weather through use of alternative seeds and more intensive inputs in an effort to attain a viable level of crop production for that season.

Farm families also continue to be economically captive to the volatile whims of market forces and the erratic effects of supply and demand. The adage that farmers are "price takers and not price makers" in the commodities they produce remains the

governing economic principle in today's agricultural economy. Farmers cannot feasibly control their level of production output or temporarily halt production operations to avoid extreme conditions of oversupply that drastically reduce commodity prices, as persons engaged in product manufacturing industries are often able to do. The forces of nature predominantly determine the quantity and timing of the products that the farmer has initially decided to produce. Regardless of the occurrence and length of extremely low farm commodity prices, cows will continue to naturally produce milk each day, livestock and poultry animals that continue to daily nurture and grow, and field crops, fruits and vegetables that continue to multiply and mature from effects of sun and other inputs of nature. And farmers will still need to continue to feed and tend to the welfare of the cows, livestock and poultry and growing crops, fruits and vegetables. The only avenue that farmers may potentially use to "control" production output is the impractical one of destroying the very commodities they have grown on their farms and have already incurred the cost of producing. In the wake of volatile and ever-changing forces of nature and commodity pricing, the only economically feasible measure for farm families to improve profitability is to more efficiently manage their farm production costs.

The essence of agriculture itself is land intensive. Ownership and use of large amounts of productive land is a necessary component to sustaining the farm's financial viability. Relative to farms in other major agricultural production states, Pennsylvania's farms are economically disadvantaged. Typical farms in Pennsylvania are substantially smaller in size and area of productive farmland than those in other farming states. As a result, Pennsylvania's farms will not achieve the economies of scale and cost efficiency in production as farms producing the same commodity in other farming states. Because

of this, there is even greater need for Pennsylvania's farm families to evolve and adapt their farm production activities to stay in line with improved, more efficient and more productive farming practices and techniques.

Pennsylvania's agricultural industry is as vulnerable as other industries to constant increases in price for purchase of materials and energy utilized in agricultural production. But the physical characteristics of the individual farm units within the Commonwealth and the amount of farmland within each farm unit that can be feasibly utilized for agricultural production are virtually unchanged from year to year. The natural make up of farms and the economic and practical barriers to acquisition and incorporation of lands surrounding the farm for use in agricultural production largely prevent farm families from materially expanding the farm unit from the unit the family has managed and operated in prior years. Additionally, farmers are challenged by the effects of agricultural production on the long-term productivity of their individual farms. To keep their static farm units viably productive for future generations, farm families must constantly change and adapt land management practices employed on fields and farm areas to provide the output needed to meet and provide adequate income above the constant rise in farm costs.

Conversion of neighboring farmland to nonagricultural development also imposes significant practical and economic burdens on the ability of farm families to sustain their farming operations. The very characteristics of prime soil, flat land surface and favorable drainage that make the land desirable for agricultural use also make it desirable for conversion to commercial and industrial development and intensive residential development. Once a farm is converted and acres of that farm are

developed for roads, buildings and other structures, it is virtually cost prohibitive for the farm to be reconverted back to agricultural production. Encroachment of nonfarm development in a geographic area weakens the integrity of the local agricultural economy, and places additional economic, political and social pressure on those families operating the remaining farms in that area. There is widespread agreement that conversion of one farm in an area will inevitably lead to conversion of several other farms neighboring the one originally converted.

In response to the serious natural and economic burdens and impediments that farm families uniquely face and that seriously threaten family's ability sustain their farms, a host of Pennsylvania statutes, such as the Right to Farm Act, have been enacted by the General Assembly. These statutes, both individually and collectively, provide and advance a definitive purpose and design to protect the ability of farm families in the Commonwealth to viably engage in agriculture and adapt their farming operations to respond to changing and potentially volatile natural and economic conditions, notwithstanding the likelihood that families' efforts to sustain their farming operations will cause conflict with local communities. To achieve this purpose, these statutes have repeatedly placed extensive limitations on authority of local governments and local citizens to challenge by ordinance or litigation the methods and procedures that farm families employ on their farms.

The intended objectives to be achieved under application of the provisions of the Right to Farm Act itself are stated in clear, broad and unequivocal terms, and the heavy weight of intended protections to be provided to farm families under this Act are unmistakable:

> ***It is the 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 (emphasis added).

The conflicts of offensive odors and adverse impacts upon use and enjoyment of residential property raised by Appellees in their nuisance litigation are essentially the very same conflicts that the General Assembly envisioned, when it enacted the Right to Farm Act and the Act's design to protect engagement of on-farm agricultural activities to sustain viability of their operations. The provisions of the Act clearly give priority to farmers' pursuit of "normal agricultural operations," notwithstanding that pursuit of such farming practices may have some adverse impacts upon the quality of life of neighboring residents or the peaceful use and enjoyment of their properties. *See*, 3 P.S. §§ 953(a) and 954(a).[1]

---

[1] Relative to Section 4(a)'s statute of repose provisions, the General Assembly has attempted to strike a legitimate and reasonable balance in prescribing the scope and limitation of activities to be protected from nuisance claims. The Act does not bar pursuit of legal actions for damages caused by farming practices performed in violation of federal or state laws:

> *[The Act's limitations on nuisance actions] shall not defeat the right of any person, firm or corporation to recover damages for any injuries or damages sustained by them on account of any agricultural operation or any portion of an agricultural operation which is conducted in violation of any Federal, State or local statute or governmental regulation which applies to that agricultural operation or portion thereof.*

3 P.S. § 954(b).

And Section 4(a) of the Right to Farm Act provides a one-year suspension of the Act's protection from nuisance actions against certain farms whose operations have been substantially changed or altered, with the exception of farms fully implementing nutrient management approved pursuant to state law.

We would note that in legislative action taken by the General Assembly after the Right to Farm Act's original enactment in 1982, the legislature has expanded, rather than narrowed, the scope of farms and farming activities to be protected under the Act from nuisance actions. In 1998, the legislature enacted Senate Bill 682, Printer's Number 1975.[2] Act 58 of 1998 both broadened the scope of activities on farms defined to be part of "normal agricultural operation" and established an exception to the Act's original scope of farms whose substantial change or alteration of operations were subject to Section 4(a)'s one-year suspension from protection from nuisance actions.

The scope of farming practices defined to be "normal agricultural operation" in the Act's original version in 1982 was essentially limited to "activities, practices, equipment and procedures that farmers adopt, use or engage in year after year . . ." Act 58 added second category of farming activity to be defined and treated as part of "normal agricultural operation":

> *The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry.*

Relative to Section 4(a), the Act's original version established, without exception, a one-year suspension from protection on all farms whose operations and facilities were substantially changed or altered. Act 58, however, added the language to preclude application of the one-year suspension to changed or altered farms that are fully implementing a nutrient management plan that accounts for the change or alteration and was approved pursuant to the Nutrient Management Act before the expansion or alteration was implemented.

---

[2] The legislation enacted under Senate Bill 682, Printer's Number 1975 is provided in Appendix 2 to this Brief.

Other statutes enacted by the legislature have consistently applied the same policy objective that farmers who responsibly pursue viable agricultural practices in a way that complies with standards of federal and state laws should be broadly protected from the burdens of local interference by nuisance ordinances and nuisance lawsuits. The Agricultural Area Security Act, 3 P.S. §§ 901 et seq., which provides for the creation of agricultural security areas in local areas, strongly and clearly recognizes that preservation of the integrity and economic viability of agriculture in the Commonwealth is to be given highest priority:

> *It is the declared policy of the Commonwealth to conserve and protect and to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products . . . Agriculture in many parts of the Commonwealth is under urban pressure from expanding metropolitan areas. This urban pressure takes the form of scattered development in wide belts around urban areas, and brings conflicting land uses into juxtaposition, creates high costs for public services, and stimulates land speculation. When this scattered development extends into good farm areas, ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements. Many of the agricultural lands in the Commonwealth are in jeopardy of being lost for any agricultural purposes. Certain of these lands constitute unique and irreplaceable land resources of Statewide importance. It is the purpose of this act to provide means by which agricultural land may be protected and enhanced as a viable segment of the Commonwealth's economy and as an economic and environmental resource of major importance.*
>
> ***It is further the purpose of this act to:***
>
> * * *
>
> ***(2) Protec t farming operations in agricultural security areas from incompatible nonfarm land uses that may render farming impracticable.***

3 P.S. § 902 (emphasis added).

To accomplish these objectives, the Agricultural Area Security Act provides numerous protections to farm families and imposes significant limitations on exercise of municipal and state governmental powers that impede the future viability of agriculture in agricultural security areas. Like the Right to Farm Act, local governments are extensively limited in authority to regulate agricultural practices performed in agricultural security areas:

> *Limitation on local regulations.*
>
> *(a) General rule.--Every municipality or political subdivision within which an agricultural security area is created shall encourage the continuity, development and viability of agriculture within such an area by not enacting local laws or ordinances which would unreasonably restrict farm structures or farm practices within the area in contravention of the purposes of this act unless such restrictions or regulations bear a direct relationship to the public health or safety.*
>
> *(b) Public nuisance.--Any municipal or political subdivision law or ordinance defining or prohibiting a public nuisance shall exclude from the definition of such nuisance any agricultural activity or operation conducted using normal farming operations within an agricultural security area as permitted by this act if such agricultural activity or operation does not bear a direct relationship to the public health and safety.*

3 P.S. § 911.

The Agricultural Area Security Act also places unique and significant requirements and limitations on state and local governmental agencies that attempt to implement public works projects likely to have detrimental impacts on the integrity of local agriculture. The Agricultural Area Security Act requires state agencies to consider the impact that administrative programs and regulations will have on the viability of agriculture within agricultural security areas and to modify these programs and regulations when programs and regulations impede agricultural viability:

> *Policy of Commonwealth agencies.*
>
> *It shall be the policy of all Commonwealth agencies to encourage the maintenance of viable farming in agricultural security areas and their administrative regulations and procedures shall be modified to this end insofar as is consistent with the promotion of public health and safety, with the provisions of any Federal statutes,*

standards, criteria, rules, regulations, or policies, and any other requirements of Federal agencies, including provisions applicable only to obtaining Federal grants, loans, or other funding.

3 P.S. § 912.

And the Agricultural Security Act statutorily precludes authority of state and local governments to condemn and use land within an agricultural security area by eminent domain, unless and until the agency has petitioned for and obtained approval from the State Agricultural Lands Approval Board and other reviewing bodies provided for in the Act. Pursuant to its request to the Board for approval, the agency must essentially demonstrate that the condemnation and project for which the agency is seeking approval to condemn are necessary for the good of the public and the agency has made all reasonable and prudent efforts to minimize the area to be condemned and the adverse impacts upon agricultural operations within the agricultural security area. *See*, 3 P.S. §§ 913(a) and 913(b).

