

PAVLACK LAW OFFICES, P.C.
BY: KEITH R. PAVLACK, ESQUIRE
IDENTIFICATION NO. 56545
1415 BLAKESLEE BLVD. DR. E.
LEHIGHTON, PA 18235
(570) 386-3888

ATTORNEY FOR DEFENDANTS

East Penn Township,
Plaintiff,

v.

Synagro, et al.,
Defendants.

:IN THE COURT OF COMMON PLEAS
:CARBON COUNTY, PENNSYLVANIA

:

: CIVIL ACTION

:

: NO. 18-1214

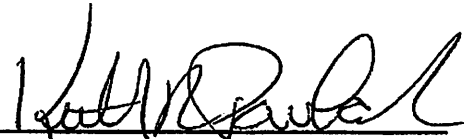
:

ENTRY OF APPEARANCE

Kindly enter my appearance on behalf of the Defendant, Synagro Central, LLC, in
the above captioned litigation.

PAVLACK LAW OFFICES, P.C.

DATE: 6/25/18

BY: 
KEITH R. PAVLACK, ESQUIRE
ATTORNEY FOR DEFENDANT
Synagro Central, LLC

2018 JUN 25 AM 9:51
CARBON COUNTY
PROTHONOTARY

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2018 JUN 25 AM 9:51

CARBON COUNTY
PROTHONOTARY

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

EAST PENN TOWNSHIP,

Plaintiff

v.

SYNAGRO, *et al.*,

Defendants.

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Case No. 18-1214

NOTICE TO PLEAD

To: East Penn Township
c/o Robert Frycklund
Law Offices of Velitsky & Frycklund
49 East Ludlow Street
P.O. Box 190
Summit Hill, PA 18250

PURSUANT TO PA. R.C.P. NO. 1361, YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

NOTIFICACION PARA HACER UN ALEGATO DE DEFENSA


To: East Penn Township
c/o Robert Frycklund

Law Offices of Velitsky & Frycklund
49 East Ludlow Street
P.O. Box 190
Summit Hill, PA 18250

POR ESTE MEDIO SE LE NOTIFICA QUE TIENE QUE PRESENTAR UNA RESPUESTA
POR ESCRITO AL DOCUMENTO ADJUNTO DENTRO DE VEINTE DIAS (20) A PARTIR
DE LA FECH EN QUE FUE NOTIFICADO DEL MISMO O DE LO CONTRARIO SE
DISPONDRA UN FALLO EN SU CONTRA.

Pavlack Law Offices, P.C.

By:


Keith R. Pavlack, Esquire
Attorney for Synagro Central, LLC
Identification # 56545
1415 Blakeslee Blvd. Drive East
Lehighton, PA 18235
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FILED
2018 JUN 25 AM 9:51
CARBON COUNTY
PROTHONOTARY

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

EAST PENN TOWNSHIP,)
)
Plaintiff)
)
v.)
) Case No. 18-1214
)
SYNAGRO, *et al.*,)
)
Defendants.)

**ANSWER WITH NEW MATTER OF DEFNDANT SYNAGRO
TO THE COMPLAINT OF EAST PENN TOWNSHIP**

Pursuant to Pennsylvania Rule of Civil Procedure 1017(a), Synagro Central, LLC

(“Synagro Central”) Answers Plaintiff East Penn Township’s Complaint as follows:¹

1. Denied. The allegations in Paragraph 1 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.
2. Denied. No entity named “Synagro” exists.

¹ The Township named “Synagro” as a Defendant in this action, but no such entity exists. Synagro Central, LLC is the corporate entity that is approved for coverage and operates under the general permit PAG-08, and is the same entity that has proposed providing biosolids for agricultural land application in East Penn Township. *See* https://www.ahs.dep.pa.gov/eFACTSWeb/searchResults_singleSite.aspx?SiteID=828486. Synagro Central, LLC should be the defendant in this action. Counsel for Synagro Central, LLC communicated this information to counsel for East Penn Township, but the Township declined to amend its Complaint to identify the proper party.

