Beveridge & Diamond

37th Annual Texas Environmental Superconference

PFAS Litigation Update – August 7, 2025

PFAS Cases to Watch

James Slaughter (Washington, DC) and Amber Ahmed (Austin, Texas)

Litigation alleging liability for trace amounts of PFAS in the environment continues to expand across the country, including toxic tort, property value diminution, and litigation challenging federal and state regulatory initiatives targeting PFAS. Below are a few major cases underway, with a focus on Texas.

In particular, the presentation will focus on *Alessi v. Synagro*, a putative class action spanning ten counties outside of Dallas and Fort Worth alleging that PFAS in biosolids (treated sewage sludge) caused damage to farmland and adjacent properties where the biosolids were applied as fertilizer. The case has attracted national attention as representative of the alleged risks of PFAS. Beveridge & Diamond is defending the case.

***Alessi v Synagro Technologies Inc.*, 3:25-cv-00445 (N.D. Tex. filed Feb. 21, 2025).**

PFAS biosolids products liability putative class action.

Johnson County, Texas property owners sued Synagro Technologies, first in Maryland, alleging contamination of their properties and injuries to their cattle and persons based on a neighboring farm's application of biosolids – a USEPA and TCEQ approved high-value fertilizer derived from sewage sludge. After Plaintiffs re-filed in Johnson County District Court as a class-action, Synagro and its co-Defendant removed to the Northern District of Texas based on the Class Action Fairness Act, where it is pending before Judge Kinkeade. The proposed class includes the several properties allegedly impacted by the land application initially at issue in Johnson County, as well as all agricultural property owners from 2018 to present located in Bosque, Denton, Ellis, Hill, Hood, Johnson, Kaufman, Parker, Sommerville and Wise counties who have allegedly suffered property diminution from farm application of biosolids.

Biosolids are a nutrient rich fertilizer that have been applied to farmland across the United States for generations by local governments and their contractors like Synagro. The practice is closely regulated by USEPA and state environmental agencies. Synagro has moved to dismiss the case on multiple grounds, including derivative governmental immunity, the Texas Right to Farm Act, and failure to state a claim. A coalition including the City of Fort Worth, the Trinity River Authority, and the City of Austin filed an amicus brief supporting the argument that production and recycling

of biosolids is a core government infrastructure function. The court stayed discovery pending the motions to dismiss, which are currently pending. Key briefing on the motion to dismiss is included with these materials.

***State of Texas v. 3M*, No. 3:25-cv-00122 (N.D. Tex. filed Dec. 11, 2024).**

Consumer protection lawsuit under DTPA.

The Texas Attorney General sued 3M, Dupont, and Dupont subsidiaries in Johnson County, Texas, alleging violations of Texas's Deceptive Trade Practices Act (DTPA) for manufacturing, marketing, and selling consumers products that contained PFAS, including PFOS and PFOA. The suit alleges that the Defendants marketed products like Teflon, Stainmaster, and Scotchguard as safe, pointing to advertisements that showed babies and young children in close contact with the products and used phrases like "Teflon Non-Stick Coating is Safe." Defendants removed to the North District of Texas based on diversity jurisdiction and the case is pending before Judge Lindsay. Texas' motion to remand to state court is pending. Dupont moved to dismiss for failure to state a claim, while 3M seeks dismissal for lack of personal jurisdiction.

***In re Aqueous Film-Forming Foam Products Liability Litigation MDL 2873*, 2:18-mn-02873-RMG (D.S.C. filed Dec. 7, 2018).**

South Carolina AFFF MDL.

Some of the largest PFAS litigation concerns trace PFAS in aqueous film-forming foam (AFFF), i.e., foam products applied to fires and for fire training in large amounts. Plaintiffs allege that AFFF applied to land is a source of PFAS in groundwater and drinking water.

Judge Richard Gergel of the U.S. District Court, South Carolina oversees the AFFF multi-district litigation (MDL). AFFF cases were first transferred to Judge Gergel in December 2018, after several defendants involved in 84 AFFF actions across twelve federal districts moved to consolidate the cases into a single MDL matter. The MDL panel consolidated cases dealing with PFAS releases into local groundwater or drinking water that were allegedly caused by AFFF product use at airports, military bases, and certain industrial locations. The panel found that these cases all shared certain factual allegations that concerned, among other issues: the toxicity of PFAS compounds and their effects on human health; the knowledge of the AFFF manufacturers regarding the dangers of PFAS; and to what extent, if any, defendants conspired or cooperated to conceal the dangers of PFAS in their products.

Significant settlements have been entered by manufacturers with numerous drinking water utilities. Since its inception, the MDL has had over 10,000 associated cases either filed directly with or

transferred to its docket. The court is set to try certain cases, all centered around claims of kidney cancer caused by PFAS, in October 2025.

***City of Fort Worth v. United States*, 4:25-cv-00235 (N.D. Tex. filed Mar. 10, 2025) (dismissed March 27, 2025).**

Fort Worth AFFF suit.

The City of Fort Worth, Texas sued 3M, Dupont, other sellers of PFAS products, and the United States Department of Defense, on March 10, 2025, alleging defendants' manufacture and use of AFFF infiltrated and damaged the City's drinking water sources, water rights, storm- and wastewater infrastructure, and real property.

The City included CERCLA cost recovery, SWDA cost recovery, FTCA trespass, negligence, and public nuisance, UFTA fraudulent transfer, and common law negligence, defective product, public nuisance, and unjust enrichment claims. The complaint distinguished between the "Manufacturing Defendants," companies that manufactured and marketed AFFF like 3M and Dupont, and the "Federal Defendants," like the Department of defense, who instead only used AFFF, though it seeks damages and reimbursement from both. Given the complexity of the parties (4 governmental entities and 29 individual companies, some of whom had fully or partially settled or declared bankruptcy), Judge Pittman ordered the creation of individual cases for each of the 29 corporate defendants.

On March 26, 2025, Judge Pittman transferred the original matter involving the governmental defendants to the South Carolina AFFF MDL. On March 27, 2025, the City voluntarily dismissed each of the 29 matters involving the corporate defendants and the lawsuit in the AFFF MDL.

***New Mexico v. United States*, D-101-cv-202501594 (1st Jud. Dist. Ct. filed June 23, 2025).**

State environmental law case.