Our courts have consistently interpreted and applied the provisions of the Agricultural Area Security Act in a manner that gives deference to protecting and enhancing the pursuit and viability of agriculture in traditional agricultural areas over potential conflicts with local communities that may result. In *41 Valley Associates v. Board of Supervisors of London Grove Township*, 882 A.2d 5 (Pa. Cmwlth. 2005), for example, the township attempted to deny the landowner's application for inclusion of a tract of land in the township's agricultural security area, largely on the basis of what the township believed to be the landowner's anticipated use of the land tract - composting of substrate for mushroom production. Township officials claimed and local residents believed the landowner's anticipated use would be detrimental to the health, safety or

welfare of the local community. And the Township largely denied the landowner's application for inclusion of the tract in the agricultural security area on that basis.

In affirming the lower court's reversal of the township's denial, Commonwealth Court recognized that consideration of the landowner's expected use of the property did not fall within the scope of valid considerations expressly provided in the Agricultural Area Security Act, noting the Act's intended purposes to encourage inclusion of land viable for potential use in agriculture. *Id.* at 15.[3]

The General Assembly's original enactment of the Nutrient Management Act, 3 P.S. §§ 1701 et seq. (repealed) also established clear policy deference to the needs of farmers to adapt their farms to sustain economic viability in agriculture and minimize local intrusion on farmers' efforts to sustain their farms. The driving force behind this Act was to establish minimum statewide standards for handling and land application of animal manure on farms. Farmers who lawfully met these standards were legally relieved of attempts by local governments to enact "special" regulations that would, for all intents and purposes, "regulate" livestock farms, and farms utilizing manure for nutrient enhancement of growing crops, out of business:

---

[3] Other decisions interpreting the Agricultural Area Security Act have consistently given strong deference to the goals of preserving and furthering the integrity and pursuit of agriculture in areas where farming has largely been present. See, e.g. *White v. Department of Transportation*, 738 A.2d 27 (Pa. Cmwlth. 1999) (Exceptions to requirements for prior review and approval of proposed condemnations narrowly construed); *Maryland and Pennsylvania Railroad Preservation Authority v. Agricultural Lands Condemnation Approval Board*, 704 A.2d 1149 (Pa. Cmwlth. 1998) (The purposes of the Agricultural Area Security Act authorize and necessitate the focus of consideration of a proposed condemnation to be the impact that the public project to result from the condemnation, as well as the taking of land, will have on the agricultural viability of each farm within the agricultural security area); *Northwestern Lehigh School District v. Agricultural Lands Condemnation Approval Board*, 26 Pa. Cmwlth. 325, 559 A.2d 978 (1989) (Purposes of the Agricultural Area Security Act compel reviewing bodies to reject proposed condemnations of land within an agricultural security area where agency failed to offer sufficient evidence to demonstrate the bases required under the Act for approval of condemnation have been met).

Preemption of local ordinances.

This act and its provisions are of Statewide concern and occupy the whole field of regulation regarding nutrient management to the exclusion of all local regulations. Upon adoption of the regulations authorized by section 4, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by this act if the municipal ordinance or regulation is in conflict with this act and the regulations promulgated thereunder. Nothing in this act shall prevent a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of this act and the regulations promulgated under this act, provided, however, that no penalty shall be assessed under any such local ordinance or regulation for any violation for which a penalty has been assessed under this act.

3 P.S. § 1717 (repealed).

In 2005, per Act 38, the General Assembly recodified the Nutrient Management Act, incorporating the Act into Chapter 5 of Title 3 of the Pennsylvania Consolidated Statutes.[4] Recodification of the Act included provisions to establish additional state regulatory standards for agriculture, specific to odor control and management of manure on farms. With expansion of odor requirements, the legislature retained and expanded the Act's policy to relieve farmers complying with odor management standards from local efforts to impose more extreme and unreasonable odor management standards:

Preemption of local ordinances.

(a) General.—This chapter and its provisions are of Statewide concern and occupy the whole field of regulation regarding nutrient management and odor management, to the exclusion of all local regulations.

(b) Nutrient management.—No ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.

---

[4] *See*, 3 Pa.C.S. §§ 501 et seq.

(c) Odor Management.—No ordinance or regulation of a political subdivision or home rule municipality may regulate the management of odors generated from animal housing or manure management facilities regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.

(d) Stricter requirements.—Nothing in this chapter shall prevent a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of this chapter and the regulations or guidelines promulgated under this chapter. No penalty shall be assessed under any such local ordinance or regulation under this subsection for any violation for which a penalty has been assessed under this chapter.

3 Pa.C.S. § 519 (emphasis added).

Other statutes recently enacted related to farming and farming practices repeatedly echo the prevailing public policy objective to relieve farmers from local interference when lawfully seeking to economically sustain their farms and attain a viable livelihood for their families:

- The **Domestic Animal Act**, 3 Pa.C.S. §§ 2301 et seq., which establishes state authority in regulation of animal health and response to animal disease, preempts local governmental authority to engage in "health" regulations for animals, dead animal disposal, and disposal of animal waste.[5]

- The **Pennsylvania Pesticide Control Act of 1973**, 3 P.S. §§ 111.21 et seq., which provides for state regulation of pesticide use and users of pesticides on

---

[5] *Preemption of local laws and regulations.*

This chapter and its provisions are of Statewide concern and shall have eminence over any ordinances, resolutions and regulations of political subdivisions which pertain to transmissible diseases of domestic animals as defined in this chapter; the whole field of regulation regarding the identification of domestic animals; the detection, containment or eradication of dangerous transmissible diseases and hazardous substances; the licensure of domestic animal or dead domestic animal dealers, agents and haulers; the procedure for disposal of dead domestic animals and domestic animal waste; the procedure for the slaughter and processing of domestic animals; humane husbandry practices and the licensure and conditions of garbage feeding businesses.

3 Pa.C.S. § 2389.

farms and other areas, preempts local governmental authority to restrict or prohibit pesticide uses otherwise authorized under state regulation.[6]

- The amendments made in Act 164 of 2004's recodification of the **Pennsylvania Seed Act**,[7] which added a provision not contained in the previous version of the Seed Act to prohibit local governments from preventing or restricting farmers' use and production of seeds lawfully authorized for use under state regulation.[8]

- The enactment in 2004 of the **Commercial Manure Hauler and Broker Certification Act**, 3 Pa.C.S. §§ 2010.1 et seq., which prohibits local governmental interference with practices related to the export of manure from farms, the importation and land application of manure on farms, or the

---

[6] *Delegation of duties; exclusion of local laws and regulations.*
* * *
(b) This act and its provisions are of Statewide concern and occupy the whole field of regulation regarding the registration, sale, transportation, distribution, notification of use, and use of pesticides to the exclusion of all local regulations. Except as otherwise specifically provided in this act, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, handling or use of pesticides, if any of these ordinances, laws or regulations are in conflict with this act.
3 P.S. § 1157.

[7] 3 Pa.C.S. §§ 7101 et seq.

[8] *Delegation of duties; exclusion of local laws and regulations.*
* * *
(b) Statewide jurisdiction and preemption. – This chapter and its provisions are of Statewide concern and occupy the whole field of regulation regarding the registration, labeling, sale, storage, transportation, distribution, notification of use and use of seeds to the exclusion of all local regulations. Except as otherwise specifically provided in this chapter , no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way attempt to regulate any matter relating to the registration, labeling, sale, storage, transportation, distribution, notification of use or use of seeds if any of these ordinances, laws or regulations are in conflict with this chapter.
3 Pa.C.S. § 7120.

transportation of manure between farms that meet the regulatory standards established under the Act.[9]

- The amendments to the Municipalities Planning Code enacted under Act 68 of 2000, which expressly recognize that continued economic viability for agriculture and protection of farm families' need to adapt their farming operations to sustain a meaningful family livelihood from agriculture are primary objectives to be achieved through municipal zoning and land use regulation,[10] and which restrict municipal authority to impede through local zoning regulation not only practices currently employed on farms but also changes in farming practices needed to meet the economic demands placed on farming operations.[11]

---

9 *Preemption of local ordinances.*

(a) General rule.— This act and its provisions are of Statewide concern and occupy the whole field of regulation regarding the certification and regulation of commercial manure brokers and commercial manure haulers, the transportation of animal manure by commercial manure haulers and commercial manure brokers and the exporting of animal manure from agricultural operations to importing operations, to the exclusion of all local regulations. Except as otherwise specifically provided in this act, no ordinance or regulation of a political subdivision may prohibit or attempt to regulate the certification or operations of commercial manure brokers and commercial manure haulers, the transportation of animal manure by brokers and haulers or the exporting of animal manure from agricultural operations to importing operations.

(b) Local power.—

(1) Except as set forth in paragraph (2), nothing in this act shall l prevent a political subdivision from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of this act and the regulations promulgated under this act.

(2) No penalty shall be assessed under a local ordinance or regulation for a violation for which a penalty has been assessed under this act.

3 Pa.C.S. § 2010.11.

10 *Purpose of act.*

It is the intent, purpose and scope of this act . . . to ensure that municipalities enact zoning ordinances that ***facilitate the present and future economic viability*** *of existing agricultural operations in this Commonwealth and* ***do not prevent or impede the owner or operator's need to change or expand*** *their operations in the future in order to remain viable . . .*

53 P.S. § 10105 (emphasis added).

11 *Ordinance provisions.*

Perhaps the most compelling advancement of the high priority intended under legislative enactment to encourage and protect pursuit of adaptive farming practices to sustain the farm's economic viability in agriculture is the General Assembly's enactment of Act 38 of 2005 itself, which has been commonly referred to as the "Agriculture, Communities and Rural Environment Act" or "ACRE" law. In addition to the increased regulatory standards for manure and odor management imposed through recodification of the Nutrient Management Act, Act 38 added Chapter 3 to the Pennsylvania Consolidated Statutes.

The main thrust of Chapter 3 is to give the Attorney General authority to bring a right of action on behalf of the Commonwealth against local governments to nullify local ordinances and regulatory actions that attempt to prohibit or restrict agricultural practices opposed by members of the local community in violation of the state preemption provisions prescribed in the agricultural protection statues or other statutory provisions that limit local governmental authority.[12] Chapter 3 additionally provides a

---

(b) Zoning ordinances, ***except to the extent that . . .regulation of activities related to commercial agricultural production would exceed the requirements imposed under the act of May 20, 1993 (P.L. 12, No. 6), known as the "Nutrient Management Act," regardless of whether any agricultural operation within the area to be affected by the ordinance would be a concentrated animal operation as defined by the "Nutrient Management Act," the act of June 30, 1981 (P.L. 128, No. 43), known as the " Agricultural Area Security Act," or the act of June 10, 1982 (P.L. 454, No. 133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances," or that regulation of other activities are preempted by other Federal or State laws*** *may permit, prohibit, regulate, restrict and determine [prescribed land uses].*

53 P.S. § 10603(b) (emphasis added).

Zoning ordinances shall encourage the continuity, development and viability of agricultural operations. . . Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present unless the agricultural operation will have a direct adverse effect on the public health and safety.