3. Denied. The allegations in Paragraph 3 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

4. Denied. The allegations in Paragraph 4 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

5. Denied. The allegations in Paragraph 5 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

6. Denied. The allegations in Paragraph 6 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

7. Denied. The allegations in Paragraph 7 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

8. Denied. The allegations in Paragraph 8 pertain to parties other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

9. Denied. The allegations in Paragraph 9 pertain to parties other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

10. Admitted in part and denied in part. Synagro admits only that Synagro Central submitted to the Pennsylvania Department of Environmental Protection (“PADEP”) a completed

Form 3800-FM-WSFR0343, "Notification of First Land Application (30-Day Notice), which PADEP received on January 29, 2018, seeking authorization from PADEP to land apply biosolids for beneficial use on the Cunfer Farm under general permit authorizations held by Synagro Central. Synagro Central denies submitting any "permit" to PADEP concerning land application of biosolids on Cunfer Farm on August 24, 2017, and denies the allegations in Paragraph 10 to the extent they characterize biosolids as "sewage sludge" and assert that Synagro Central applied at any time for a *permit* to land apply or store biosolids on Cunfer Farm.²

11. Admitted in part and denied in part. Synagro Central admits only that PADEP issued a 30-Day Notice Approval dated March 23, 2018 (the "PADEP Approval") in which PADEP approved the land application of biosolids for beneficial use on Cunfer Farm and that the document attached as Exhibit A to the Complaint is a copy of the PADEP Approval. Synagro Central denies the allegation that Plaintiff received a copy of the PADEP Approval on March 28, 2018 because Synagro Central is without knowledge or information sufficient to form a belief as to the truth of that allegation.

12. Admitted in part and denied in part. Synagro Central admits only that East Penn Township filed with the Environmental Hearing Board an appeal on April 26, 2018, that the appeal is currently pending, and that Exhibit B to the Complaint is a copy of the notice of appeal filed by Plaintiff in that matter. Synagro Central denies the remaining allegations in Paragraph 12, including the alleged assignments of error in Exhibit B. To the extent Paragraph 12 contains legal conclusions, no response is required.

² The complaint improperly refers to biosolids as "sewage sludge." Synagro will use the correct term, "biosolids," which is treated sewage sludge, throughout its Answer and New Matter.

13. Denied. Paragraph 13 contains legal conclusions and argument for which no response is required. Synagro Central is without knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 13.

14. Admitted in part and denied in part. Paragraph 14 contains legal conclusions and argument for which no response is required. To the extent Paragraph 14 alleges facts pertaining to parties other than Synagro Central, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies them. To the extent Paragraph 14 alleges facts pertaining to Synagro Central, Synagro Central admits only that it does not hold a registration certificate issued by East Penn Township under Ordinance 77 and denies all other allegations.

15. Denied. The allegations in Paragraph 15 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations.

16. Denied. Paragraph 16 contains statements of law to which no response is required.

17. Denied. The allegations in Paragraph 16 pertain to a party other than Synagro Central. Therefore, Synagro Central is without knowledge or information sufficient to form a belief as to the truth of these allegations. Synagro Central further states that the referenced document speaks for itself.

18. Denied. Synagro Central is without knowledge or information sufficient to form a belief as the truth of the allegations in Paragraph 18. Synagro Central further states that the referenced document speaks for itself.

19. Denied. Synagro Central is without knowledge or information sufficient to form a belief as the truth of the allegations in Paragraph 19. Synagro Central further states that the referenced document speaks for itself.

20. Denied. Synagro Central is without knowledge or information sufficient to form a belief as the truth of the allegations in Paragraph 20.

21. Denied. Synagro Central is without knowledge or information sufficient to form a belief as the truth of the allegations in Paragraph 21.

