

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet
CARBON

County

For Prothonotary Use Only:

Docket No:

18-1214

FILED
2018 MAY 11 PM 1:17
CARBON COUNTY
PROTHONOTARY

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

Complaint Writ of Summons Petition
 Transfer from Another Jurisdiction Declaration of Taking

Lead Plaintiff's Name: East Penn Township, Carbon County, PA Lead Defendant's Name: Synagro, Dennis Cunfer, Wanda Crostley, et al.

Are money damages requested? Yes No Dollar Amount Requested: within arbitration limits
 Yes No (check one) outside arbitration limits

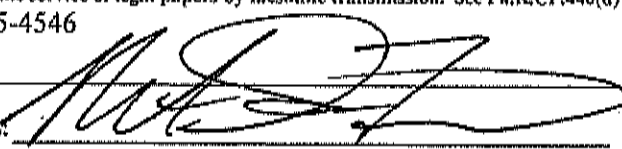
Is this a *Class Action Suit*? Yes No Is this an *MDJ Appeal*? Yes No

Name of Plaintiff/Appellant's Attorney: Robert S. Frycklund, Esquire
 Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

<p>TORT (do not include Mass Tort)</p> <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Label/ Defamation <input type="checkbox"/> Other: _____	<p>CONTRACT (do not include Judgments)</p> <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input type="checkbox"/> Other: _____	<p>CIVIL APPEALS</p> <input type="checkbox"/> Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other _____ <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____
<p>MASS TORT</p> <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____	<p>REAL PROPERTY</p> <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____	<p>MISCELLANEOUS</p> <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input checked="" type="checkbox"/> Other: Complaint Injunctive Relief _____
<p>PROFESSIONAL LIABILITY</p> <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____		

Court of Common Pleas of Carbon County			
Civil Cover Sheet		For Prothonotary Use only (Docket Number)	
PLAINTIFF'S NAME: Enter names (last, first, middle initial) of plaintiff. If the plaintiff is a government agency or corporation, use the full name of the agency or corporation. In the event there are more than two plaintiffs, list the additional parties on a separate sheet of paper. Husband and wife should be listed as separate parties. East Penn Township, Carbon County, Pennsylvania		DEFENDANT'S NAME: Enter names (last, first, middle initial) of defendant. If the defendant is a government agency or corporation, use the full name of the agency or corporation. In the event there are more than two defendants, list the additional parties on a separate sheet of paper. Husband and wife should be listed as separate parties. Synagro, Dennis Cunfer, Wanda Crostley, Justin Cunfer, Katherine Hetherington-Cunfer, Deanna Cunfer and Cunfer Farm a/k/a Never Done Farm	
PLAINTIFF'S ADDRESS & TELEPHONE NUMBER: Enter the address and telephone numbers of the parties at the time of filing of the action. If any party is a corporation, enter the address and telephone number of the registered office of the corporation. 167 Municipal Road, Lehighton, PA 18235		DEFENDANT'S ADDRESS & TELEPHONE NUMBER: Enter the address and telephone numbers of the parties at the time of filing of the action. If any party is a corporation, enter the address and telephone number of the registered office of the corporation. Synagro 1600 Dooley Road, P.O. Box B, Whiteford, Maryland 21160; Dennis Cunfer and Deanna Cunfer 236 Smithlane Road, Lehighton, PA 18235; Wanda Crostley 3315 Mahoning Drive West, Lehighton, PA 18235; Katherine-Hetherington Cunfer and Justin Cunfer 351 Cunfer Lane, Lehighton, PA 18235; Cunfer Farm a/k/a Never Done Farm 366 Cunfer Lane, Lehighton, PA 18235	
ADDITIONAL PLAINTIFF'S NAME:		ADDITIONAL DEFENDANT'S NAME:	
ADDITIONAL PLAINTIFF'S ADDRESS/ TELEPHONE NO:		ADDITIONAL DEFENDANT'S ADDRESS/ TELEPHONE NO:	
TOTAL NUMBER OF PLAINTIFFS: Indicate the total number of plaintiffs and the total number of defendants in the action. 1		TOTAL NUMBER OF DEFENDANTS: Indicate the total number of plaintiffs and the total number of defendants in the action. 7	
STATUTORY BASIS FOR CAUSE OF ACTION If the action is commenced pursuant to statutory authority ("Petition Action"), the specific statute must be cited.			
RELATED PENDING CASES: (All previously filed related cases must be identified by docket number. Indicated whether they have been consolidated by Court Order or Stipulation.)			
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant. Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/APPELLANT'S ATTORNEY: Unrepresented filers must provide their name, address, telephone number and signature. Robert S. Frycklund, Esquire		ADDRESS 49 East Ludlow Street P.O. Box 190 Summit Hill, PA 18250	
PHONE NUMBER 570-645-2811	SUPREME COURT IDENTIFICATION NUMBER 82921	E-MAIL ADDRESS: Robert@frycklund.com	
		FAX NO. (OPTIONAL - FOR SERVICE): Providing the fax number shall authorize the service of legal papers by facsimile transmission. See Pa.R.CP.440(d) 570-645-4546	
DATE: 5/1/2018		SIGNATURE: 	

