

## Unanimous Ruling in Pennsylvania Supreme Court Shields Biosolids Land Application from Tort Claims

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Supreme Court of Pennsylvania voted in favor of Synagro and held that land application of biosolids is an agricultural activity shielded from untimely litigation by Pennsylvania's ***Right to Farm Act (RTFA)***.

The Court's opinion reversed the Pennsylvania intermediate appellate court and resolved critical questions regarding the division of labor between judge and jury, the scope of the RTFA, and the use of biosolids as fertilizer on farms. In ***Gilbert v. Synagro Central***, \_\_\_ A.3d \_\_\_, 2015 WL 9282354 (Dec. 21, 2015), the Court unanimously held that (1) application of the RTFA's statute of repose presents a legal question that only a judge may resolve and (2) biosolids application is a "normal agricultural operation" protected by the RTFA.

The suit arose from farming operations in York County, Pennsylvania. Neighboring landowners complained of odors from farmers' use of biosolids—nutrient-rich material produced from sewage sludge—and filed a lawsuit asserting claims of nuisance, negligence and trespass. The trial court granted the defendants' motion for summary judgment on the ground that the plaintiff landowners filed their claims outside the RTFA's one-year statute of repose. On appeal, the Superior Court of Pennsylvania reversed, holding that whether biosolids application qualified as a "normal agricultural operation" protected by the RTFA required a jury to evaluate the manner in which biosolids had been applied.

The Pennsylvania Supreme Court's [majority](#) and [concurring](#) opinions reject the lower court's rationale in full. In language with implications for future tort cases, the justices emphasized that the RTFA, like any statute of repose, is jurisdictional and thus, its "applicability is a question for the trial court, not the jury." The Court further explained that whether a particular activity, such as biosolids application, falls within the definition of a term used in a statute of repose is to be treated as a question of law that only a judge can resolve. The opinion makes clear that the RTFA can only function properly if its bar against litigation is not contingent on a jury's determinations.

The *Gilbert* decision confirmed that biosolids application is a normal agricultural operation entitled to protection by the RTFA and likely will influence courts across the country in their review of legal issues regarding biosolids recycling to farmland. Citing numerous statistics and the briefs of a broad coalition of amici, the Court acknowledged the widespread use of biosolids in agriculture in

Pennsylvania and America across the country. This opinion represents a clear statement by a state's highest court that biosolids use is an accepted and common practice in modern farming that is entitled to protection from untimely and burdensome litigation.

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