22. Denied. Paragraph 22 contains a conclusion of law to which no response is required.

23. Admitted in part and denied in part. Synagro Central admits only that at some time in the future it may provide biosolids at Cunfer Farm for use as an effective organic fertilizer and soil amendment consistent with all state and federal laws governing the generation, storage and use of biosolids. Synagro Central otherwise denies the allegations in Paragraph 23.

24. Denied. Synagro Central is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24.

25. Denied. Synagro Central denies the allegations in Paragraph 25 to the extent they mischaracterize biosolids and the risks associated with their use as an organic fertilizer and soil amendment. Synagro Central denies the remaining allegations in this Paragraph because it is without knowledge or information sufficient to form a belief as to their truth.

26. Denied. Paragraph 26 mischaracterizes biosolids and the limited impacts they may have on neighboring properties when applied as an organic fertilizer and soil amendment on farms in compliance with applicable federal and state laws and regulations governing biosolids.

27. Denied. Paragraph 27 contains a conclusion of law to which no response is required. To the extent Paragraph 27 alleges facts, they are denied as mischaracterizing biosolids and Synagro Central's operations, all of which are conducted in conformity with the comprehensive state and federal schemes governing biosolids.

28. Denied. Paragraph 28 contains legal conclusions and argument to which no response is required. Synagro Central further denies that it has engaged in any activity that is unauthorized by law or illegal.

29. Denied. The allegations in Paragraph 29 are a restatement of the allegations in Paragraph 1-28 and no further response is required. To the extent a response is required, Synagro Central's responses to Paragraph 1-28 are incorporated by reference.

30. Denied. Paragraph 30 contains a legal conclusion and argument to which no response is required.

31. Denied. Synagro Central denies that any injunctive relief is needed to prevent any irreparable damage or harm to the health, safety and welfare interest of East Penn Township's residents.

32. Denied. Paragraph 30 contains a legal conclusion and argument to which no response is required. Synagro Central further denies that any injury would result from the Court not issuing the injunctive relief requested in the Complaint.

NEW MATTER

On information and belief and subject to further discovery and investigation, Synagro sets forth the following affirmative defenses. Synagro reserves the right to supplement these defenses.

33. Plaintiff has failed to state any claim because the named defendant, "Synagro," is not an entity that exists.

34. Plaintiff has failed to state any claim because it has alleged no underlying cause of action as the basis for its request for injunctive relief.

35. Plaintiff's claim is preempted by state law, including Pennsylvania's robust regulatory scheme governing the land application of biosolids to farmland in the Commonwealth.

36. Plaintiff's claim is barred or limited by the doctrines of waiver, estoppel, or unclean hands.

37. Plaintiff's claim is barred by the doctrine of primary jurisdiction.

38. Plaintiff exceeded its authority under the Second Class Township Code, 53 P.S. § 65101 *et seq.*, by enacting Ordinance No. 77.

39. The Agriculture, Communities and Rural Environment Act, 3 Pa. C.S. §§ 311-318, prohibits enforcement of Ordinance No. 77 against the land application of biosolids.

40. Synagro Central's actions are authorized by federal and state law, including permits issued pursuant to federal and state law.

41. Synagro Central's actions constitute reasonably prudent conduct without intent to harm, malice, recklessness, wantonness, or negligence.

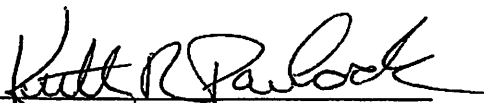
42. Plaintiff has failed to state a claim that it is entitled to recover its costs and attorneys' fees.

43. Synagro reserves the right to assert additional defenses after further investigation and discovery.

WHEREFORE, Synagro demands that judgment be entered in its favor, and against Plaintiff, and that Synagro be awarded the costs of suit and other such relief as this court deems appropriate.

