

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

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

NO: 18-1214

vs.

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

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

Defendants

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

474395

219

(2)

TYPE OF FILING (Check one):

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

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

OTHER PARTIES:

Robert S. Frycklund, Esquire

Attorney's Name (Typed)

Attorney for: East Penn Township, Carbon County, PA

Movant **Respondent**

Attorney's Name (Typed)

Attorney For:

Movant **Respondent**

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

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

EAST PENN TOWNSHIP, CARBON
COUNTY, PENNSYLVANIA,
Plaintiff
: : : : : No.

vs.

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

ORDER OF COURT

AND NOW, this ____ day of _____, 2018, upon consideration of the within

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

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

BY THE COURT:

J.

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

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

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EMERGENCY APPLICATION FOR SPECIAL RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

16. It is imperative that this Honorable Court issue an injunctive Order to prevent serious and irreparable damages, harms and/or losses to the health, safety and welfare interests of the residents of East Penn Township, and to prevent further such damages, harms and/or losses.
17. For the reasons set forth hereinabove, and as set forth in the Complaint for injunctive relief which was filed on or about May 1, 2018, East Penn Township believes, and therefore avers, that it is likely to prevail on the merits of the said Complaint.
18. The injunctive relief requested is reasonably suited to abate the offending activity.
19. The injunctive relief requested will not adversely affect, and will in fact advance and protect, the public interest.
20. East Penn Township believes, and therefore avers, that a greater injury would result from the non-issuance of such an injunctive Order than from issuing it.

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

DATE: 5/1/2018

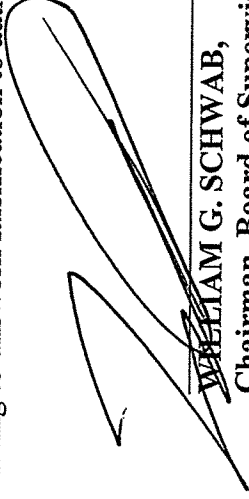
Respectfully submitted,



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

VERIFICATION

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



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

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CIVIL ACTION - EQUITY

EAST PENN TOWNSHIP, CARBON
COUNTY, PENNSYLVANIA,
Plaintiff

No.

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CUNFER and CUNFER FARM a/k/a NEVER
DONE FARM,

Defendants

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CERTIFICATE OF SERVICE

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

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

Dennis Cunfer
236 Smithlane Road
Lehighton, Pennsylvania 18235

Wanda Crostley
3315 Mahoning Drive West
Lehighton, Pennsylvania 18235

Katherine Hetherington-Cunfer
351 Cunfer Lane
Lehighton, Pennsylvania 18235

Justin Cunfer
351 Cunfer Lane
Lehighton, Pennsylvania 18235

Deanna Cunfer
236 Smithlane Road
Lehighton, Pennsylvania 18235

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



ROBERT S. FRYCKLUND, ESQUIRE
Attorney for Plaintiff/Petitioner