2018 MAY -1 PM 1:17
 CARBON COUNTY
 PROTHONOTARY
 FILED

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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 CARBON COUNTY
 PROTHONOTARY

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

North Penn Legal Services
 101 West Broad Street, Suite 713
 Hazleton, PA 18201
 Phone 1-877-953-4250
 Fax (570) 455-3625

or

Carbon County Lawyer Referral
 811 Blakeslee Blvd. Dr. East, Suite 130
 Lehighton, PA 18235
 Phone 1-610-379-4950
 Fax (610) 379-4952

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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CARBON COUNTY
PROTHONOTARY

COMPLAINT

AND NOW comes the Plaintiff, East Penn Township, Carbon County, Pennsylvania, by and through its attorney, Robert S. Frycklund, Esquire, to respectfully file this Complaint against the above-named Defendants, and in support thereof states as follows:

1. Plaintiff East Penn Township is political subdivision of the Commonwealth of Pennsylvania located in Carbon County, Pennsylvania, having an address of 167 Municipal Road Lehighton, Carbon County, Pennsylvania 18235 (hereinafter, "East Penn Township" or the "Township").

2. Defendant Synagro is a biosolids and residuals management company that, in part, contracts with farmers to provide them with biosolids ("sewage sludge") to land-apply, having an address of 1600 Dooley Road, P.O. Box B, Whiteford, Maryland 21160 (hereinafter "Synagro").

3. Defendant Dennis Cunfer is an adult individual having an address of 236 Smithlane Road, Lehighton, Pennsylvania 18235 (hereinafter, "Dennis Cunfer").

4. Defendant Wanda Crostley is an adult individual having an address of 3315 Mahoning

Drive West, Lehighton, Pennsylvania 18235 (hereinafter, "Wanda Crostley").

5. Defendant Katherine Hetherington-Cunfer is an adult individual having an address of 351 Cunfer Lane, Lehighton, Pennsylvania 18235 (hereinafter, "Katherine Cunfer").

6. Defendant Justin Cunfer is an adult individual having an address of 351 Cunfer Lane, Lehighton, Pennsylvania 18235 (hereinafter, "Justin Cunfer").

7. Defendant Deanna Cunfer is an adult individual having an address of 236 Smithlane Road, Lehighton, Pennsylvania 18235 (hereinafter, "Deanna Cunfer").

8. Defendant Cunfer Farm a/k/a Never Done Farm is a beef cattle farm and feedlot on land owned by Dennis Cunfer and Wanda Crostley, consisting of approximately one hundred twenty-three-point-three (123.3) acres located at or about 366 Cunfer Lane, Lehighton, East Penn Township, Carbon County, Pennsylvania 18235 (hereinafter, "Cunfer Farm").

9. Cunfer Farm is operated by Dennis Cunfer, his wife Deanna Cunfer, their son, Justin Cunfer, and their daughter-in-law, Katherine Hetherington-Cunfer

10. On or about August 24, 2017, Synagro submitted an application to the Commonwealth of Pennsylvania Department of Environmental Protection (hereinafter, "PA DEP") for a permit to store and land-apply biosolids ("sewage sludge") in and upon Cunfer Farm,

11. On or about March 23, 2018, PA DEP issued a thirty (30) day notice of approval of Synagro's application to store and land-apply sewage sludge in and upon Cunfer Farm (hereinafter, "Notice of Approval"), which said Notice of Approval was received by East Penn Township on March 28, 2018. A true and correct copy of the Notice of Approval is attached hereto and made a part hereof

as Exhibit "A".