Dated: June 25, 2018

Respectfully submitted,



Keith R. Pavlack
Attorney I.D. No. 56545
PAVLACK LAW OFFICES PC
1415 Blakeslee Blvd., Dr. E
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477 Madison Avenue, 15th Floor
New York, NY 10022
(212) 702-5400
mbrillault@bdlaw.com

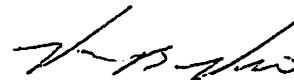
Counsel for Defendant Synagro Central, LLC

VERIFICATION

Subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, I hereby certify that I am a Technical Services Manager at Synagro Central, LLC and that I am authorized to make this Verification on its behalf. I further certify that I have read Plaintiff's Complaint and the foregoing Answer and New Matter, and based on a reasonable inquiry by Synagro and outside counsel retained in this matter, I verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge or information and belief.

Dated: June 22, 2018

Synagro Central, LLC



Peter Price

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

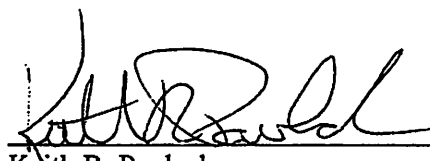
EAST PENN TOWNSHIP,)	
)	
Plaintiff,)	
)	
v.)	Case No. 18-1214
)	
)	
SYNAGRO, <i>et al.</i> ,)	
)	
Defendants.)	

FILED
2018 JUN 25 AM 9:51
CARBON COUNTY
PROTHONOTARY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 25, 2018, copies of the foregoing Synagro’s Answer with New Matter to Plaintiff’s Complaint were served via first class mail on the following:

Robert Frycklund
Law Offices of Velitsky & Frycklund
49 East Ludlow Street
P.O. Box 190
Summit Hill, PA 18250
Counsel for Plaintiff



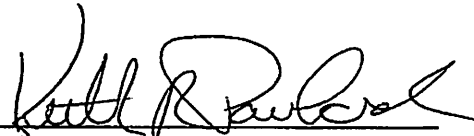
Keith R. Pavlack
Counsel for Synagro Central, LLC

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

FILED
2018 JUN 25 AM 9:51
CARBON COUNTY
PROTHONOTARY

Respectfully submitted,



Keith R. Pavlack
Attorney ID #56545
1415 Blakeslee Blvd. Dr. E.
Lehigh, PA 18235
(570) 386-3888

Date: 6/25/18

PAVLACK LAW OFFICES, P.C.
BY: KEITH R. PAVLACK, ESQUIRE
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(570) 386-3888

ATTORNEY FOR DEFENDANTS

East Penn Township,
Plaintiff,

:IN THE COURT OF COMMON PLEAS
:CARBON COUNTY, PENNSYLVANIA

v.

:
: CIVIL ACTION

Synagro, et al.,
Defendants.

:
: NO. 18-1214
:

NOTICE TO PLEAD

To: East Penn Township
c/o Robert Frycklund
Law Offices of Velitsky & Frycklund
49 East Ludlow Street
P.O. Box 190
Summit Hill, PA 18250

2018 JUN 25 AM 9:52
CARBON COUNTY
PROTHONOTARY
FILED

PURSUANT TO PA. R.C.P. NO. 1361, YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

NOTIFICACION PARA HACER UN ALEGATO DE DEFENSA

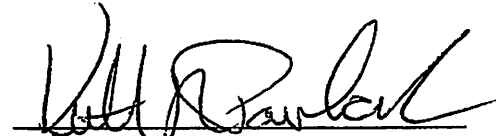
To: East Penn Township
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P.O. Box 190
Summit Hill, PA 18250

POR ESTE MEDIO SE LE NOTIFICA QUE TIENE QUE PRESENTAR UNA RESPUESTA POR ESCRITO AL DOCUMENTO ADJUNTO DENTRO DE VEINTE

DIAS (20) A PARTIR DE LA FECH EN QUE FUE NOTIFICADO DEL MISMO O DE
LO CONTRARIO SE DISPONDRA UN FALLO EN SU CONTRA.

Pavlack Law Offices, P.C.