New Mexico recently sued the United States Air Force and Department of Defense in state court. The suit is unique from many of the other AFFF suits: instead of CERCLA violations, product liability, or negligence, the suit alleges violations of the newly amended New Mexico Hazardous Waste Act and of Cannon Air Force Base's New Mexico Environment Department (NMED) permit. HB 140, recently passed in New Mexico, broadened the state definition of "Hazardous Materials" to explicitly include certain types of PFAS, and directed NMED to adopt rules regulating these materials.

The State most recently requested a preliminary injunction to allow NMED access to the Cannon Air Force Base to perform a PFAS sampling inspection; require the defendants to prepare an action

plan pursuant to their NMED permit; and require the defendants to come into compliance with the permit. On July 24, 2025, the day after New Mexico filed its request for a preliminary injunction, the United States removed the case to federal court. Both motions are still pending resolution.

***Nat'l Ass'n of Mfrs. v. U.S. E.P.A.*, 24-1188 (D.C. Cir. filed June 7, 2024).**

PFOS/PFOA challenge to designation of PFAS limits in drinking water.

The American Water Works Association, the Association of Metropolitan Water Agencies and the National Association of Manufacturers are suing EPA regarding its final rule establishing Maximum Contaminant Levels (MCLs) for six per- and polyfluoroalkyl substances and mixtures in drinking water. Petitioners claim that the rule exceeded EPA's scope of authority and was promulgated without proper procedure, including a lackluster public comment process. They also claimed the rulemaking was arbitrary and capricious, noting that EPA did not consider the significantly higher household water costs the MCLs would create and that the listing was based in part on faulty science.

In their briefings, the petitioners all take issue with EPA's novel attempt to regulate PFAS under the Safe Drinking Water Act (SDWA) via a "hazard index." They separately note that the SDWA does not authorize EPA to regulate mixtures using a hazard index (substances must be regulated one at a time, individually), EPA failed to follow proper procedure and its own guidance regarding the use of hazard indexes, and the hazard index EPA purported to use was not backed by substantial scientific evidence.

Starting on February 7, 2025, the EPA began filing unopposed motions to hold the case in abeyance to delay the initial reply brief deadline on February 25, 2025. On May 14, 2025, EPA announced that it intended to keep the MCLs for PFOS and PFOA but rescinded the MCLs for the other four per- and polyfluoroalkyl substances and mixtures it had originally listed. The May 14 rulemaking also extended the compliance timeline to 2031. The respondents are now set to file a motion or letter with the Court clarifying their litigation positions by September 10, 2025, with a new proposed briefing schedule to be filed by September 17, 2025. Now that the PFAS mixture levels are no longer regulated under the rule, petitioners may revise their arguments disputing EPA's use of hazard indexes.

***U.S. Chamber of Commerce v. U.S. E.P.A.*, 24-1193 (D.C. Cir. filed June 10, 2024).**

Challenge to USEPA listing of PFAS as a hazardous substance under CERCLA.

On June 10, 2024, the U.S. Chamber of Commerce, Associated General Contractors of America, Inc., and the National Waste & Recycling Association challenged the April 19, 2024 EPA rule designating PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Petitioners argued that, in designating the substances, EPA misinterpreted CERCLA and conducted a flawed cost analysis. Petitioners also argued that EPA's decision to designate the two substances was arbitrary and capricious because it failed to consider and address where PFOA and PFOS are located and in what quantities, the actual economic costs the designation would cause, and the unintended consequences of the designation.

On February 11, 2025, the EPA moved to hold the case in abeyance. EPA says it is evaluating the Rule as it relates to its broader strategy on PFOA and PFOS and has continued to file unopposed abeyances with the Court. Most recently, the Court granted another 45-day abeyance on July 3, 2025.

Appendix

Plaintiffs' Second Amended Complaint—Class Action, *Alessi v. Synagro Technologies Inc.*, 3:25-cv-00445 (N.D. Tex. filed Apr. 4, 2025).

Synagro Defendants' Motion to Dismiss Pursuant to Rule 12(b)(1) and Rule 12(b)(6) and Brief in Support, *Alessi v. Synagro Technologies Inc.*, 3:25-cv-00445 (N.D. Tex. filed Apr. 25, 2025).

Plaintiffs' Response in Opposition to Synagro Defendants' Motion to Dismiss Pursuant to Federal Rules 12(b)(1) and 12(b)(6), *Alessi v. Synagro Technologies Inc.*, 3:25-cv-00445 (N.D. Tex. filed May 23, 2025).

Synagro Defendants' Reply in Support of Motion to Dismiss, *Alessi v. Synagro Technologies Inc.*, 3:25-cv-00445 (N.D. Tex. filed June 6, 2025).

Brief for City of Fort Worth, Trinity River Authority, and City of Austin as Amicus Curiae, *Alessi v. Synagro Technologies Inc.*, 3:25-cv-00445 (N.D. Tex. filed July 15, 2025).

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
(Dallas Division)

ROBIN ALESSI, *et. al.*	§	
	§	
Plaintiffs,	§	
	§	**Civil No. 3:25-CV-0445-K**
v.	§	
	§	
SYNAGRO TECHNOLOGIES, INC., *et al.*	§	
	§	
Defendants.	§	

SECOND AMENDED COMPLAINT—CLASS ACTION

James Farmer, Robin Alessi, Patsy Schultz, Karen Coleman, Tony Coleman, Alton Morton Bryant, and Christopher Michael Bryant, Plaintiffs, bring this suit against Synagro Technologies, Inc., Synagro of Texas—CDR, Inc., (collectively "Synagro") and Renda Environmental, Inc. ("Renda"), on behalf of themselves and all persons similarly situated, and allege the following based on personal knowledge as to allegations regarding themselves and on information and belief as to other allegations:

NATURE OF THE ACTION

1. Plaintiffs' farms were poisoned by toxic chemicals in a biosolids fertilizer produced and marketed by Defendants when a neighboring farmer spread it on his crops.

2. This is an action for damages suffered by Plaintiffs as a direct and proximate result of Defendants' negligent and wrongful conduct in connection with the design, development, manufacture, testing, promoting, marketing, advertising, distribution, labeling, and/or sale of biosolids fertilizers containing PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine disrupters, and pharmaceuticals).