53 P.S. § 10603(h).

[12] *See*, 3 Pa.C.S. § 315(a).

process for farmers whose current farming practices or opportunities for participation in future farming practices are being illegally restricted by municipal ordinance or regulatory action to bring the illegal conduct to the attention of the Attorney General and engage the Attorney General in review and court action when the Attorney General determines such conduct to be an illegal exercise of local authority.[13] The legislature recognized that the numerous statutory provisions identified above to protect and preserve the integrity of agriculture in farming areas were merely paper tigers. Prior to ACRE, a substantial number of municipalities were failing to adhere to their limitation of authority, and virtually no individual farm had the financial means to assert the legal protections statutorily provided in the face of repeated attempts by local communities to severely restrict farming practices.

This Court, in *Commonwealth, Office of Attorney General v. Locust Township*, 600 Pa, 533, 968 A.2d 1263 (2009), aptly understood the serious threat that the mere presence of an unauthorized local regulatory standard imposes on the ability of farm families to viably manage their farms. In rejecting claims that the Attorney General had no authority under ACRE to challenge illegal local regulation of agriculture until active enforcement measures are initiated against the farmer, the Court majority in that case noted:

---

[13] See, 3 Pa.C.S. § 314.

> The dissent postulates a policy supporting a restriction on the Attorney General's right of action with regard to preexisting ordinances that the local municipality does not attempt to enforce. Specifically, the dissent asserts that it would be a waste of money to litigate the validity of ordinances that a municipality has no intention of enforcing. **Respectfully, this position would frustrate the Act's purpose by relegating to local farmers the same unsatisfactory alternatives described in Arsenal Coal: the farmer could either absorb the cost of complying with the local ordinance, which the farmer believes to be invalid, or refuse to comply and take his chances with the "penalties and impediments" which follow.** Arsenal Coal, 477 A.2d at 1340. If the farmer chooses the later course, and if the municipality chooses to bring an enforcement action, only then may the Attorney General choose to act. This would lead to parallel proceedings, one against the farmer and another against the municipality. **Such a result would frustrate Act 38's purpose of streamlining the process for resolving conflicts between state law and local ordinances by adding an additional layer of litigation onto a mechanism the legislature thought was already too cumbersome and expensive.**

Id. at 553, fn. 9, 968 A.2d at 1275, fn. 9 (emphasis added).

The analysis offered by this Court in *Locust Township*, affirmed the high priority intended by the General Assembly under the multitude of enacted agricultural statutes to favor and legally protect farm management decisions and activities performed by Pennsylvania's farm families that facilitate the continued existence and financial viability of their farms.

In applying statutory interpretation of the provisions Section 4(a) of the Right to Farm Act and resolving whether courts or juries should ultimately decide performance of an activity on a farm is part of "normal agricultural operation," this Court must recognize and effectuate this strong statutory policy favorable to farm families' pursuit of viable farming practices without interference by local communities. Any interpretation of Section 4(a) that would conflict with or impede this prevailing statutory policy should be rejected.

2. Assignment of the question whether specified farming practices are part of "normal agricultural operation" to juries as "issues of fact" would provoke parochial, arbitrary and inconsistent determinations that would thwart the intended public objectives established in the Right to Farm Act and other agricultural protection statutes to sustain and encourage the pursuit of viable farming practices in the Commonwealth and protect farm families pursuing viable agricultural practices from excessive legal actions.

The Right to Farm Act's definition of what is to be considered part of "normal agricultural operation" for purposes of Section 4(a)'s protection from nuisance actions plainly prescribes that the analysis and determination of what is to be considered to be "normal" are to be made from the perspective of the farmer and the agricultural industry, rather than from persons who are not engaged in farming or who have little practical experience in the needs of farm families in viably operating their farms:

> *"Normal agricultural operation." 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 and is:*
>
> *(1) not less than ten contiguous acres in area; or*
>
> *(2) less than ten contiguous acres in area but has an anticipated yearly gross income of at least $10,000.*
>
> ***The term includes new activities, practices equipment and procedures consistent with technological development within the agricultural industry.*** *Use of equipment shall include machinery designed and used for agricultural operations, including but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items of agricultural equipment and machinery defined by the act of December 12, 1994 (P.L. 944, No. 134), known as the Farm Safety and Occupational Health Act.* ***Custom work shall be considered a normal farming practice.***

3 P.S. § 952 (emphasis added).[14]

---

[14] For purposes of information, although "custom farm work" not defined in the Right to Farm Act, the term is commonly understood to be field preparation, planting and seeding, soil enhancement, harvesting and transportation and similar activities performed by a person under contract with a farmer to perform specialized ag production services on the farmer's farm.

The Act's definition of "normal agricultural operation" does not prescribe any minimum percentage or numerical threshold of farmers that must adopt, use or engage in a particular practice or item of equipment or machinery in order that practice, procedure, machinery or equipment to be "normal." As discussed on pages 18-19 of our Brief, subsequent amendments to the originally enacted version of the Right to Farm Act have expanded the scope of activities defined to be "normal" to also include farmers' engagement or use of **new** practices, procedures, equipment and machinery that are consistent with agricultural technological development. The definition also recognizes that inclusion of an activity performed on the farmer's farm as part of "normal agricultural operation" is not dependent on whether the farmer had personally performed the activity on his or her farm. And the definition itself does not prescribe any requirement for prevention or control of odor, dust or other impacts that may impinge on peaceful enjoyment of neighboring lands as a condition for an activity to be "normal."

Determination of whether performance of an activity on a farm falls within the scope of the Right to Farm Act's definition of "normal agricultural operation" is a simple and straightforward analysis based on the perspective of what farmers and the agricultural industry believe to be necessary for a farm's viability in response to unique land, soil, water economic and environmental conditions that vary, often significantly, from farm to farm.

In the context of Section 4(a)'s protection from nuisance actions, the definition of "normal agricultural operation" must plainly be read and applied in a manner that: (1) ensures determinations of "normal" are based on what individual farm families and the agricultural industry would consider to be necessary to the farm's short-term and long-term economic viability, not on a local resident's philosophical belief of what farming should be; and (2) ensures legal determinations of the issue whether an on-farm activity fall inside or outside the scope of "normal agricultural operations" are uniformly applied statewide.

Unfortunately, a number of farming practices that largely enhance farm families' ability to sustain their farms and livelihoods are not widely popular among the nonfarm public. Numerous attempts have been made by local communities and objecting neighbors to enact local ordinances and assert political and legal challenges in an effort to stop farm families from utilizing these practices, despite unwavering evidence that these attempts are fundamentally devoid of legal merit.

The case of *Commonwealth, Office of Attorney General v. East Brunswick Township*, 956 A.2d 1100 (Pa. Cmwlth. 2008) illustrates the degree and manner of advocacy which has been pursued by those objecting to individual farming practices in the face of obvious contrary principles of law. In *East Brunswick*, the Attorney General pursuant to the ACRE law,[15] challenged the legal validity of a township ordinance that attempted to impose extensive restrictions in the use of biosolids on farms for soil enhancement. The township filed preliminary objections, claiming among other matters,

---

[15] 3 Pa.C.S, Ch. 3. A discussion of the ACRE law is provided on pages 27-28 of our Brief.

that Pennsylvania's local governments possess an "inalienable right" to self-governance, with autonomous authority over "regulation of health and safety" superior to the powers of the Commonwealth. In rejecting the township's claim, the court offered obvious commentary that the principle of "local governments are creatures of the legislature from which they get their existence" is "one of the most basic precepts of governmental structure in this Commonwealth." and that "[m]unicipal corporations have no inherent powers and may do only those things which the Legislature has expressly or by necessary implication placed within their power to do so." *Id.* at 1107.[16]

Despite this principle having been consistently and unequivocally settled by our courts, some local officials and citizens groups continue to use the ideological claim of "inalienable right" of municipal self-governance and autonomous authority to keep unpopular activity outside municipal borders as the political battle cry to "legally justify" their continued attempts to pass ordinances and pursue legal claims to prohibit unpopular farming practices – attempts that should be known by now to be wholly unsupportable in law and legal precedent. *See, e.g., Commonwealth, Office of Attorney General v. Packer Township*, 49 A.3d 495, 499 (Pa. Cmwlth. 2012) (rejecting outright township's claim of inalienable right of municipal self-governance and noting that township's arguments in support of claim were virtually the same as those rejected in *East Brunswick*).

---

[16] *Citing, Denbow v. Borough of Leetsdale,* 556 Pa. 567, 576, 729 A.2d 1113, 1118 (1999) (citations omitted); Woodside, Pennsylvania Constitutional Act 507 (1985).

Allowing juries to preliminarily determine "as fact" whether performance of an on-farm activity is "normal" for purposes of Section 4(a)'s protection from nuisance actions substantially increases the likelihood for results that are based on personal biases and individual tastes of the "factfinder," contravening the type of objectivity in analysis and application of law intended by the General Assembly under the Right to Farm Act and agricultural protection statutes. Jurors as "factfinders" would be put in a material position to "determine" any type of practice frequently used on farms that they personally do not like or feel farmers should not be doing is not part of "normal agricultural operation." Jurors could disregard and nullify through "factual determination" the clear direction that the General Assembly has legally required to be given in the Right to Farm Act that "normal agricultural operation" is to be considered and judged exclusively from the perspective of the farmer, not from the juror's ideal beliefs or ideologies of how a family farm should operate. And the same farming activity performed on farms in neighboring counties could be "determined" by one county's jury panel to fall outside the scope of "normal agricultural operation" and by the other county's jury panel to fall within the scope of "normal agricultural operation."[17]

These outcomes are precisely what the General Assembly does not intend under the Right to Farm Act and the numerous agricultural statutes identified above and prevailing policy objectives consistently established in those statutes to favor and encourage agriculture and provide legal consistency and deference to the needs of Pennsylvania's farm families in the pursuit of practices that viably sustain their farms.

---

[17] This Court must keep in mind that the determination of whether an on-farm activity is part of "normal agricultural operation is critical to Section 4(a)'s protection from nuisance actions. If the activity is not determined to be "normal," the protection does not apply.

The opportunity for jurors to apply subjective, parochial, inconsistent and arbitrary judgment on each of the many tasks and activities performed by farm families on their farms would seriously thwart the attainment of the prevailing public policy goals favorable to agriculture that have been solidified through the Right to Farm Act and the companion agricultural statutes enacted by the legislature.