By:

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

Keith R. Pavlack, Esquire
Attorney for Plaintiff
Identification # 56545
1415 Blakeslee Blvd. Drive East
Lehighton, PA 18235
(570) 386-3888

**PAVLACK LAW OFFICES, P.C.
BY: KEITH R. PAVLACK, ESQUIRE
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LEHIGHTON, PA 18235
(570) 386-3888**

ATTORNEY FOR DEFENDANTS

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PROTHONOTARY

**East Penn Township,
Plaintiff,**

v.

**Synagro, et al.,
Defendants.**

**:IN THE COURT OF COMMON PLEAS
:CARBON COUNTY, PENNSYLVANIA**

:

: CIVIL ACTION

:

: NO. 18-1214

:

**ANSWER WITH NEW MATTER OF DEFENDANTS, DENNIS CUNFER, WANDA
CROSTLEY, JUSTIN CUNFER, KATHERINE HETHERINGTON-CUNFER, DEANNA
CUNFER, CUNFER FARMS A/K/A NEVER DONE FARM,
TO THE COMPLAINT OF EAST PENN TOWNSHIP**

Pursuant to Pennsylvania Rule of Civil Procedure 1017(a), Defendants, Dennis Cunfer, Wanda Crostley, Justin Cunfer, Katherine Hetherington-Cunfer, Deanna Cunfer, Cunfer Farm a/k/a Never Done Farm, answer Plaintiff East Penn Township's Complaint as follows:

1. Denied. The allegations in Paragraph 1 pertain to a party other than Answering Defendants. Therefore, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of these allegations.

2. Denied. The allegations in paragraph 2 pertain to a party other than the Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of these allegations.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted in part. Denied in part. It is specifically denied that Cunfer Farm a/k/a Never Done Farm is a legal entity. Dennis Cunfer and Deanna Cunfer own 119.3 acres of fields upon which they proposed to apply biosolids. Wanda Crostley owns 4 acres that she permits Dennis Cunfer, Deanna Cunfer and Justin Cunfer to farm. It has been proposed to apply biosolids to all 4 acres. The 119.3 acres owned by Dennis Cunfer and Deanna Cunfer has a postal address of 236 Smithlane Road, Lehighton, PA. The 4 acres owned by Wanda Crostley has a postal address of 665 Cunfer Road, Lehighton, PA. It is admitted that the 123.3 acres of land is used as a beef cattle farm, feed lot and crop land. Strict proof thereof is demanded at the time of trial.

9. Admitted.

10. Admitted in part and denied in part. Answering Defendants admit only that Synagro Central, LLC submitted to the Pennsylvania Department of Environmental Protection (“PADEP”) a completed Form 3800-FM-WSFR0343, “Notification of First Land Application (30-Day Notice), which PADEP received on January 29, 2018, seeking authorization from PADEP to land apply biosolids for beneficial use on the Cunfer Farm under general permit authorizations held by Synagro Central, LLC. Answering Defendants deny that Synagro Central, LLC submitted any “permit” to PADEP concerning land application of biosolids on the Cunfer Farm on August 24, 2017, and deny the allegations in Paragraph 10 to the extent they characterize biosolids as “sewage sludge” and assert that Synagro Central, LLC applied at any time for a *permit* to land apply or store biosolids on the Cunfer Farm. Strict proof thereof is demanded at the time of trial.

11. Admitted in part and denied in part. Answering Defendants admit only that PADEP issued a 30-Day Notice Approval dated March 23, 2018 (the "PADEP Approval") in which PADEP approved the land application of biosolids for beneficial use on the Cunfer Farm and that the document attached as Exhibit A to the Complaint is a copy of the PADEP Approval. Answering Defendants deny the allegation that Plaintiff received a copy of the PADEP Approval on March 28, 2018 because Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of that allegation. Strict proof thereof is demanded at the time of trial.