3. Defendant Synagro contracts with more than a thousand municipal wastewater facilities across North America, including the City of Fort Worth, Texas (until April 1, 2025).

4. Synagro uses the biosolids from those wastewater facilities, also known as "sewage sludge," to make Synagro Granulite Fertilizer. During the wastewater treatment process, liquids are separated from solids, and the solids are treated to remove some toxic ingredients and reduce pathogens. However, even after treatment, biosolids typically contain a variety of persistent pollutants.

5. Prior to Synagro's contract with the City of Fort Worth, Texas, Defendant Renda Environmental contracted with the city to manage the biosolids from its wastewater facilities. Renda also produced and marketed a biosolids fertilizer that was applied by the same neighboring farmer to his land.

6. Per- and polyfluoroalkl substances, or "PFAS," are a large family of human-made chemicals that provide heat, stain, and water resistance, making them useful for a range of commercial and industrial applications. All PFAS chemicals contain multiple bonds between atoms of carbon and fluorine, which are extremely strong and give PFAS their exceptional chemical and thermal stability. Due to these strong bonds, PFAS (or in some cases, their degradation products) are highly persistent in the environment and are called "forever chemicals."

7. Human exposure to PFAS is associated with cancer, birth defects, developmental damage to infants, and impaired functioning of the liver, kidneys, and immune system. PFAS are also toxic to animals.

8. Because PFAS are not removed by conventional wastewater treatment, they accumulate in the biosolids that Defendants use to make their fertilizer, which Defendants falsely market as being safe and organic.

9. Plaintiffs' land has been exposed to PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine disrupters, and pharmaceuticals) through Defendants' biosolids fertilizers. As a result, Plaintiffs' have suffered devastating damage to their livestock, and the land where they live and work has been rendered nearly worthless.

10. Plaintiffs were unaware that the injuries described herein were attributable to the fertilizers that were applied to their neighbor's land and apparently migrated to Plaintiffs' lands until Johnson County tested Plaintiffs' properties, their livestock, and the Synagro Granulite Fertilizer for PFAS and other toxic chemicals as part of a criminal investigation.

11. On behalf of themselves and the "Class" as defined below, Plaintiffs seek damages, restitution, and injunctive relief for the harm caused by Defendants' fertilizers.

12. Plaintiffs do not seek by this action to restrain any agricultural operation, and neither the claims nor the relief sought runs afoul of the provisions of the Texas Right to Farm Act. Rather than restrain Defendants from continuing to operate, this action seeks a mandatory injunction requiring Defendants to clean up and restore Plaintiffs' properties from harm caused by a defective product that migrated to their lands. Moreover, neither Defendant currently produces or markets biosolids from the Fort Worth facility. The Fort Worth City Council voted unanimously to end its ten-year contract with Synagro as of April 1, 2025.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds $5,000,000, exclusive of interest and costs. Upon information and belief, the number of class members is over 100, many of whom have different citizenship from a Defendant. Thus, minimal diversity exists under 28 U.S.C. § 1332(d)(2)(A).

14. Venue is proper in the Northern District of Texas because the actions upon which these claims are based occurred in Johnson County, Texas, and the property that is the subject of this action is situated in Johnson County, Texas. *See* 28 U.S.C. § 1391(b)(2). Furthermore, Defendants manufactured, distributed, marketed, and sold biosolids fertilizers within the Northern District of Texas.

PARTIES

15. Plaintiff James Farmer resides at 12125 County Road 102, Grandview, Texas 76050, which has been impacted by the land application of Defendants' biosolids fertilizer. He is Plaintiff Robin Alessi's partner and has resided at and taken care of the property since December 2013.

16. Plaintiff Robin Alessi owns the property at 12125 County Road 102, Grandview, Texas 76050, which has been impacted by the land application of Defendants' biosolids fertilizer. She purchased the property in 2010 and has resided there since that time.

17. Plaintiff Patsy Schultz resides at 12201 County Road 102, Grandview, Texas 76050, which has been impacted by the land application of Defendants' biosolids fertilizer. She and her husband, James Schultz, purchased the property in 2002, and she inherited his share after his passing in 2018.

18. Plaintiff Karen Coleman resides at 4145 Burleson Retta Road, Burleson, Texas 76028. Mrs. Coleman is Patsy Schultz's daughter and leases for cattle grazing her mother's property at 12201 County Road 102, Grandview, Texas 76050, which has been impacted by the land application of Defendants' biosolids fertilizer.

19. Plaintiff Tony Coleman resides at 4145 Burleson Retta Road, Burleson, Texas 76028. He is Patsy Schultz's son-in-law and leases for cattle grazing the property at 12201 County

Road 102, Grandview, Texas 76050, which has been impacted by the land application of Defendants' biosolids fertilizer.

20. Plaintiff Alton Morton Bryant resides at 12804 County Road 102, Grandview, Texas 76050. Mr. Bryant owns this property, which has been impacted by the land application of Defendants' biosolids fertilizer.

21. Plaintiff Christopher Michael Bryant resides at 12800 County Road 102, Grandview, Texas 76050. Mr. Bryant lives on this property, which has been impacted by the land application of Defendants' biosolids fertilizer.

22. Defendant Synagro Technologies, Inc. is a Delaware corporation, with a principal office located at 435 Williams Court, Ste. 100, Baltimore, Maryland 21220, and has been served and appeared through counsel.

23. Defendant Synagro of Texas—CDR, Inc. is a Texas corporation, with a principal office located at 435 Williams Court, Ste. 100, Baltimore, Maryland 21220, and has been served and appeared through counsel.

24. Defendant Renda Environmental, Inc. is a Texas corporation, with a principal office located at 522 Benson Lane, Roanoke, Texas 76262, and has been served and appeared through counsel.