12. Due to certain alleged substantive and procedural defects in PA DEP's issuance of the said Notice of Approval, East Penn Township timely and properly filed an appeal to the Environmental Hearing Board on April 26, 2018 (hereinafter, the "Appeal"), which said Appeal is pending before that tribunal. A true and correct copy of the Appeal, which is hereby incorporated as though set forth fully and at length herein, is attached and made a part hereof as Exhibit "B".

13. In 1996, in accordance with its governmental responsibility as trustee of public natural resources under Article I, Section 27 of the Pennsylvania Constitution (hereinafter, the "Environmental Rights Clause"), East Penn Township duly enacted Ordinance No. 77, which 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. A true and correct copy of Ordinance No. 77, which is hereby incorporated as though set forth fully and at length herein, is attached and made a part hereof as Exhibit "C".

14. To date, none of Defendants Synagro, Dennis Cunfer, Wanda Crostley, Justine Cunfer, Katherine Cunfer and Cunfer Farm (hereinafter, collectively, the "Defendants") has complied with any of the requirements of Ordinance No. 77 for the issuance of a registration certificate prior to the commencement of waste operations.

15. Instead, on February 22, 2018, Katherine Cunfer, a former employee of the Pennsylvania Attorney General's office and current high-ranking employee of the PA DEP, who is married to

Cunfer Farm co-owner Justin Cunfer, emailed her former colleague, Senior Deputy Attorney General Robert A. Willig (hereinafter, "Mr. Willig"), requesting that Mr. Willig conduct a legal review of Ordinance No. 77 and render an opinion concerning its enforceability under the Agricultural Code, Act 38 of 2005 (hereinafter, "ACRE").¹ A true and correct copy of Katherine Cunfer's email correspondence of February 22, 2018 to Mr. Willig is attached hereto and made a part hereof as Exhibit "D".

16. ACRE provides in relevant part that "[a] local government unit shall not adopt nor enforce an unauthorized local ordinance", which, in turn, is defined as any local ordinance which:

- (1) Prohibits or limits a normal agricultural operation unless the local government unit:
 - (i) has expressed or implied authority under State law to adopt the ordinance; and
 - (ii) is not prohibited or preempted under State law from adopting the ordinance.
- (2) Restricts or limits the ownership structure of a normal agricultural operation.

3 Pa.C.S. §§ 312, 313.

17. By email reply dated February 26, 2018, Mr. Willig declined Katherine Cunfer's request to conduct such a review or to render an opinion concerning Ordinance No. 77's enforceability vis-à-vis ACRE. A true and correct copy of Mr. Willig's email reply of February 26, 2018 to Katherine Cunfer is attached hereto and made a part hereof as Exhibit "E".

18. On March 1, 2018, following the previous evening's public meeting, at which hundreds of East Penn Township residents appeared and voiced to the Board of Supervisors their grave concerns about the negative health and safety impacts of the proposed land-application of sewage sludge upon

¹ ACRE specifically provides that "[a]n owner or operator of a normal agricultural operation may request the Attorney General to review a local ordinance believed to be an unauthorized local ordinance and to consider whether to bring legal action under section 315(a) (relating to right of action)." 3 Pa.C.S. § 314(a).

Cunfer Farm, Katherine Cunfer again emailed Mr. Willig to complain about the perceived unfairness of her family's situation, and again implored him to initiate a review of Ordinance No. 77. A true and correct copy of Katherine Cunfer's email correspondence of March 1, 2018 to Mr. Willig is attached hereto and made a part hereof as Exhibit "F".

19. By letter dated March 12, 2018 and received by East Penn Township on March 16, 2018, Mr. Willig informed the East Penn Township Board of Supervisors that it has commenced a review of Ordinance No. 77 to determine whether it unlawfully prohibits or limits a "normal agricultural operation", and requesting that the Township respond to Katherine Cunfer's claims within thirty (30) days.² A true and correct copy of Robert A. Willig's letter of March 12, 2018 is attached hereto and made a part hereof as Exhibit "G".

20. On April 20, 2018, East Penn Township timely and properly submitted to Mr. Willig its formal response to Katherine Cunfer's claims, via email. A true and correct copy of the said response, which is hereby incorporated as though set forth fully and at length herein, is attached and made a part hereof as Exhibit "H".