12. Admitted in part and denied in part. Answering Defendants admit only that East Penn Township filed with the Environmental Hearing Board an appeal on April 26, 2018, that the appeal is currently pending, and that Exhibit B to the Complaint is a copy of the notice of appeal filed by Plaintiff in that matter. Answering Defendants deny the remaining allegations in Paragraph 12, including the alleged assignments of error in Exhibit B. To the extent Paragraph 12 contains legal conclusions, no response is required. Strict proof thereof is demanded at the time of trial.

13. Denied. Paragraph 13 contains legal conclusions and argument for which no response is required. Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 13. Strict proof thereof is demanded at the time of trial.

14. Admitted in part and denied in part. Paragraph 14 contains legal conclusions and argument for which no response is required. Answering Defendants admit only that they do not hold a registration certificate issued by East Penn Township under Ordinance 77 and deny all other allegations. Strict proof thereof is demanded at the time of trial.

15. Admitted in part. Denied in part. It is admitted that Defendant, Katherine Hetherington-Cunfer sent an email to Robert A. Willig, dated February 22, 2018. Answering Defendants deny the remaining allegations in paragraph 15. Furthermore, the attached exhibit is a written instrument which speaks for itself and any expression or implications inconsistent therewith are denied. Strict proof thereof is demanded at the time of trial.

16. Denied. Paragraph 16 contains statements of law to which no response is required.

17. Admitted in part. Denied in part. It is admitted that Defendant, Katherine Hetherington-Cunfer received an email reply dated February 26, 2018, from Mr. Willig. Answering Defendants deny the remaining allegations in paragraph 15. Furthermore, the attached exhibit is a written instrument which speaks for itself and any expression or implications inconsistent therewith are denied. Strict proof thereof is demanded at the time of trial.

18. Denied. Answering Defendants are without knowledge or information sufficient to form a belief as the truth of the allegations in Paragraph 18. Answering Defendants further state that the attached exhibit is a written instrument which speaks for itself and any expression or implications inconsistent therewith are denied. Strict proof thereof is demanded at the time of trial.

19. Denied. Answering Defendant are without knowledge or information sufficient to form a belief as the truth of the allegations in Paragraph 19. Answering Defendants further state that the attached exhibit is a written instrument which speaks for itself and any expression or implications inconsistent therewith are denied. Strict proof thereof is demanded at the time of trial.

20. Denied. Answering Defendants are without knowledge or information sufficient to form a belief as the truth of the allegations in Paragraph 20. Answering Defendants further state that the attached exhibit is a written instrument which speaks for itself and any expression or implications inconsistent therewith are denied. Strict proof thereof is demanded at the time of trial.

21. Denied. Answering Defendants are without knowledge or information sufficient to form a belief as the truth of the allegations in Paragraph 21. Strict proof thereof is demanded at the time of trial.

22. Denied. Paragraph 22 contains a conclusion of law to which no response is required.

23. Admitted in part and denied in part. Answering Defendants admit only that at some time in the future Synagro Central, LLC may provide biosolids at the Cunfer Farm for use as an effective organic fertilizer and soil amendment consistent with all state and federal laws governing the generation, storage and use of biosolids. Answering Defendants otherwise deny the allegations in Paragraph 23. Strict proof thereof is demanded at the time of trial.

24. Denied. Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24. Strict proof thereof is demanded at the time of trial.

25. Denied. Answering Defendants deny the allegations in Paragraph 25 to the extent they mischaracterize biosolids and the risks associated with their use as an organic fertilizer and soil amendment. Answering Defendants deny the remaining allegations in this Paragraph because they are without knowledge or information sufficient to form a belief as to their truth. Strict proof thereof is demanded at the time of trial.

26. Denied. Paragraph 26 mischaracterizes biosolids and the limited impacts they may have on neighboring properties when applied as an organic fertilizer and soil amendment on farms in compliance with applicable federal and state laws and regulations governing biosolids. Strict proof thereof is demanded at the time of trial.