FACTUAL ALLEGATIONS

A. Synagro Managed Fort Worth's Biosolids Program from 2019 to April 1, 2025.

25. Synagro Technologies, Inc., markets itself as the preeminent provider of biosolids and residuals solutions services in North America. Synagro claims to "turn waste into worth by helping more than 1,000 municipal, industrial water and wastewater facilities in North America move toward safer, cleaner and more environmentally beneficial practices," and boasts, "we're

trusted because we remove risks while keeping the logistics clean."[1] Synagro manages 6.5 million tons of biosolids annually, with 80% of those "beneficially reused," which includes land application.[2]

26. In December 2019, Synagro entered a contract with the City of Fort Worth to manage its biosolids program, which produces about 26,500 dry tons of fertilizer each year at the Village Creek Water Reclamation Facility located at 4500 Wilma Lane, Arlington, Texas 76112.[3] The product is then sold to farmers, ranchers, and landowners in Texas as a cheaper, organic alternative to commercial fertilizer.

27. Per the contract, Synagro built a new biosolids processing facility to produce dry pellet fertilizer called Synagro Granulite Fertilizer.

28. Farmers and other users could pick up Granulite pellets at Synagro's Fort Worth Biosolids Dewatering and Processing Facility. Sales were arranged via email and telephone communications with a Synagro salesperson located in Virginia. An image of the product label is below.

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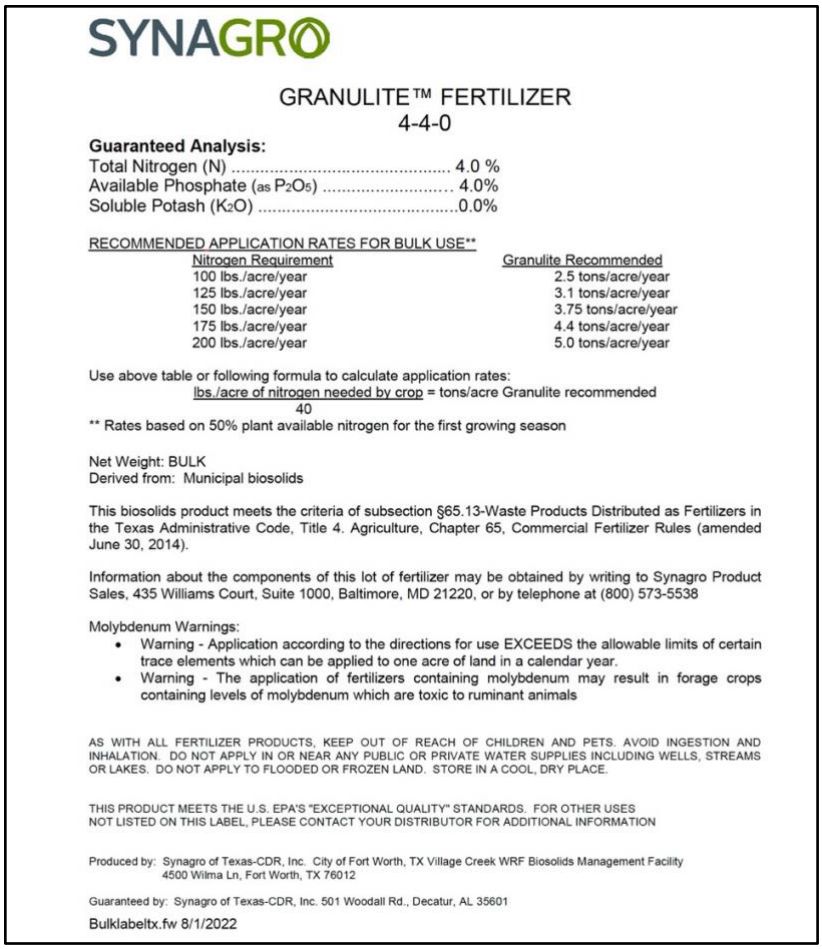
[1] "Where We Work," *available at:* https://www.synagro.com (last visited Feb. 11, 2024).

[2] "Synagro 2022 Sustainability Report," *available at:* https://www.synagro.com/wp-content/uploads/2023/09/Synagro-Sustainability-Report-2023-Final.pdf at p. 5 (last visited Feb. 11, 2024).

[3] Service Contract for Design, Permitting, Construction, Operation, Maintenance, Repair and Improvement of the City of Fort Worth's Biosolids Management and Beneficial Reuse from the Village Creek Water Reclamation Facility, City Project Number 101961, between The City of Fort Worth, Texas, and Synagro of Texas-CDR, Inc.



SYNAGRO

GRANULITE™ FERTILIZER
4-4-0

Guaranteed Analysis:
Total Nitrogen (N) ..... 4.0 %
Available Phosphate (as P_2O_5) 4.0%
Soluble Potash (K_2O) 0.0%

RECOMMENDED APPLICATION RATES FOR BULK USE**

Nitrogen Requirement	Granulite Recommended
100 lbs./acre/year	2.5 tons/acre/year
125 lbs./acre/year	3.1 tons/acre/year
150 lbs./acre/year	3.75 tons/acre/year
175 lbs./acre/year	4.4 tons/acre/year
200 lbs./acre/year	5.0 tons/acre/year

Use above table or following formula to calculate application rates:

$$\frac{\text{lbs./acre of nitrogen needed by crop}}{40} = \text{tons/acre Granulite recommended}$$

** Rates based on 50% plant available nitrogen for the first growing season

Net Weight: BULK
Derived from: Municipal biosolids

This biosolids product meets the criteria of subsection §65.13-Waste Products Distributed as Fertilizers in the Texas Administrative Code, Title 4. Agriculture, Chapter 65, Commercial Fertilizer Rules (amended June 30, 2014).

Information about the components of this lot of fertilizer may be obtained by writing to Synagro Product Sales, 435 Williams Court, Suite 1000, Baltimore, MD 21220, or by telephone at (800) 573-5538

Molybdenum Warnings:
- Warning - Application according to the directions for use EXCEEDS the allowable limits of certain trace elements which can be applied to one acre of land in a calendar year.
- Warning - The application of fertilizers containing molybdenum may result in forage crops containing levels of molybdenum which are toxic to ruminant animals

AS WITH ALL FERTILIZER PRODUCTS, KEEP OUT OF REACH OF CHILDREN AND PETS. AVOID INGESTION AND INHALATION. DO NOT APPLY IN OR NEAR ANY PUBLIC OR PRIVATE WATER SUPPLIES INCLUDING WELLS, STREAMS OR LAKES. DO NOT APPLY TO FLOODED OR FROZEN LAND. STORE IN A COOL, DRY PLACE.