Judges are sworn to apply, and earnestly do apply, established principles of jurisprudence based on application of the judge's objective analysis and determination of statutory language and legislative intent, as well as legal precedent established under prior case holdings. Judges solemnly endeavor to render judgment on issues of conflict based on the judge's objective perception of what the true and accurate application of lawis, even if the conclusion conflicts with the judge's personal opinion of what the law should be ideally or personal belief of what the best outcome should be. More specifically to statutes, judges strive to determine outcomes based on the express provisions of statute or conclusions that will further the public policy purposes and objectives intended to be achieved in statute, even though the judge may personally question the wisdom of the outcome prescribed in the statute, the public policy objectives the statute is trying to achieve, or the means selected by the legislature in the statute to achieve the policy objectives. Essentially, judges do not allow their personal views to replace objective analysis and application of law in their decision making and determinations.

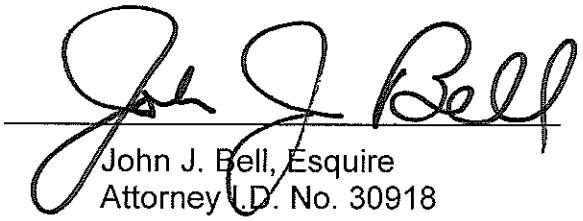
A holding by this Court that issues pertaining to "normal agricultural operations" are matters of law to be exclusively determined by courts, not juries, will virtually eliminate the opportunity for mischief and personal bias in determinations on the issue, and will better ensure achievement of the intended public policy objectives favorable to agriculture established in the Right to Farm Act and companion agricultural statutes.

CONCLUSION

Amici Curiae, Pennsylvania Farm Bureau and PennAg Industries Association, respectfully request that this Court reverse the holding of the court below, and conclude that the question of whether performance of a particular activity on a farm is part of "normal agricultural operation" for protection of that farm from nuisance actions under the Right to Farm Act's statute of repose provisions is one of law to be determined exclusively by a court.

Respectfully submitted,
PENNSYLVANIA FARM BUREAU,
PENNAG INDUSTRIES ASSOCIATION
Amici Curiae

BY:



John J. Bell, Esquire
Attorney I.D. No. 30918
P.O. Box 8736
510 S. 31st Street
Camp Hill, PA 17001-8736
(717) 761-2740
Attorney for Amici Curiae

APPENDIX 1 – MAJORITY OPINION AND ORDER AND DISSENTING OPINION ENTERED BY SUPERIOR COURT AT DOCKET NO 119 MDA 2013

J-A32014-13

2014 PA Super 77

RALPH GILBERT, GLORIA GILBERT, MICHELLE TORGERSON, EDWIN TORGERSON, MELDA BITTORF, BEVERLY COX, WILLIAM COX, KIMBERLY MILES, CLEA 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 VAN VOORHIS, SUSAN LEE FOX, TERRENCE FANCHER AND DONNA FANCHER,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellants	:	
v.	:	
SYNAGRO CENTRAL, LLC, SYNAGRO MID-ATLANTIC, GEORGE PHILLIPS, HILLTOP FARMS AND STEVE TROYER,	:	
Appellees	:	No. 119 MDA 2013

Appeal from the Order entered December 28, 2012,
Court of Common Pleas, York County,
Civil Division at No. 2008-SU-003249-01

BEFORE: DONOHUE, OTT and PLATT*, JJ.

OPINION BY DONOHUE, J.: **FILED APRIL 15, 2014**

Appellants, Ralph Gilbert, Gloria Gilbert, Michelle Torgerson, Edwin Torgerson, Melda Bittorf, Beverly Cox, William Cox, Kimberly Miles, Clea

*Retired Senior Judge assigned to the Superior Court.

Fockler, John Fockler, Linda Eckert, Scott Eckert, William Strine, Kenny Jasinski, Dennis Jasinski, Kathryn Jasinski, Joseph Jasinski, Patricia Unversagt, 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 Van Voorhis, Susan Lee Fox, Terrence Fancher, and Donna Fancher (collectively, the "Residents"), appeal from the trial court's order granting summary judgment in favor of Synagro Central, LLC and Synagro Mid-Atlantic (together "Synagro"), George Phillips ("Phillips"), Hilltop Farms ("Hilltop"), and Steve Troyer ("Troyer") (collectively, the "Farm Parties"). Because we conclude, *inter alia*, that issues of material fact remain with respect to whether the use of biosolids in this case is a "normal agricultural operation" under the Right To Farm Act, 3 P.S. §§ 951-957 (the "RTFA"), we reverse the trial court's order and remand the case for further proceedings consistent with this decision.

The Residents all own or reside at properties located adjacent to a 220-acre farm in New Freedom, York County, Pennsylvania (the "Farm"), owned by Phillips since 1986. On this farmland, Phillips owns and operates Hilltop Farms, a farm business. Since 2003, Troyer has leased portions of the farmland from Phillips, and has planted and harvested crops, including corn and soybeans. Synagro contracts with municipalities to recycle and transport biosolids for land applications, and in 2005 obtained a permit from the Pennsylvania Department of Environmental Protection (the "PaDEP") to

provide "land application and long-term storage services" of biosolids to Phillips at Hilltop Farm.

According to the Residents, biosolids (sometimes referred to as "sewage sludge"), is a "viscous, semi-solid mixture of bacteria, virus-laden organic matter, toxic metals, synthetic organic chemicals, and settled solids removed from domestic and industrial waste water at sewage treatment plants." Amended Complaint, 7/23/2010, at ¶ 53. Sewage sludge contains "prescription drug products and their biologically active metabolites, synthetic chemicals, and other industrial chemicals, waste, and toxic runoff," and the sludge treatment process often raises the pH to a level where it "is irritating to skin, nose, throat and lungs, and can cause rashes and burns." ***Id.*** at ¶¶ 55-56.

Beginning in March 2006 and continuing until April 2009, approximately 11,635 wet tons of biosolids were applied to fields at the Farm, including as follows:

- Over three days in March 2006, approximately 1,113 tons of biosolids were applied on three fields (nos. 7,9, and 11) totaling approximately 67 acres (an overall average of 16 and one half tons per acre, or about seven pounds per square yard);

- In May 2006, approximately 437 tons were applied on two fields (nos. 1 and 3) totaling approximately 48 acres over two days (an overall average of about nine and one half tons per acre);

- Over three days in September 2006, approximately 1,100 tons were applied on two fields (nos. 2 and 5)

totaling approximately 40 acres (an average of more than 27 tons per acre, or about 11 pounds per square yard);

- In late March through mid-April 2007, approximately 1,504 tons were applied on four fields (nos. 7,9,11, and 12) totaling approximately 74 acres (an average of about 20 tons per acre);

- In late April and May 2007, approximately 1.301 tons were applied to one field (no. 14) of approximately 54 acres (an average of about 24 tons per acre);

- Over three days in July 2007, approximately 1,774 tons of biosolids were applied on six fields (nos. 1,3,6,8,10, and 13) totaling approximately 100 acres (an average of less than 18 tons per acre, or about 7.5 pounds per square yard);

- In January and February 2008, approximately 1,593 tons were applied to six fields (nos. 6,7,8,9,10, and 11) totaling approximately 110 acres (an average of about 13 and one half tons per acre);

- In October 2008, approximately 424 tons were applied on three fields (nos. 1,4, and 8) totaling approximately 59 acres (an average of about 13 and one half tons per acre); and

- In March and April 2009, approximately 1,430 tons were applied to eight fields (nos. 2,3,5,9, and 11-14) totaling approximately 120 acres (an average of 12 tons per acre).

Farm Parties' Summary Judgment Exhibits J and K. The biosolids were spread over the surface of the fields and were not immediately tilled or plowed into the soil. ***Id.*** at Exhibit F. According to the Residents, as soon as the spreading of biosolids at the Farm began, they immediately noticed

extremely offensive odors, "typically smelling like a herd of dead, rotting deer." Amended Complaint, 7/23/2010, at ¶ 86.

The application of the biosolids was monitored by the PaDEP and the York County Solid Waste Authority, and three notices of violation were issued, although none involved odors emanating from the Farm.[1] Farm Parties' Summary Judgment Exhibits at Exhibits O, P, and Q. In October 2009, Snyagro notified the PaDEP that it was suspending the use of biosolids at the Farm. ***Id.*** at Exhibit S.

On July 3, 2008 and July 10, 2008, the Residents filed two similar three-count complaints. On December 1, 2008, the trial court consolidated the two actions. On July 23, 2010, with leave of court the Residents filed a joint Amended Complaint, which sets forth three counts. In Count I, the Residents allege that the biosolids activities of the Farm Parties have resulted in offensive conditions and created a health hazard for those living on the adjoining properties, in the nature of a private nuisance. In Count II, the Residents allege that the Farm Parties have acted negligently because the Farm Parties failed in their duty to properly handle and dispose of the biosolids in a manner to avoid the potential harm to the Residents. In Count III, the Residents allege that biosolids activities of the Farm Parties

[1] Two of the violations, received in March 2006 and April 2009, alleged that biosolids had been spread beyond designated target areas. The Farm Parties contend that they took immediate corrective actions in response. The third notice was issued in June 2007 for tilling a field too soon after application of biosolids.

constitute a trespass onto their land. The Residents seek injunctive relief, compensatory and punitive damages, and counsel fees and costs.

On July 25, 2011, the Farm Parties filed a Joint Motion for Summary Judgment, and the Residents filed a response in opposition. On October 14, 2011, the trial court denied the motion for summary judgment, stating as follows:

> Because RTFA does not specifically mention sewer sludge or biosolids, it is not clear, as a matter of law, that the application of biosolids is a 'normal agricultural operation' under the protection of the RTFA. Even though each side refutes the other's position whether the application of sewer sludge/biosolids is a normal agricultural operation, neither side has presented any supporting evidence.
>
> * * *
>
> Because [the Farm Parties] have not provided any supporting evidence to show what constitutes 'normal agricultural operations' or that application of biosolids is a 'normal agricultural operation,' the Motion for Summary Judgment is denied.

Trial Court Opinion, 10/14/2011, at 8-9.

On July 2, 2012, after discovery, the Farm Parties filed a second Joint Motion for Summary Judgment, and the Residents again filed a response in opposition. In an opinion and order dated December 28, 2012, the trial court granted the motion for summary judgment, concluding that the Residents' nuisance count was barred by the statute of repose set forth in

section 954(a) of the RTFA and that the Residents had failed to plead a *prima facie* claim for negligence or trespass.

This timely appeal followed, in which the Residents present the following two issues for our consideration and determination:

> 1. Whether the trial court erred in granting summary judgment and holding that the Residents' nuisance and negligence claims were barred by the one-year limitation in the [RTFA].
>
> 2. Whether the trial court erred in granting summary judgment and holding that the Residents failed to plead *prima facie* claims for negligence and trespass.

Residents' Brief at 2. The following parties have submitted *amicus curiae* briefs, all in support of the position of the Farm Parties: the PaDEP, the Office of the Attorney General of the Commonwealth of Pennsylvania and the Pennsylvania Department of Agriculture, the City of Philadelphia, the Pennsylvania Municipal Authorities Association and the Allegheny County Sanitary Authority, the Pennsylvania Farm Bureau, the PennAg Industries Association, and the Mid-Atlantic Biosolids Association, the Pennsylvania Water Environment Association, and the Pennsylvania Septage Management Association.