27. Denied. Paragraph 27 contains a conclusion of law to which no response is required. To the extent Paragraph 27 alleges facts, they are denied as mischaracterizing biosolids and Answering Defendants' operations, all of which are conducted in conformity with the comprehensive state and federal schemes governing biosolids. Strict proof thereof is demanded at the time of trial.

28. Denied. Paragraph 28 contains legal conclusions and argument to which no response is required. Answering Defendants further deny that they have engaged in any activity that is unauthorized by law or illegal. Further, the Plaintiff failed to state a cause of action that would permit an award of attorney fees. Strict proof thereof is demanded at the time of trial.

29. Denied. The allegations in Paragraph 29 are a restatement of the allegations in Paragraph 1-28 and no further response is required. To the extent a response is required, Answering Defendants' responses to Paragraph 1-28 are incorporated by reference. Strict proof thereof is demanded at the time of trial.

30. Denied. Paragraph 30 contains a legal conclusion and argument to which no response is required.

31. Denied. Answering Defendants deny that any injunctive relief is needed to prevent any irreparable damage or harm to the health, safety and welfare interest of East Penn Township's residents. Strict proof thereof is demanded at the time of trial.

32. Denied. Paragraph 30 contains a legal conclusion and argument to which no response is required. Answering Defendants further deny that any injury would result from the Court not issuing the injunctive relief requested in the Complaint. Strict proof thereof is demanded at the time of trial.

NEW MATTER

On information and belief and subject to further discovery and investigation, Answering Defendants set forth the following affirmative defenses. Answering Defendants reserve the right to supplement these defenses.

33. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

34. Plaintiff has failed to state a cause of action that would permit an award of attorney fees under Pennsylvania Law.

35. Plaintiff has failed to state any claim because it has alleged no underlying cause of action as the basis for its request for injunctive relief.

36. Plaintiff's claim is preempted by state law, including Pennsylvania's robust regulatory scheme governing the land application of biosolids to farmland in the Commonwealth.

37. Plaintiff's claim is barred or limited by the doctrines of waiver, estoppel, or unclean hands.

38. Plaintiff's claim is barred by the doctrine of primary jurisdiction.

39. Plaintiff exceeded its authority under the Second Class Township Code, 53 P.S. § 65101 *et seq.*, by enacting Ordinance No. 77.

40. The Agriculture, Communities and Rural Environment Act, 3 Pa. C.S. §§ 311-318, prohibits enforcement of Ordinance No. 77 against the land application of biosolids.

41. Answering Defendants have complied with all applicable and authorized federal, state, and local regulations concerning land application of biosolids.

42. Answering Defendants' actions are authorized by federal and state law, including permits issued pursuant to federal and state law.

43. Answering Defendants' actions constitute reasonably prudent conduct without intent to harm, malice, recklessness, wantonness, or negligence.

44. Answering Defendants reserve the right to assert additional defenses after further investigation and discovery.

WHEREFORE, Dennis Cunfer, Wanda Crostley, Justin Cunfer, Katherine Hetherington-Cunfer, Deanna Cunfer and Cunfer Farm and Never Done Farm demand that judgment be entered in their favor, and against Plaintiff, and that Dennis Cunfer, Wanda Crostley, Justin Cunfer, Katherine Hetherington-Cunfer, Deanna Cunfer and Cunfer Farm a/k/a Never Done Farm be awarded the costs of suit and other such relief as this court deems appropriate.

DATE: 6/25/18

PAVLACK LAW OFFICES, P.C.

BY: 

**KEITH R. PAVLACK, ESQUIRE
ATTORNEY FOR DEFENDANTS,
Dennis Cunfer, Wanda Crostley, Justin
Cunfer, Katherine Hetherington-Cunfer,
Deanna Cunfer, Cunfer Farm a/k/a Never
Done Farm**

VERIFICATION

I, Wanda Crostley, hereby state that I am a Defendant in this action and that the statements in the foregoing Answer and New Matter are true and correct to the best of my knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to falsifications to authorities.