THIS PRODUCT MEETS THE U.S. EPA'S "EXCEPTIONAL QUALITY" STANDARDS. FOR OTHER USES NOT LISTED ON THIS LABEL, PLEASE CONTACT YOUR DISTRIBUTOR FOR ADDITIONAL INFORMATION

Produced by: Synagro of Texas-CDR, Inc. City of Fort Worth, TX Village Creek WRF Biosolids Management Facility
4500 Wilma Ln, Fort Worth, TX 76012

Guaranteed by: Synagro of Texas-CDR, Inc. 501 Woodall Rd., Decatur, AL 35601

Bulklabeltx.fw 8/1/2022

29. On information and belief, Synagro's biosolids fertilizers have been land applied in Bosque, Denton, Ellis, Hill, Hood, Johnson, Kaufman, Parker, Sommerville and Wise counties.

30. Renda previously managed the City of Fort Worth's biosolids program. On information and belief, biosolids fertilizers produced, manufactured, marketed, and/or sold by Renda have been land applied in Bosque, Denton, Ellis, Hill, Hood, Johnson, Kaufman, Parker, Sommerville and Wise counties.

31. On March 25, 2025, the Fort Worth City Council voted unanimously to cancel its ten-year contract with Synagro as of April 1, 2025, and the City of Fort Worth Water Department will take over operations and maintenance of the biosolids facility by April 5.[4]

B. PFAS ("Forever Chemicals") and Other Toxic Chemicals in Biosolids.

32. Biosolids, also known as sewage sludge, are the product of the wastewater treatment process. They are the treated organic matter derived from human sewage waste. During the wastewater treatment process, liquids are separated from the solids, and the solids are treated to remove some of the toxic ingredients and reduce pathogens.

33. Biosolids created from treatment of wastewater are one of the most complex mixtures of chemicals that exist. This mixture of chemicals and any risk associated with those chemicals are dependent on the sources of the wastewater that are used to create the biosolids.

34. Biosolids, when applied to agricultural land, may introduce hazardous chemicals to the soil. These hazardous chemicals are persistent in the soil and have been observed migrating offsite (through surface runoff and/or leaching) creating hazards to nearby properties—meaning the land where it is applied is impacted as are the surrounding lands.

35. Synagro claims biosolids "are rich in plant-available nutrients and can be applied to soil as a fertilizer or soil conditioner," and they improve soil health by providing nutrient addition, improved soil structure, and water use.[5]

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[4] "Fort Worth ends 10-year contract with fertilizer company accused of water, land contamination," Forth Worth Report (March 25, 2025) *available at:* https://fortworthreport.org/2025/03/25/fort-worth-ends-10-year-contract-with-fertilizer-company-accused-of-water-land-contamination/ (last visited March 31, 2025).

[5] "Synagro 2022 Sustainability Report," *available at:* https://www.synagro.com/wp-content/uploads/2023/09/Synagro-Sustainability-Report-2023-Final.pdf at p. 6 (last visited Feb. 11, 2024).

36. Nevertheless, many of the pollutants in biosolids are not removed through treatment. Further, waste treatment effluent results in chemical mixtures of several bioactive chemicals that can work additively to create risk that may not exist for each individual chemical. These chemicals enter the environment when biosolids are: 1) applied to agricultural lands, home gardens, pastures, and other lands as fertilizer; 2) landfilled; or 3) incinerated.

37. Biosolids contain a variety of persistent and toxic pollutants, including PFAS, a large class of environmentally persistent synthetic chemicals, which then enter the water and food supply.

38. Because PFAS are environmentally persistent, and many can leach into the groundwater, these chemicals can cause public health and environmental harm long after their release.

39. PFAS get into biosolids in two ways. First, PFAS are ubiquitous in consumer products such as clothing, household cleaners, carpets, upholstered furniture, personal care products, and makeup. When people use these products, PFAS are washed down the drain and enter sewer systems, where they are sent to wastewater treatment plants ("WWTP"s). Second, many industries use PFAS, and their waste streams are also sent to WWTPs.

40. While WWTPs do remove some of the chemicals in the wastewater, they do not remove PFAS. In fact, concentrations of PFAS are often higher in the effluent of WWTPs than the influent, indicating that precursor PFAS are biodegrading into new PFAS during the treatment.

41. Virtually all biosolids-based fertilizers tested have been found to contain large amounts of PFAS.

42. Heavy metals such as arsenic (As), mercury (Hg), selenium (Se), molybdenum (Mo), titanium (Ti), antimony (Sb), zinc (Zn), cadmium (Cd), copper (Cu), chromium (Cr),lead (Pb), and nickel (Ni) are also commonly found in biosolids.

43. Heavy metals can accumulate in in soils over the repeated application of biosolids, and even single application events have shown to raise concentrations significantly. Metals are not biodegradable and persist in the environment after they are released. They will remain available for uptake and exposure to the plants, animals, and humans that interact with the soil, its products, and associated groundwater indefinitely.

44. Metals exposure in humans can result in the development of nervous system disorders, gastrointestinal and kidney dysfunction, immune system dysfunction, skin lesion, birth defect, vascular damage, and cancer.

45. Molybdenum metal is rare in nature but is present in significant quantities in industrial discharges to wastewater treatment plants and presents a serious threat when biosolids with molybdenum are land applied. Cattle and sheep are much more susceptible than other species to molybdenum toxicity, and they may show poor growth, infertility, diarrhea, lameness, ataxia, as well as osteoporosis.

46. Estrogens and endocrine disrupters are also commonly found in biosolids, and natural and synthetic steroid estrogens are very resistent to degradation in the environment. Steroid estrogens from agriculturally applied biosolids are available to plants for uptake and accumulation in shoot and root tissue. This leads to the accumulation of steroid estrogens in agricultural products and the eventual exposure to humans and animals that consume them. In humans, lifetime external estrogen exposure has been linked to breast cancer in females and prostate cancer in males.

Evidence suggests that environmental estrogen exposure could alter the growth, development and reproduction of humans and wildlife.