Our standard of review with respect to a trial court's decision to grant or deny a motion for summary judgment is as follows:

> A reviewing court may disturb the order of the trial court only where it is established that the court committed an error of law or abused its discretion. As with all questions of law, our review is plenary.

> In evaluating the trial court's decision to enter summary judgment, we focus on the legal standard articulated in the summary judgment rule. Pa.R.C.P. 1035.2. The rule states that where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law, summary judgment may be entered. Where the non-moving party bears the burden of proof on an issue, he may not merely rely on his pleadings or answers in order to survive summary judgment. Failure of a nonmoving party to adduce sufficient evidence on an issue essential to his case and on which it bears the burden of proof establishes the entitlement of the moving party to judgment as a matter of law. Lastly, we will view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.

JP Morgan Chase Bank, N.A. v. Murray, 63 A.3d 1258, 1261–62 (Pa. Super. 2013) (quoting ***Murphy v. Duquesne Univ. of the Holy Ghost***, 565 Pa. 571, 590, 777 A.2d 418, 429 (2001)).

For their first issue on appeal, the Residents contend that the trial court erred in granting summary judgment in favor of the Farm Parties with regard to whether section 954(a) of the RTFA bars the Residents' nuisance claim.[2] Our legislature passed the RTFA in 1982 in an effort to "protect agricultural operations from the encroachment of nonagricultural uses and the nuisance suits which inevitably follow." ***Horne v. Haladay***, 728 A.2d

---

[2] The trial court also ruled that section 954(a) bars the Residents' negligence claim because the facts that support the negligence claim mirror those that support the nuisance claim. Trial Court Opinion, 12/28/2012, at 24-28. We will discuss the dismissal of the Residents' nuisance claim herein below.

954, 956 (Pa. Super. 1999). Section 951 provides the following legislative policy statement:

§ 951. Legislative policy

> It is the 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.

The limitations on nuisance actions are set forth in the statute of repose in section 954 of the RTFA, and require a plaintiff either to file the nuisance action within one year of the inception of the agricultural operation or a substantial change in that operation, as provided in subsection 954(a), or to base their nuisance claim on a violation of a federal, state or local statute or regulation, as provided in subsection 954(b).

§ 954. Limitation on public nuisances

> **(a) No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as**

> **constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation and are normal agricultural operations**, or if the physical facilities of such agricultural operations are substantially expanded or substantially altered and the expanded or substantially altered facility has either: (1) been in operation for one year or more prior to the date of bringing such action, or (2) been addressed in a nutrient management plan approved prior to the commencement of such expanded or altered operation pursuant to section 6 of the act of May 20, 1993 (P.L. 12, No. 6), known as the Nutrient Management Act, and is otherwise in compliance therewith: Provided, however, [t]hat nothing herein shall in any way restrict or impede the authority of this State from protecting the public health, safety and welfare or the authority of a municipality to enforce State law.
>
> (b) The provisions of this section shall not affect or defeat the right of any person, firm or corporation to recover damages for any injuries or damages sustained by them on account of any agricultural operation or any portion of an agricultural operation which is conducted in violation of any Federal, State or local statute or governmental regulation which applies to that agricultural operation or portion thereof.

3 P.S. § 954 (emphasis added).

The parties agree that only the bolded portion of subsection 954(a) is applicable in this case, as neither side contends that the physical facilities at the Farm have been substantially expanded or altered. In the trial court, the Residents argued that the three notices of regulatory violations (mentioned herein above) implicated subsection 954(b), thereby negating application of the statute of repose here. In its opinion granting summary judgment,

however, the trial court ruled that subsection 954(b) did not apply in this case because the Residents did not allege in the Amended Complaint that any of their alleged injuries were the result of these violations. Trial Court Opinion, 12/28/2012, at 20-21. The Residents have not appealed this determination.

By its express terms, the statute of repose set forth in subsection 954(a) applies to bar a nuisance action only if three requirements are met. First, the agricultural operation at issue must have an established date of operation at least one year prior to the filing of the lawsuit. Second, the conditions or circumstances constituting the basis of the nuisance action must have existed substantially unchanged since the established date of operation. And third, the conditions or circumstances constituting the basis of the nuisance action must be a "normal agricultural operation," as that term is defined in 3 P.S. § 952.[3]

---

[3] The Dissent contends that whether the Farm Parties' use of biosolids constitutes a "normal agricultural operation" is an issue beyond the scope of this Court's purview in deciding this appeal, since whether the trial court properly applied subsection 954(a)'s statute of repose must be determined based only on the identity of the parties, the commencement date of the application of biosolids, and the filing dates of the Residents' complaints. Dissenting Opinion at 3.

We note that neither the trial court, the Farm Parties, nor any of the *amicus curiae* have advocated such a position before this Court. To the contrary, all plainly agree that the statute of repose in subsection 954(a) applies only to protect "normal agricultural operations" against nuisance suits filed beyond the one-year deadline. ***See, e.g.***, Farm Parties' Brief at 19 ("the statute expressly protects 'normal agricultural operations'"). As a result, a

With respect to the first requirement, the trial court agreed with the Residents that the "agricultural operation" at issue here is that conducted at the Farm and that its "established date of operation" is 1986 when Phillips purchased the property. Trial Court Opinion, 12/28/2012, at 18-19. The Farm Parties question why the "established date of operation" should be set at the date of Phillips' acquisition of the farmland in 1986, since the land had been used for farming for many years prior to this date. Farm Parties' Brief at 28-32. The Farm Parties do not contend, however, that determination of this issue is necessary in this context, since whether the "established date of operation" is 1986 or some earlier point in time, in either event the Residents' lawsuit was not filed until 2008, well beyond the one-year requirement in subsection 954(a).

Before addressing the second and third requirements for application of subsection 954(a), we must determine what precisely constitutes the "the conditions or circumstances complained of as constituting the basis for the nuisance action." The Residents contend that this phrase refers to the odors and health effects resulting from the use of biosolids at the Farm, while the Farm Parties argue instead that the phrase connotes an "objective, operational change" in the agricultural operations at the Farm. Residents'

---

determination of whether the Farm Parties' use of biosolids in this case was a "normal agricultural operation," as that phrase is used in section 954(a) of the RTFA, was unquestionably an issue before the trial court and, hence, likewise an issue for this Court to decide on appeal.

Brief at 27; Farm Parties' Brief at 34. In resolving this dispute, we note that the goal and purpose of statutory interpretation is to ascertain legislative intent and give it effect, and that the plain language of the statute is, as a general rule, the best indicator of that intent. 1 Pa.C.S.A. § 1921(a); ***Mohamed v. Com., Dept. of Transp., Bureau of Motor Vehicles***, 615 Pa. 6, 18, 40 A.3d 1186, 1193 (2012); ***Mercury Trucking, Inc. v. Pa. PUC***, __ Pa. ___, ___, 55 A.3d 1056, 1067-68 (2012).

In our view, neither of the proposed interpretations adequately captures the legislature's intent here. The Residents' exclusive focus on the effects of the nuisance ignores that the "conditions and circumstances" at issue must constitute the "basis for the nuisance action." Likewise, nowhere in the relevant language is there any reference limiting the scope of the subsection to "operational changes."

Our Supreme Court elucidated the basis for a nuisance action in ***Kramer v. Pittsburgh Coal Co.***, 341 Pa. 379, 380, 19 A.2d 362, 363 (1941):

> In legal phraseology, the term 'nuisance' is applied to that class of wrongs that arise from the unreasonable, unwarrantable, or unlawful use by a person of his own property, real or personal, or from his own improper, indecent, or unlawful personal conduct, working an obstruction or injury to a right of another, or of the public, and producing such material annoyance, inconvenience, discomfort or hurt that the law will presume a consequent damage. The distinction between trespass and nuisance consists in the former being a direct infringement of

> one's right of property, while, in the later, the infringement is the result of an act which is not wrongful in itself, but only in the consequences which may flow from it.

Id. at 380, 19 A.2d at 363 (citations and internal quotation marks omitted).

Accordingly, to sustain a nuisance action, a plaintiff must allege both (1) a use of property or conduct by a property owner that (2) results in material annoyance, inconvenience, or discomfort to another person or to the public. As a result, the phrase "conditions or circumstances complained of as constituting the basis for the nuisance action," must refer to the Farm Parties' application of biosolids at the Farm, as "complained of" in the Residents' Amended Complaint, that has resulted in foul odors and other harmful effects on the Residents.

With this definition in mind, we turn to the second requirement for application of subsection 954(a) – whether the "conditions or circumstances complained of as constituting the basis of the nuisance action" have existed substantially unchanged since the established date of operation. The trial court ruled that organic fertilizers had been used at the Farm since at least 1986, and that because biosolids are just another form of organic fertilizer, no substantial change had occurred. Trial Court Opinion, 12/28/2012, at 20. In our view, this was error, since, as just established, the "conditions or circumstances complained of as constituting the basis of the nuisance action" refers not just to the use of an organic fertilizer at the Farm, but rather to

the use of an organic fertilizer ***that resulted in extremely foul odors and health effects***. The basis for the Residents' nuisance claim is not merely that the Farm Parties' changed the type of fertilizer used at the farm, but rather than the change in fertilizers resulting in severe nuisance conditions.

Substantial evidence in the record establishes a genuine issue of material fact with respect to whether the switch to biosolids in 2006 constituted a substantial change. Numerous Residents testified that the odors experienced on their properties in 2006 and thereafter were extremely offensive and noxious, smelled like dead animals, and was so bad that on many occasions they could not leave their homes. For example, one Resident indicated that the smell was such that "you couldn't even go outside" and that it "smelled like death." Scott Eckert Dep. at 36-37. The Residents also testified that they had long been familiar with the odors from animal manures and had never objected to these smells. T. Fancher Dep. at 22; M. Torgerson Dep. at 93-94; J. Freese Dep. at 48 ("I enjoy the smell of manure. I think it is the most down-to-earth country smell that you could smell."). According to the Residents, the Farm Parties' use of biosolids created odors that were far worse than comparable odors from animal manures previously used at the farm. T. Fancher Dep. at 35-36 (biosolid use "changed the way we lived" and was far worse than animal manures); S. Fox Dep. at 112 (biosolids had a "nauseating, repulsive stench" far worse than cow manure); R. McSherry Dep. at 28-29 (animal manure has a quick

smell that soon leaves you, but biosolids "was a lot stronger odor, and it stayed constantly").