Date: 6/24/15

Wanda K Crostley
Wanda Crostley

VERIFICATION

I, Katherine Hetherington-Cunfer, hereby state that I am a Defendant in this action and that the statements in the foregoing Answer and New Matter are true and correct to the best of my knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to falsifications to authorities.

Date: 10/24/2018

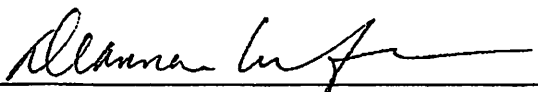


Katherine Hetherington-Cunfer

VERIFICATION

I, Deanna Cunfer, hereby state that I am a Defendant in this action and that the statements in the foregoing Answer and New Matter are true and correct to the best of my knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to falsifications to authorities.

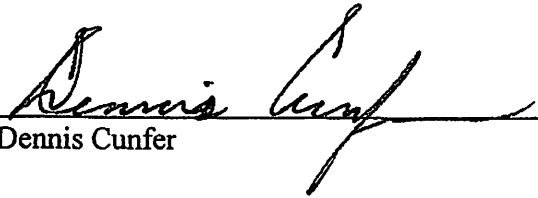
Date: 6/24/18


Deanna Cunfer

VERIFICATION

I, Dennis Cunfer, hereby state that I am a Defendant in this action and that the statements in the foregoing Answer and New Matter are true and correct to the best of my knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to falsifications to authorities.

Date: 6/24/18


Dennis Cunfer

VERIFICATION

I, Justin Cunfer, hereby state that I am a Defendant in this action and that the statements in the foregoing Answer and New Matter are true and correct to the best of my knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to falsifications to authorities.

Date: 6/24/18


Justin Cunfer

PAVLACK LAW OFFICES, P.C.
BY: KEITH R. PAVLACK, ESQUIRE
IDENTIFICATION NO. 56545
1415 BLAKESLEE BLVD. DR. E.
LEHIGHTON, PA 18235
(570) 386-3888

ATTORNEY FOR DEFENDANTS

East Penn Township,
Plaintiff,

v.

Synagro, et al.,
Defendants.

:IN THE COURT OF COMMON PLEAS
:CARBON COUNTY, PENNSYLVANIA

:
:
:
:
:

CIVIL ACTION

NO. 18-1214

CERTIFICATE OF SERVICE

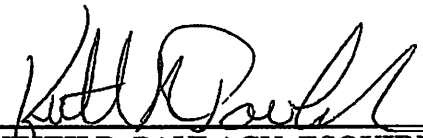
I HEREBY CERTIFY that on _____, copies of the foregoing Answer
with New Matter were served via first class mail on the following:

Robert Frycklund
Law Offices of Velitsky & Frycklund
49 East Ludlow Street
P.O. Box 190
Summit Hill, PA 18250
Counsel for Plaintiff

FILED
2018 JUN 25 AM 9:53
CARBON COUNTY
PROTHONOTARY

PAVLACK LAW OFFICES, P.C.

DATE: 6/25/18

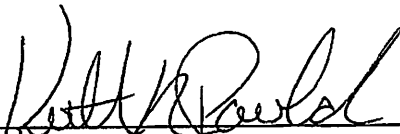
BY: 
KEITH R. PAVLACK, ESQUIRE
ATTORNEY FOR DEFENDANTS,
Dennis Cunfer, Wanda Crostley, Justin
Cunfer, Katherine Hetherington-Cunfer,
Deanna Cunfer, Cunfer Farm a/k/a Never
Done Farm

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

FILED
2010 JUN 25 AM 9:53
CARBON COUNTY
PROthonotary

Respectfully submitted,

BY: 
KEITH R. PAVLACK, ESQUIRE
Attorney ID #56545
1415 Blakeslee Blvd. Dr. E.
Lehighton, PA 18235
(570)386-3888

Date: 6/25/10