47. Pharmaceutically active compounds (*e.g.*, antimicrobials, antibiotics, non-steroidal anti-inflammatory drugs, antidepressants, antidiabetics, etc.) and their metabolites are universal in biosolids fertilizer. Pharmaceutical concentration in biosolid and sewage sludge amended soils are long lasting. They may impact ecosystem health due to their uptake by plants and animals and movement through food webs. Crops and other fresh products can introduce pharmaceutically active compounds as well as metabolites to humans. Further, the application of biosolids to agricultural fields results in the accumulation of antibiotics in soils. This can lead to the creation of antibiotic resistance bacteria in the soil. These bacteria may then pose a risk to humans and livestock.

C. Synagro Knew or Should Have Known Its Biosolid Product Contains PFAS and Other Toxic Chemicals.

48. Synagro touts its role in developing a circular economy—a system of production and consumption designed to reduce waste by reimagining product design, material use, and resource efficiency—by owning and operating processing facilities where Synagro processes biosolids and turns them into compost, fertilizer pellets, and soil conditioners.[6]

49. Yet, in its 2022 Sustainability Report, Synagro acknowledges that PFAS may be present in the biosolids that Synagro sells as fertilizer: "One of our industry's challenges to move toward a more circular world, is the potential of unwanted substances in biosolids, like per- and polyfluoroalkyl substances (PFAS)."[7]

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[6] *Id.* at pp. 6-7.
[7] *Id.* at 21. (emphasis added)

50. In fact, Synagro explicitly recognizes that, "PFAS enter public water collection systems through discharges from industrial, commercial, and domestic sources. Each municipality has unique discharge sources and in some cases these substances can potentially be detected in biosolids."[8]

51. In 2022, Synagro set up a nonprofit called the Coalition of Recyclers of Residual Organics by Practitioners of Sustainability at Synagro's corporate headquarters and installed its Chief Executive Officer and Chairman Bob Preston (who began his career at DuPont) as the chairman. Since its founding, the group has spent $220,000 on federal lobbying to limit liability for PFAS in biosolids according to the group's disclosure forms.

52. On March 28, 2023, Synagro announced a joint project with CharTech Solutions to deploy high-temperature pyrolysis for PFAS mitigation of thermally dried biosolids. The press release stated: "CHAR and Synagro have been working together for three years to test and apply HTP technology for biosolids to eliminate PFAS."[9] Notably, there would be no need for Synagro to develop such technology if PFAS did not exist in biosolids. Unfortunately, thermal destruction of PFAS-containing wastes can lead to additional health and environmental harm, since PFAS have high thermal stability, and incineration may release harmful byproducts.

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[8] *Id.*

[9] "Synagro and CharTech Solutions to Deploy High-Temperature Pyrolysis for PFAS Mitigation of Thermally Dried Biosolids," March 28, 2023, available at: https://www.synagro.com/2023/03/28/synagro-and-chartech-solutions-to-deploy-high-temperature-pyrolysis-for-pfas-mitigation-of-thermally-dried-biosolids/ (last visited Feb. 11, 2024).

53. Further, a 2013 study of biosolids archived from 2001 showed massive quantities of PFAS in all samples.[10] Farmers in Michigan,[11] New Mexico,[12] and Maine[13] are being forced to shut down operations due to PFAS contamination. In 2022, Maine passed a law that prohibits the land application of biosolids.

54. The United States Environmental Protection Agency ("EPA"), in its "PFAS Explained:" document available on its website, states: "**Biosolids** Fertilizer from wastewater treatment plants used on agricultural lands can affect ground and surface water."[14]

D. PFAS are Toxic to Humans.

55. As noted above, PFAS are a large family of human-made chemicals that provide heat, stain, and water resistance, making them useful for a range of commercial and industrial applications. All PFAS chemicals contain multiple bonds between atoms of carbon and fluorine, which are extremely strong and give PFAS their exceptional chemical and thermal stability. Due

[10] Venkatesan, AK, Halden, RU. *National inventory of perfluoroalkyl substances in archived U.S. biosolids from the 2001 EPA National Sewage Sludge Survey*. J Hazard Mater. 2013 May 15;252-253:413-8. doi: 10.1016/j.jhazmat.2013.03.016.

[11] Chris Clayton, "Forever Chemicals and Risks to Farms," *Progressive Farmer* (May 9, 2022) *available at* https://www.dtnpf.com/agriculture/web/ag/livestock/article/2022/05/06/michigan-farm-cautionary-tale-pfas (last visited Feb. 12, 2024).

[12] Steve Davies, "New Mexico dairy farmer awaits PFAS relief as Congress looks to boost research funding," *AgriPulse* (June 29, 2022) *available at* https://www.agri-pulse.com/articles/17916-new-mexico-dairy-farmer-awaits-pfas-relief-as-congress-looks-to-boost-research-funding (last visited Feb. 12, 2024).

[13] Kevin Miller, "More than 50 Maine farms impacted by PFAS, but state officials see 'glimmer of hope," *Maine Public* (Feb. 1, 2023) *available at* https://www.mainepublic.org/environment-and-outdoors/2023-02-01/more-than-50-maine-farms-impacted-by-pfas-but-state-officials-see-glimmer-of-hope (last visited Feb. 12, 2024).

[14] EPA, "PFAS Explained:" *available at* https://www.epa.gov/system/files/documents/2023-10/final-virtual-pfas-explainer-508.pdf (last visited Feb. 12, 2024).

to these strong bonds, PFAS (or in some cases, their degradation products) are highly persistent in the environment and are called "forever chemicals."

56. Most research on the environmental fate and toxicity of PFAS has focused on the subclass of long-chain perfluoroalkyl acids ("PFAAs"), including perflurooctanoic acid ("PFOA") and perflurooctanesulfonic acid ("PFOS"), and more recently, per- and polyfluoroalkyl ether acids such as GenX chemicals.[15] There is a substantial body of scientific evidence demonstrating that wastes containing long-chain PFAAs or GenX chemicals are toxic, mobile, environmentally persistent, and bioaccumulative.

57. In the environment, the degrees of persistence, mobility, and bioaccumulation depend on the specific PFAS compound and environmental chemistry. Shorter chain PFAS tend to be more mobile in the environment, while longer chain PFAS tend to have higher sorption. PFAS are also proteinophilic, tending to sorb to proteins in the cells of living organisms and are commonly detected at higher levels in the blood, liver, and kidney. In animals, including fish, longer chain PFAS such as PFOS tend to be more bioaccumulative, and animal tissue concentrations tend to increase as an organism's trophic level increases.