For these reasons, we conclude that the certified record indicates that a material issue of fact exists with respect to whether the Farm Parties' use of biosolids at the Farm constituted a "substantial change" from prior operations. We nevertheless conclude, however, that the Farm Parties satisfied the second requirement for application of the RTFA's statute of repose, since the alleged substantial change occurred more than one year before the Residents filed their lawsuits in this case. The certified record plainly establishes that the Farm Parties began to apply biosolids in large quantities at the farm in March 2006, more than two years prior to the filing of the Residents' two lawsuits on July 3, 2008 and July 10, 2008. A substantial change does not eliminate subsection 954(a)'s one-year statute of repose entirely, but rather merely resets it, permitting the filing of a nuisance action within one year from the date of the substantial change. ***Horne***, 728 A.2d at 956. Accordingly, even if the Residents could prove at trial that the Farm Parties' use of biosolids constituted a substantial change, their lawsuits would still not satisfy the timeliness requirements under subsection 954(a).[4]

[4] Assuming that the use of biosolids is a "normal agricultural operation," an issue discussed herein below.

The Residents offer two arguments in opposition to this conclusion, neither of which we find to be persuasive. First, the Residents contend that no language in subsection 954(a) indicates that the one-year time period resets after a substantial change, and that as a result after a substantial change occurs, the RTFA no longer bars nuisance actions. Residents' Brief at 33. In ***Horne***, however, this Court decided to the contrary. In that case, the agricultural operation (a poultry business) began in November 1993, the defendant constructed a decomposition house in August 1994, and the appellant filed suit in November 1995. ***Horne***, 728 A.2d at 956. We ruled that subsection 954(a) barred appellant's lawsuit even if construction of the decomposition house constituted a substantial change, as suit was not filed until more than one year after its completion. ***Id.***

Moreover, we agree with the Farm Parties that the Residents' proposed interpretation of subsection 954(a) is inconsistent with legislative intent. Section 951 of the RTFA sets forth a clear legislative policy 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. The Residents' interpretation, pursuant to which the statute of repose specifically designed to accomplish this legislative mandate is eliminated after any substantial change resulting in a nuisance, fails to accomplish this fundamental legislative goal.

Second, the Residents argue that even if the one-year time period resets after a substantial change, the Farm Parties' application of a large quantity of biosolids in July 2007 constituted a second substantial change. Residents' Brief at 37. According to the Residents, the Farm Parties applied 1.8 million pounds of biosolids over a weekend in July 2007, and the extremely hot temperatures exacerbated the intensity of the odors. ***Id.*** An increase only in the extent of the nuisance conditions, however, cannot constitute a substantial change, since the use or conduct that formed the basis for the Residents' nuisance claims – namely the application of biosolids – did not change at all. The RTFA's statute of repose would be rendered entirely ineffectual if plaintiffs could continue to restart the one-year time period by pointing to increases over time in their perception of the degree of the offensive conditions.

The third requirement under the RTFA's statute of repose in subsection 954(a) is that the practice in question must qualify as a "normal agricultural operation." The RTFA defines "normal agricultural operation" as follows:

> **"Normal agricultural operation."** 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 and is:
>
> > (1) not less than ten contiguous acres in area; or

> (2) less than ten contiguous acres in area but has an anticipated yearly gross income of at least $10,000.
>
> The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including, but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items of agricultural equipment and machinery defined by the act of December 12, 1994 (P.L. 944, No. 134), known as the Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice.

3 P.S. § 952. Practices that do not qualify as "normal agricultural operations" are not protected under the RTFA. The trial court ruled that "the application of biosolids does constitute an activity or practice that has been adopted or used by farmers, and is consistent with technological development, and accordingly, meets the RTFA's definition of a "normal agricultural operation." Trial Court Opinion, 12/28/2012, at 13.

On appeal, the Farm Parties contend that the application of biosolids on farmland is a "normal agricultural operation" as a matter of law, without any need to review the evidentiary record. Farm Parties' Brief at 17-21. In this regard, the Farm Parties point out that in 1998, the legislature amended the definition of "normal agricultural operations" to delete a prior limitation of "customary and generally accepted" activities, practices, equipment, and

procedures engaged in "year after year," and instead added the phrase "new activities, practices, equipment and procedures consistent with technological development within the agricultural industry." ***Id.*** at 20. The trial court concurred with the Farm Parties that the use of biosolids is indeed a new practice "consistent with technological development within the agricultural industry," citing to regulations authorizing the regulated use of biosolids promulgated by the United States Environmental Protection Agency ("EPA") in 1993 and the PaDEP in 1997. Trial Court Opinion, 12/28/2012, at 12. The trial court further noted that PaDEP regulations define "normal farming operations" under Pennsylvania's Solid Waste Management Act ("SWMA") to include using waste to improve soil, and that the Commonwealth Court, in ***Hempfield Twp. v. Hapchuk***, 620 A.2d 668 (Pa. Commw. 1993), has interpreted this regulatory definition to conclude that the application of sewer sludge is a "farming and agricultural use." ***Id.*** at 672; Trial Court Opinion, 12/28/2012, at 12.

Contrary to these arguments, however, nowhere in the definition of "normal agricultural operation" did the legislature include any language suggesting that the application of biosolids on farmland meets this definition. At the time of the amendment of the definition in 1998, the EPA (in 1993) and the PaDEP (in 1997) had both issued regulations authorizing the use of biosolids on farmland, but the legislature did not include the use of biosolids in its amended definition as a new practice "consistent with technological

development within the agricultural industry." A specific mention of biosolids was undoubtedly an option available to the legislature at that time, since other practices (*e.g.*, custom work) and types of equipment (*e.g.*, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment) are clearly identified. As such, we cannot agree with the contention that the legislature's amendment of the definition in 1998 was specifically intended to incorporate the application of biosolids as a "normal agricultural operation."

We likewise reject the contention that the PaDEP's regulatory definition of "normal farming operations" under the SWMA or the Commonwealth Court's interpretation of this definition in the ***Hempfield*** case compels a conclusion that the use of biosolids qualifies as a "normal agricultural operation" as a matter of law. To the contrary, in subsequent decisions the Commonwealth Court has emphatically ruled to the contrary. In ***Com., Office of Atty. Gen. ex rel. Corbett v. East Brunswick Twp.***, 956 A.2d 1100 (Pa. Commw. 2008), for example, the Attorney General of Pennsylvania brought an action in the Commonwealth Court pursuant to Act 38, 3 P.S. §§ 311-318, which directs the Attorney General to review local ordinances upon the request of any owner or operator of a "normal agricultural operation" and to determine whether the local ordinance enforces the policy set forth in section 953 of the RTFA not to impede "normal agricultural operations." 3 P.S. §§ 311-318. Act 38 adopts and

incorporates the RFTA's definition of "normal agricultural operation." ***Id.*** at §§ 312; 952.

In ***East Brunswick***, the Attorney General challenged a local ordinance regulating the application of biosolids on farmland as fertilizer. For three reasons, a three-judge panel of the Commonwealth Court concluded that summary judgment in favor of the Attorney General was not warranted, since whether the use of biosolids is a "normal agricultural operation" is "a factual determination based upon evidence" rather than a legal determination based upon the SWMA regulations or its prior decision in ***Hempfield***:

> First, the legislature did not expressly incorporate by reference Section 103 of the SWMA into Act 38, as it did expressly incorporate [the definition of 'normal agricultural operation'] of the [RTFA]. Indeed, Section 103 provides that its definitions are to be followed "when used in this act," *i.e.*, the SWMA; it does not expand its definitions for use in other statutes, such as Act 38. Further, the regulation upon which the Attorney General relies was not adopted by the Department of Agriculture under authority of the [RTFA]. Rather, it was adopted by [PaDEP] under the SWMA, a statute not intended to promote agriculture but to regulate 'solid waste practices.' Section 102 of the SWMA, 35 P.S. § 6018.102.
>
> Second, 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.' 3 Pa.C.S. § 314(d). This suggests, at a minimum, that the determination of what constitutes a 'normal agricultural operation' is an evidentiary,

> not a legal, determination. Here, the Township vehemently challenges the finding that the application of sewage sludge to land is either 'normal' or even 'agricultural.' It argues 'corporate ... sewage sludge hauling' is an industrial and municipal activity. Township Brief in Support of Preliminary Objections at 10–11.
>
> Third, as noted by the Township, nowhere in Act 38 is there any mention of sewage sludge or its application to land. Similarly, [the definition of 'normal agricultural operation' of the [RTFA]], which has been incorporated into Act 38, says nothing about sewage sludge. Because the Attorney General has filed for summary relief, there is no evidentiary record, not even an affidavit, on which to make the factual finding that 'sewage sludge application' is a 'normal agricultural operation' and not 'industrial waste disposal,' as asserted by the Township.

East Brunswick, 956 A.2d at 1115-16 (footnote omitted). We find the reasoning of the Commonwealth Court on these points to be persuasive.

Finally, the Farm Parties argue that courts should decide what constitutes a "normal agricultural operation" as a matter of law since there is "no suggestion in the RTFA that it requires evidentiary hearings or jury trials to determine what is a normal agricultural operation, and reading this into the statute would eliminate the certainly that is the hallmark of a statute of repose." Farm Parties' Brief at 27. In this regard, the Farm Parties contend that statutes of repose are jurisdictional in nature, and thus their scope and applicability pose questions of law for courts. Farm Parties' Brief at 15-16. We agree that statutes of repose are jurisdictional in nature, and that as a result their ***scope***, as determined by statutory interpretation, presents a

question of law for courts to decide. ***See, e.g.***, ***Smith v. W.C.A.B.***, 543 Pa. 295, 300, 670 A.2d 1146, 1148-49 (1996).

With respect to the ***applicability*** of statutes of repose, however, issues of fact are often determinative, and a party may avoid summary judgment by identifying sufficient evidence in the record to establish that one or more issues of material fact remain for consideration by the eventual finder of fact. In ***McConnaughey v. Building Components, Inc.***, 536 Pa. 95, 637 A.2d 1331 (1994), for example, our Supreme Court reversed a grant of summary judgment in favor of a product manufacturer pursuant to 42 Pa.C.S.A. § 5536, a statute of repose applicable to construction projects. ***Id.*** at 102, 637 A.2d at 1335. The Supreme Court concluded that a genuine issue of material fact remained with respect to the extent of the manufacturer's involvement in the planning, design, or construction of the structure at issue. ***Id.*** Likewise, in ***Prigden v. Parker Hannifin Corp.***, 974 A.2d 1166 (Pa. Super. 2009), this Court quashed as interlocutory an appeal from a trial court's order denying summary judgment, on the grounds that the trial court properly determined that issues of fact remained regarding the applicability of a statute of repose under the General Aviation Revitalization Act, 49 U.S.C. § 40101. ***Id.*** at 1172; ***see also Stewart v. Precision Airmotive, LLC***, 7 A.3d 266, 277 (Pa. Super. 2010), *appeal denied*, 615 Pa. 779, 42 A.3d 294 (2012) (same).