21. To date, the Pennsylvania Attorney General's office has not completed its review of Ordinance No. 77, has not made a determination or otherwise rendered an opinion as to whether or not it believes that the storage and land-application of sewage sludge on Cunfer Farm would qualify as a "normal agricultural operation" under ACRE, and has not made a determination or otherwise rendered

² Although the said letter was dated March 12, 2018 and received on March 16, 2018, Mr. Willig did not initially include copies of Katherine Cunfer's email correspondence, thereby rendering it impossible for the Township to respond to her

an opinion as to enforceability of Ordinance No. 77.

22. 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).

23. 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 in and upon Cunfer Farm, including the storage and land-application of sewage sludge, without having first applied for and obtained a registration certificate from East Penn Township.

24. 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 shared that they have documented health issues, including breathing problems.

25. 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.

26. 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.

27. Defendants' knowing and deliberate violation of Ordinance No. 77 will thus have a direct

unknown claims. Mr. Willig subsequently provided the missing attachments on March 21, 2018 and confirmed that the Township would have thirty (30) days from that date to submit a response.

negative impact on the health, safety and welfare of the residents of East Penn Township.

28. Defendants' unauthorized and illegal actions as aforesaid are so deliberate and outrageous as to warrant the award of reasonable attorneys' fees and costs in favor of East Penn Township and against Defendants.

COUNT I INJUNCTIVE RELIEF

29. East Penn Township hereby incorporates by reference the averments of Paragraphs 1 through 28 as though set forth fully and at length herein.

30. 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.

31. It is imperative that this Honorable Court issue an injunctive Order to prevent irreparable damage and/or harm to the health, safety and welfare interests of the residents of East Penn Township.

32. East Penn Township believes, and therefore avers, that greater injury would result from the non-issuance of such an injunctive Order than from issuing it.

WHEREFORE, Plaintiff, East Penn Township, Carbon County, Pennsylvania, respectfully requests the issuance of an Order of Court and entry of judgment against Defendants Synagro, Dennis Cunfer, Wanda Crostley, Justine Cunfer, Katherine Cunfer and Cunfer Farm, as follows:

- a. An injunctive Order of Court directing Defendants to refrain from the commencement of any waste operations in and upon Cunfer Farm, including but not limited to the storage and land-application of sewage sludge, without having first duly

applied for and obtained a registration certificate from East Penn Township;

b. An injunctive Order of Court directing Defendants to immediately and completely remediate, remove and properly dispose of any and all sewage sludge which has already been applied in or upon Cunfer Farm prior to the entry of the said injunctive Order;

c. An injunctive Order of Court directing Defendants to immediately cease and desist of any waste operations in and upon Cunfer Farm, including but not limited to the storage and land-application of sewage sludge, unless and until such time as Defendants have duly applied for and obtained a registration certificate from East Penn Township in accordance with Ordinance No. 77;

d. A judgment in favor of Plaintiff and against Defendants for reimbursement of all legal costs and reasonable attorneys' fees and costs incurred by Plaintiff as a result of Defendants' unjust and unlawful actions as set forth hereinabove;

e. An Order of Court specifically retaining this Court's jurisdiction over this matter to ensure that the Court's directives are strictly adhered to by Defendants, and to hear any and all claims for contempt of same; and

f. Such other and further relief as this Court deems to be equitable, just and appropriate.

Respectfully submitted,

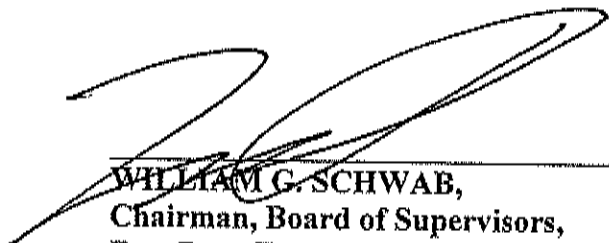
DATE: 5/1/2018

A handwritten signature in black ink, appearing to read 'R. Frycklund', written over a horizontal line.

ROBERT S. FRYCKLUND, ESQUIRE
Attorney for Plaintiff
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 in this action. I hereby certify that the statements contained in the foregoing Complaint 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