58. PFAS are associated with cancer and are linked to growth, learning, and behavioral problems in infants and children; fertility and pregnancy problems, including pre-eclampsia; interference with natural human hormones; increased cholesterol and risk of obesity; and immune

[15] PFAS with six or more carbons are considered long-chain PFAS, while those with fewer than six carbons are considered short-chain. The two most-studied PFAS are eight carbon PFAS: PFOA and PFOS.

system problems.[16] Epidemiological studies have found decreased antibody response to vaccines,[17] and associations between blood serum PFAS levels and both immune system hypersensitivity and autoimmune disorders like asthma and ulcerative colitis.[18]

59. According to EPA, "PFAS disrupt signaling of multiple biological pathways resulting in common adverse effects on several biological systems and functions, including thyroid hormone levels, lipid synthesis and metabolism, development, and immune and liver function. Additionally, EPA's examination of health effects information found that exposure through drinking water to a mixture of PFAS can be assumed to act in a dose-additive manner . . . This dose additivity means that low levels of multiple PFAS, that individually would not likely result in adverse health effects, when combined in a mixture are expected to result in adverse health effects."[19]

60. In 1999, EPA began investigating PFOS after receiving data from 3M Company that the substance is persistent, unexpectedly toxic, and bioaccumulative. By 2000, the company entered into an agreement with EPA promising to phase out all PFOS and PFOA production. In

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[16] U.S. Dept. of Health and Human Services, Agency for Toxic Substances and Disease Registry, *Toxicological Profile for Perfluoroalkyls*, (May 2021), *available at* https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf (last visited Feb. 12, 2024).

[17] Sunderland, E. M. et. al., *A Review of the Pathways of Human Exposure to Poly- and Perfluoroalkyl Substances (PFASs) and Present Understanding of Health Effects*, 29 JOURNAL OF EXPOSURE SCIENCE AND ENVIRONMENTAL EPIDEMIOLOGY, no. 2, (2018), *available at* https://pubmed.ncbi.nlm.nih.gov/30470793/ (last visited Feb. 12, 2024).

[18] *See* U.S. Environmental Protection Agency, *Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)*, 39 (May 2016), *available at* https://www.epa.gov/sites/production/files/2016-05/documents/pfoa_health_advisory_final_508.pdf (last visited Feb. 12, 2024).

[19] PFAS National Primary Drinking Water Regulation Rulemaking—Proposed Rule, 88 Fed. Reg. 18,638, 18,639 (May 30, 2023), *available at* https://www.federalregister.gov/documents/2023/03/29/2023-05471/pfas-national-primary-drinking-water-regulation-rulemaking#addresses (last visited on Feb. 12, 2024).

2006, eight other major PFAS manufacturers likewise agreed to voluntarily phase out PFOA production.

61. As long-chain PFAAs were phased out by U.S. manufacturers, they were replaced by alternative short-chain and ether-based PFAS such as GenX chemicals, which are being found to have similar health and environmental risks as long-chain PFAAs.

62. Numerous studies have found toxicity in legacy PFAS, such as PFOS and PFOA. Yet, as scientists study newer replacement PFAS, they are finding similar adverse toxicological outcomes in the new PFAS. A compilation of PFAS toxicity studies shows that virtually every PFAS examined is correlated with adverse health outcomes.[20]

63. While ingestion of PFAS is the most common route of exposure, scientists are finding that inhalation and dermal absorption are important routes of exposure. The federal Agency for Toxic Substances and Disease Registry states that people working with PFAS "may be exposed to PFAS by inhaling them, getting them on their skin, and swallowing them."[21]

64. Even small amounts of PFAS are dangerous. In March 2023, EPA issued proposed drinking water limits for six PFAS, including PFOA and PFOS. The proposed limits are 4 parts per trillion ("ppt") for both PFOA and PFOS individually, but EPA also proposed health-based, non-enforceable Maximum Contaminant Level Goals (MCLGs) of *zero* because "**there is no dose**

[20] PFAS Project Lab, Northeastern University, PFAS-TOX Database, *available at* https://pfasproject.com/pfas-toxic-database/ (last visited Feb. 12, 2024).

[21] ATSDR, Per- and Polyfluoroalkyl Substances (PFAS) and Your Health, *available at* https://www.atsdr.cdc.gov/pfas/health-effects/exposure.html#:~:text=Workers%20may%20be%20exposed%20to,your%20body%20through%20your%20skin (last visited Feb. 12, 2024)

below which either chemical is considered safe."[22] The other four PFAS EPA proposes to regulate are GenX, PFBS, PFNA, and PFHxS.

65. On May 8, 2024, EPA designated PFOA and PFOS, including their salts and structural isomers, as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund").[23] EPA found that "both PFOA and PFOS 'may present substantial danger to public health or welfare or the environment when released into the environment' when released into the environment."[24] EPA stated that, "Available information indicates that human exposure to PFOA and/or PFOS is linked to a broad range of adverse health effects, including developmental effects to fetuses during pregnancy or to infants (*e.g.*, low birth weight, accelerated puberty, skeletal variations), liver effects (*e.g.*, tissue damage), immune effects (*e.g.*, antibody production and immunity), and other effects (*e.g.*, cholesterol changes). . . In addition, toxicity assessments . . . indicated that PFOA and PFOS may cause carcinogenic effects in humans and animals."[25] EPA also concluded that "PFOA and PFOS are persistent in the environment, which can cause long-term exposure" and that they "are also highly mobile in the environment and can migrate away from the initial point of release."[26]

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[22] PFAS National Primary Drinking Water Regulation Rulemaking—Proposed Rule, 88 Fed. Reg. 18,638, 18,639 (May 30, 2023), *available at* https://www.federalregister.gov/documents/2023/03/29/2023-05471/pfas-national-primary-drinking-water-regulation-rulemaking#addresses (emphasis added) (last visited on Feb. 12, 2024).
[23] Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, 89 Fed. Reg. 39124 (May 8, 2024) *available at* https://www.govinfo.gov/content/pkg/FR-2024-05-08/pdf/2024-08547.pdf (last visited Nov. 13, 2024)
[24] *Id.*
[25] *Id.*
[26] *Id.* at 39126.