We must turn then to the evidentiary record to determine whether a material issue of fact exists with respect to whether the Farm Parties' use of biosolids, as described in the Residents' Amended Complaint, is a "normal agricultural operation." The trial court, in granting summary judgment, found persuasive evidence offered by the Farm Parties and *amici* showing that "over the past 20 years, [PaDEP] has permitted approximately 1,500 sites, including farms, for the application of biosolids, and more than 700 of those sites had active permits as of 2010." Trial Court Opinion, 12/28/2012, at 10-11. PaDEP statistics further showed that more than 70 sites in York County had been approved for the use of biosolids on farmland in the past 15 years. ***Id.*** at 11. The trial court found it significant that the PaDEP closely regulates this practice. ***Id.***

In response to the Residents' contention that 700 farms constitutes only 1% of the 63,163 farms in Pennsylvania and thus provides little evidence that the use of biosolids on farmlands is either a normal or widespread practice, the trial court responded by pointing out that the 1% calculation may be misleading because the total number of farms also includes various types of non-agricultural operations, like livestock and poultry farms. ***Id.*** at 11-12. The trial court reached no finding of fact, however, as to what a more accurate percentage of farms using biosolids might be. Instead, the trial court observed that the definition of "normal agricultural operation" is silent as to numbers, and thus "to find that

biosolids are not a normal agricultural operation simply based on the fact that the 700 sites constituted only 1% of total farms goes beyond the plain language of the definition, as well as the intent of the RTFA." ***Id.*** at 12.

Essentially, then, the statistics regarding the number of Pennsylvania farms using biosolids are not determinative, one way or the other, of whether the practice is a "normal agricultural operation." In this regard, we note that just as the definition is silent as to numbers, it is also silent with regard to the effect, if any, of governmental regulation. While it is undoubtedly true that the application of biosolids on farmland is closely regulated by the PaDEP, nothing in the definition suggests that governmental regulation of the practice should play any substantial role in determining whether it is a "normal agricultural operation" under the RTFA. As indicated herein above, the PaDEP began regulating the use of biosolids in 1997, but when the legislature amended the definition of "normal agricultural operation" in 1998, no language was added to delineate that the use of biosolids was intended to be included within its scope.

Neither the trial court nor the Farm Parties have directed this Court to any other evidence in the record to establish as a matter of law that the use of biosolids is a "normal agricultural operation." The Residents, on the other hand, point to a substantial quantity of evidence to show that the Farm Parties' particular use of biosolids in this case was not normal or routine and failed to conform to accepted EPA and industry practices. For example,

evidence of record, including deposition testimony from several of the Residents, suggests that the Farm Parties took no steps to mitigate odors and other nuisance conditions resulting from their use of biosolids, and had no odor management or nuisance control plans. As such, the Residents argue that "it is not 'normal' for a farm to send odors unlimited in intensity, duration, frequency, or character" across and onto neighboring properties. Residents' Brief at 39. The Residents have submitted an affidavit from an expert on EPA recommended management practices for the use of biosolids. ***Id.*** at 40. According to this affidavit, these management practices include "selecting remote sites and fields away from neighbors, minimizing storage time for sewage sludge, developing an odor control plan, avoiding land applications during certain wind or weather conditions, ... and having an alternative disposal option for particularly malodorous batches." ***Id.*** The Residents contend that testimony from representatives of the Farm Parties establishes that they made no attempts to comply with any of these management practices. ***Id.*** at 11-12.

In our view, the certified record on appeal does not demonstrate as a matter of law that the Farm Parties' use of biosolids at the Farm constitutes a "normal agricultural operation," as that term is defined by the RTFA. The Farm Parties contend that the use of biosolids is "one of the largest and most successful recycling undertakings in America and Pennsylvania," and one regularly used by Pennsylvania farmers. Farm Parties' Brief at 14. The

Residents, conversely, contend that the use of biosolids is not a widespread practice, is used by only about 1% of the farms operating in Pennsylvania, and was in any event not "normal" as specifically employed by the Farm Parties in this case. These arguments should be put to a jury for resolution. Summary judgment is reserved only for those cases in which it is clear that no issues of material fact remain and that the moving party is entitled to judgment as a matter of law. ***See, e.g.***, ***Toy v. Metropolitan Life Ins. Co.***, 593 Pa. 20, 34, 928 A.2d 186, 195 (2007). With respect to the issue of whether the application of biosolids is a "normal agricultural operation," issues of material fact remain and therefore the trial court erred in granting summary judgment.

For their second issue on appeal, the Residents contend that the trial court erred in granting summary judgment on their claims for negligence and trespass. With respect to the Residents' negligence claims, we find no error. To prove a negligence claim, it is well-established that the plaintiff must establish that the defendant owes the plaintiff a duty "to conform to a particular standard of conduct toward another." ***See, e.g.***, ***Atcovitz v. Gulph Mills Tennis Club, Inc.***, 571 Pa. 580, 586, 812 A.2d 1218, 1222 (2002). The trial court concluded, and we agree, that the Residents have not identified any duty under Pennsylvania law that requires a property owner to use his or her property in such a manner that it protects neighboring landowners from offensive odors or other nuisance conditions.

Trial Court Opinion, 12/28/2012, at 26-27. As this Court held in ***Horne***, while it is true that a nuisance claim can be founded on negligent conduct, a negligence claim cannot be based solely on facts that establish a nuisance claim. ***Horne***, 728 A.2d at 960. As in ***Horne***, the operative facts here establish that the Residents have asserted nuisance claims, not negligence claims – namely claims based upon a use of property that "is not wrongful in itself, but only in the consequences which may flow from it." ***See Kramer***, 341 Pa. at 381, 19 A.2d at 363.

With respect to the Residents' trespass claims, we agree with the Farm Parties that the Residents have waived most of these claims on appeal. In their Amended Complaint, the Residents allege that the Farm Parties committed a trespass by releasing biosolids "into the environment" and thus caused them to enter onto and contaminate the Residents' properties "whether in solid, particulate, or gaseous state." Amended Complaint, 7/23/2010, at ¶ 405. In granting summary judgment dismissing the Residents' trespass claims, the trial court ruled that under Pennsylvania law "intrusions and effects which come through the air, such as noise, odors, smoke, interference with light and air, and the like" have predominated been treated as nuisances rather than trespasses. Trial Court Opinion, 12/28/2012, at 31. On appeal, the Residents have included no argument in their brief to support their claims that the airborne dissemination of odors from the Farm Parties' use of biosolids constitutes a trespass. Accordingly,

these claims are waived. ***See, e.g.*, *Commonwealth v. Jackson***, 494 Pa. 457, 459 n.1, 431 A.2d 944, 945 n.1 (1981) (holding that the failure to address a claim in the argument section of an appellate brief waives consideration of the claim).

Instead, in their appellate brief the Residents restrict their argument to the trespass claims of four Residents, Wendy and Jeff Fodel and Donna and John Freese. Wendy Fodel testified at her deposition that brown water ran across a street from the Farm onto her property. W. Fodel Dep. at 78-81. Jeff Fodel testified that Troyer had deposited stone in a little stream on the Farm, and that "[i]t hit that stone and went right across the street on my property." J. Fodel Dep. at 155. Donna Freese testified that she observed "large chunks" of biosolids on her property. D. Freese Dep. at 83. Her husband testified that biosolids were diverted onto his property after having been applied on a severe slope directly across the street. J. Freese Dep. at 63-67. He further testified that he informed the person applying the biosolids of the condition, but "he just happily went on his way." ***Id.*** at 66-68.

Section 158 of the Restatement (Second) of Torts governs trespass claims in Pennsylvania:

> **§ 158 Liability for Intentional Intrusions on Land**
>
> One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally

> (a) enters land in the possession of the other, or causes a thing or a third person to do so, or
>
> (b) remains on the land, or
>
> (c) fails to remove from the land a thing which he is under a duty to remove.

Restatement (Second) of Torts § 158 (1965); ***Smith v. King's Grant Condo.***, 614 A.2d 261, 267 (Pa. Super. 1992), *affirmed*, 537 Pa. 51, 640 A.2d 1276 (1994). The comment to clause (a) provides that "it is not necessary that the foreign matter should be thrown directly and immediately upon the other's land," and that instead "[i]t is enough that an act is done with knowledge that it will to a substantial certainty result in the entry of the foreign matter." ***Id.*** at Comment.

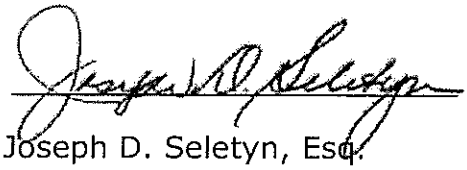
Based upon our review of the deposition testimony of the Fodels and the Freeses, we must conclude that they have offered sufficient evidence to create issues of material fact precluding the dismissal of their trespass claims. These four Residents all contend that biosolids, both in liquid and solid forms, have entered their properties directly from the Farm. Moreover, the testimony of Jeff Yodel and John Freese provides evidence that the entry of biosolids onto their properties was the result of conduct by the Farm Parties "with knowledge that it will to a substantial certainty result in the entry of the foreign matter" – including the placement of stone in a stream on the Farm diverting contaminated water onto the Yodels' property, and the

placement of biosolids on a severe slope directly across the street from the Freeses' property.

Order reversed. Case remanded to the trial court for further proceedings consistent with this decision. Jurisdiction relinquished.

Platt, J. files a Dissenting Opinion.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/15/2014

J-A32014-13

2014 PA Super 77

RALPH GILBERT, GLORIA GILBERT, MICHELLE TORGERSON, MELDA BITTORF, BEVERLY COX, WILLIAM COX, KIMBERLY MILES, CLEA FOCKLER, JOHN FOCKLER, LINDA 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 VAN VOORHIS, SUSAN LEE FOX, TERRENCE FANCHER AND DONNA FANCHER, Appellants v. SYNAGRO CENTRAL, LLC, SYNAGRO MID-ATLANTIC, GEORGE PHILLIPS, HILLTOP FARMS AND STEVE TROYER Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 119 MDA 2013

Appeal from the Order Entered December 28, 2012,
In the Court of Common Pleas of York County,
Civil Division, at No. 2008-SU-003249-01.

BEFORE: DONOHUE, OTT, and PLATT*, JJ.

DISSENTING OPINION BY PLATT, J.: **FILED APRIL 15, 2014**

* Retired Senior Judge assigned to the Superior Court.

I respectfully dissent. In my view, Appellants' complaint was untimely filed, based on the one-year statute of repose at 3 P.S. § 954(a). Therefore, I would affirm the trial court's decision.

The leaned Majority concludes that "issues of material fact remain with respect to whether the use of biosolids in this case is a 'normal agricultural operation'" to determine that Appellees' conduct fell outside the statute of limitation set forth in the Right to Farm Act (RTFA) at 3 P.S. § 954(a). (Majority Opinion, at 2). I believe this conclusion is unwarranted.

It is well-settled that "the statute of limitations begins to run as soon as the right to institute and maintain a suit arises." ***Hopkins v. Erie Ins. Co.***, 65 A.3d 452, 460 (Pa. Super. 2013) (citation omitted).

The Majority correctly concludes that the circumstances constituting the basis of the nuisance action, the application of biosolids on Appellees' farm, began in March 2006, and Appellants filed their complaint in July 2008. (Majority Opinion, at 3-5, 13-14, 15-17).

The Majority contends, however, that the application of biosolids fails to qualify as a "normal agricultural operation," in order to apply the statute of repose. (***Id.*** at 18). It acknowledges that there are EPA and industrial guidelines on biosolid application, which strongly suggests that the use of biosolids is, contrary to its determination, a normal agricultural practice under 3 P.S. § 952. (***Id.*** at 19-20, 26). Instead, the Majority concludes that there remains a genuine issue of material fact as to whether the use of biosolids "was in any event not 'normal' as specifically employed by the Farm Parties in this case." (***Id.*** at 27). However, this exception is unwarranted, because it conflates our standard for grant of summary

judgment with the question of law raised by whether the statute of limitations has run. ***See Wilson v. Transp. Ins. Co.***, 889 A.2d 563, 570 (Pa. Super. 2005).

The cases relied on by the Majority do not stand for its assertion that "[w]ith respect to the ***applicability*** of statutes of repose, . . . issues of fact are often determinative, and a party may avoid summary judgment by identifying sufficient evidence in the record to establish that one or more issues of material fact remain for consideration by the eventual finder of fact." (Majority Opinion, at 23); ***see, e.g. McConnaughey v. Building Components***, 637 A.2d 1331 (Pa. 1994) (genuine issue of material fact regarding whether appellee was involved in allegedly tortious conduct).

Here, there is no genuine issue of material fact as to the identity of the parties, the date of commencement of the application of biosolids, or the date on which Appellants filed their complaint. ***See Hopkins***, ***supra*** at 460. We cannot reach the question of whether the application of biosolids "was in any event not 'normal' as specifically employed by the Farm Parties in this case" because Appellants' complaint was not timely filed. (***Id.*** at 27). Thus, I believe that the Majority erred in sidestepping the statute of limitations in order to reach the issues raised by Appellants' untimely nuisance claim.

Therefore, I would conclude that the trial court correctly determined that summary judgment was appropriate where Appellants' complaint was untimely under the one-year statute of limitation under the RTFA at 3 P.S. § 954(a). ***See Horne v. Haladay***, 728 A.2d 954, 954 (Pa. Super. 1999), *appeal denied*, 745 A.2d 1223 (Pa. 1999).

I would affirm the grant of summary judgment by the trial court. Accordingly, I respectfully dissent.

APPENDIX 2 – PENNSYLVANIA GENERAL ASSEMBLY, 1997-1998 LEGISLATIVE TERM: SENATE BILL 682, PRINTER'S NUMBER 1975

HOUSE AMENDED

PRIOR PRINTER'S NO. 726 PRINTER'S NO. 1975

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 682 Session of 1997

INTRODUCED BY WENGER, MADIGAN, DELP, GERLACH, STAPLETON, O'PAKE, HELFRICK, HECKLER, KUKOVICH, ARMSTRONG, RHOADES, THOMPSON, ROBBINS AND KASUNIC, MARCH 13, 1997

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 29, 1998

AN ACT

Amending the act of June 10, 1982 (P.L.454, No.133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances," further providing FOR DEFINITIONS AND for limitation on public nuisances. <—

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

~~Section 1. Section 4(a) of the act of June 10, 1982 (P.L.454, No.133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances," is amended to read:~~ <—

SECTION 1. SECTION 2 OF THE ACT OF JUNE 10, 1982 (P.L.454, NO.133), ENTITLED "AN ACT PROTECTING AGRICULTURAL OPERATIONS FROM NUISANCE SUITS AND ORDINANCES UNDER CERTAIN CIRCUMSTANCES," AMENDED MAY 22, 1996 (P.L.336, NO.52), IS AMENDED TO READ: <—

SECTION 2. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL HAVE, UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE, THE

MEANINGS GIVEN TO THEM IN THIS SECTION:

"AGRICULTURAL COMMODITY." ANY OF THE FOLLOWING TRANSPORTED OR INTENDED TO BE TRANSPORTED IN COMMERCE:

(1) AGRICULTURAL, AQUACULTURAL, HORTICULTURAL, FLORICULTURAL, VITICULTURAL OR DAIRY PRODUCTS.

(2) LIVESTOCK AND THE PRODUCTS OF LIVESTOCK.

(3) RANCH-RAISED FUR-BEARING ANIMALS AND THE PRODUCTS OF RANCH-RAISED FUR-BEARING ANIMALS.

(4) THE PRODUCTS OF POULTRY OR BEE RAISING.

(5) FORESTRY AND FORESTRY PRODUCTS.

(6) ANY PRODUCTS RAISED OR PRODUCED ON FARMS INTENDED FOR HUMAN CONSUMPTION AND THE PROCESSED OR MANUFACTURED PRODUCTS OF SUCH PRODUCTS INTENDED FOR HUMAN CONSUMPTION.

"MUNICIPALITY." A COUNTY, CITY, BOROUGH, INCORPORATED TOWN, TOWNSHIP OR A GENERAL PURPOSE UNIT OF GOVERNMENT AS ESTABLISHED BY THE ACT OF APRIL 13, 1972 (P.L.184, NO.62), KNOWN AS THE "HOME RULE CHARTER AND OPTIONAL PLANS LAW."

"NORMAL AGRICULTURAL OPERATION." THE [CUSTOMARY AND GENERALLY ACCEPTED] ACTIVITIES, PRACTICES, EQUIPMENT AND PROCEDURES THAT FARMERS 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 [AND], HARVESTING AND PREPARATION FOR MARKET OR USE OF AGRICULTURAL, AGRONOMIC, HORTICULTURAL, SILVICULTURAL AND [AQUICULTURAL] AQUACULTURAL CROPS AND COMMODITIES AND IS:

(1) NOT LESS THAN TEN CONTIGUOUS ACRES IN AREA; OR

(2) LESS THAN TEN CONTIGUOUS ACRES IN AREA BUT HAS AN ANTICIPATED YEARLY GROSS INCOME OF AT LEAST $10,000.

THE TERM INCLUDES NEW ACTIVITIES, PRACTICES, EQUIPMENT AND PROCEDURES, CONSISTENT WITH TECHNOLOGICAL DEVELOPMENT WITHIN THE

AGRICULTURAL INDUSTRY. USE OF EQUIPMENT SHALL INCLUDE MACHINERY DESIGNED AND USED FOR AGRICULTURAL OPERATIONS, INCLUDING, BUT NOT LIMITED TO, CROP DRYERS, FEED GRINDERS, SAW MILLS, HAMMER MILLS, REFRIGERATION EQUIPMENT, BINS AND RELATED EQUIPMENT USED TO STORE OR PREPARE CROPS FOR MARKETING AND THOSE ITEMS OF AGRICULTURAL EQUIPMENT AND MACHINERY DEFINED BY THE ACT OF DECEMBER 12, 1994 (P.L.944, NO.134), KNOWN AS THE FARM SAFETY AND OCCUPATIONAL HEALTH ACT. CUSTOM WORK SHALL BE CONSIDERED A NORMAL FARMING PRACTICE.

SECTION 2. SECTION 4(A) OF THE ACT IS AMENDED TO READ:

Section 4. Limitation on public nuisances.

(a) No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation and are normal agricultural operations, or if the physical facilities of such agricultural operations are substantially expanded or substantially altered and the expanded or substantially altered facility has either: (1) been in operation for one year or more prior to the date of bringing such action, or (2) been addressed in a nutrient management plan approved prior to the commencement of such expanded or altered operation pursuant to section 6 of the act of May 20, 1993 (P.L.12, No.6), known as the "Nutrient Management Act," and is otherwise in compliance therewith: Provided, however, That nothing herein shall in any way restrict or impede the authority of this State from protecting the public health, safety and welfare or the authority of a municipality to enforce State law.

* * *

~~Section 2. This act shall take effect in 60 days.~~ <—

SECTION 3. THIS ACT SHALL TAKE EFFECT AS FOLLOWS: <—

(1) THE AMENDMENT OF SECTION 4(A) OF THE ACT SHALL TAKE EFFECT IN 60 DAYS.

(2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IMMEDIATELY.

PROOF OF SERVICE

I, John J. Bell, Esquire hereby certify that this I am this day serving two copies of the attached Amicus Curiae Brief in Support of Appellees filed on behalf of Pennsylvania Farm Bureau in the above-captioned case upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. Rule 121:

SERVICE BY FIRST CLASS MAIL ADDRESSED AS FOLLOWS:

FOR APPELLANTS:

Neil A. Slenker, Esquire
Stock & Leader
221 W. Philadelphia St., Suite 600
York, PA 17401-2994
Telephone: (717) 846-9800
Fax: (717) 843-6134

Curtis N. Stambaugh, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1166
Telephone: (717) 237-5345
Fax: (717) 237-5300

James B. Slaughter, Esquire
Beveridge & Diamond, P.C.
1350 I Street, N.W., Suite 700
Washington, DC 20005-3311
Telephone: (202) 789-6040
Fax: (202) 789-6190

David R. Breschi, Esquire
Breschi & Associates, LLC
946 Lincoln Way East
Chambersburg, PA 17201
Telephone: (717) 263-9533
Fax: (717) 263-9513

FOR APPELLEES:

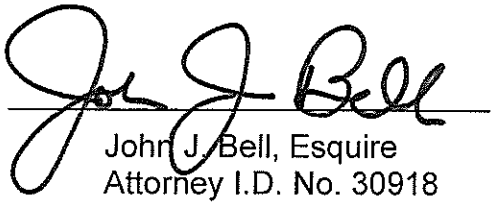
John E. Kotsatsos, Esquire
George A. Webber, III, Esquire
Law Offices of Peter G. Angelos
60 West Broad Street, Suite 200
Bethlehem, PA 18018
Telephone: (610) 866-3333
Fax: (610) 866-3329

Van Bunch, Esquire
T. Brent Jordan, Esquire
Bonnett, Fairbourn Friedman & Balint, P.C.
2901 N. Central Ave., Suite 1000
Phoenix, AZ 85012
Telephone: (602) 274-1100
Fax: (602) 274-1199

Christopher T. Nidel, Esquire
Nidel Law, P.L.L.C.
2002 Massachusetts Avenue, N.W.
Washington, DC 20036
Telephone: (202) 558-2030
Fax: (202) 558-2030

James M. Hecker, Esquire
Public Justice
1825 K Street, N.W., Suite 200
Washington, DC 20006
Telephone: (202) 797-8600
Fax: (202) 232-7203

Dated: December 22, 2014



John J. Bell, Esquire
Attorney I.D. No. 30918
P.O. Box 8736
510 S. 31st Street
Camp Hill, PA 17001-8736
(717) 761-2740