66. Since there is no current federal regulation of long-chain PFAAs or GenX chemicals, disposal of these PFAS wastes is largely unrestricted, and one common solution for disposal has been to release these substances into city wastewater systems. As a result, the risk of wide-spread environmental pollution and human exposure to PFAS from land application of the biosolids product that remains after wastewater treatment is high and foreseeable.

67. There are no medical interventions that will remove PFAS from the body.

E. PFAS biomagnifies in the food chain.

68. PFAS in biosolids leach into the soil or ground water, are then taken up by plants, which are subsequently consumed by humans and wildlife.

69. In 2021, scientists published an article that predicted PFAS uptake and concentrations in different plants from biosolids and calculated the potential exposure to humans and animals consuming harvested vegetation.[27] They determined that EPA's current daily reference doses of PFOA and PFOS[28] could be met by consuming vegetables grown in biosolid amended soils.[29]

70. Because PFAS can biomagnify,[30] PFAS from soil can be taken up by plants, which are then eaten by animals such as cows, creating contamination of both the milk and the meat.

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[27] Lasee, S. et al, *The Effects of Soil Organic Carbon Content on Plant Uptake of Soil Perfluoro Alkyl Acids (PFAAs) and the Potential Regulatory Implications,* Environmental Toxicology and Chemistry, Vol 40(3), pp 832-845 (2021).

[28] On June 21, 2022, EPA updated its health advisories for PFOA and PFOS to 0.004 ppt for PFOA, 0.02 ppt for PFOS, 10 ppt for GenX chemicals, and 2,000 ppt for PFBS. *Lifetime Drinking Water Health Advisories for Four Perfluoroalkyl Substances*, 87 Fed. Reg. 36848. EPA's previous lifetime health advisory was 70 ppt for both PFOA and PFOS.

[29] Lasee, S. et al, *supra,* pp 832-845 (2021).

[30] Biomagnification occurs when the chemical concentration in an organism exceeds the concentration of its food where the major exposure route occurs from the organism's diet.

71. If water is contaminated with PFAS, fish in those waters also become contaminated. Further, PFAS can lead to acute toxicity and result in death of these fish.

72. Farms, ranches, and communities can be devastated by the subsequent contamination of water, soil, crops, fish, and livestock. This threat of contamination is not merely hypothetical – it has happened to each of the Plaintiffs in this case.

F. Existing Federal Safety Standards and Regulations Applicable to Biosolids are Inadequate to Protect the Public from Unreasonable Risks of Injury or Damage.

73. Since the original federal regulations on biosolids or sewage sludge were issued, the science has evolved, and the risks associated with biosolids used as fertilizers have become evident, especially with respect to PFAS.

74. EPA recently outlined PFAS limits for drinking water, and on January 15, 2025, EPA published a draft risk assessment for potential human health and environmental risks associated with land application of sewage sludge containing PFOA and PFOS for those who live on or near impacted properties.[31] EPA concluded that unacceptable human health risks are associated with the exposure to forever chemicals via biosolids fertilizer.

75. Specifically, EPA found land application of sewage sludge exceeds the agency's acceptable human health risk thresholds for cancer and non-cancer effects even when the sludge is applied only one time and contains only 1 part per billion of PFOA or PFOS. *Id.* at 3862.

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[31] "Draft Sewage Sludge Risk Assessment for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS)," 90 Fed. Reg. 3859 (Jan. 15, 2025) *available at* https://www.federalregister.gov/documents/2025/01/15/2025-00734/draft-sewage-sludge-risk-assessment-for-perfluorooctanoic-acid-pfoa-and-perfluorooctane-sulfonic (last visited Jan. 23, 2025).

76. EPA admitted its "draft risk calculations are not conservative estimates," in part because the agency modeled risk associated with sludge containing 1ppb PFOA or PFOS "which is on the low end of measured U.S. sewage sludge concentrations." *Id.* at 3863. "Risk estimates for the highest risk pathways can exceed the EPA's acceptable thresholds by several orders of magnitude." *Id.* The sludge the Plaintiffs were exposed to far exceeds the parameters modeled by EPA.

77. EPA also issued a fact sheet for farmers recommending they, "Consider an alternative source of fertilizer from biosolids moving forward, especially if your farm might be vulnerable to PFAS impacts (examples include dairy farms where the pastures or fields used to grow feed have biosolids application, farms with pasture-raised hens or cattle in fields with biosolids application, farms growing leafy greens like lettuce or spinach, farms with a home drinking water well and sensitive groundwater, like those in regions with karst geology)."[32]

78. As a result of safety concerns, Maine and Connecticut have banned the use of biosolids as fertilizers. Other states such as Michigan, Minnesota, New York, Vermont, and Wisconsin have enacted legislation establishing interim PFOS and PFOA criteria for biosolids. Indiana, Hawaii, Maryland, Massachusetts, New York, Oklahoma, Vermont, and Texas are currently considering new bills to ban or place additional limits on the use of biosolids fertilizers.

79. In 2022, Michigan officials shut down a 400-acre cattle farm after biosolids were applied on that farm—and, subsequently, the meat, which was sold directly to farmers' markets and schools—tested with high levels of PFAS.

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[32] "Draft Sewage Sludge Risk Assessment for PFOA and PFOS: Information for Farmers" (Jan. 2025) *available at* https://www.epa.gov/system/files/documents/2025-01/fact-sheet-farmers-draft-sewage-sludge-risk-assessment-pfoa-pfos.pdf (last visited Jan. 23, 2025).

80. In 2022, Maine banned the use of sewage sludge on agricultural fields and has found contamination on at least 68 of the 100 farms the state has checked so far in a systemic effort to test farms for the chemicals, with 1,000 sites still to be tested.

81. On December 11, 2024, Texas Attorney General Ken Paxton filed a lawsuit against chemical companies 3M and DuPont, claiming the companies knew for decade that PFAS chemicals could cause serious harm to human health yet continued to advertise them as safe for household use around families and children. Texas is suing to hold the companies accountable for deceiving Texas into buying consumer products without vital information.

82. On February 11, 2025, Johnson County commissioners issued a state of disaster, requesting state and federal emergency funds to address farmland, livestock, and water wells contaminated by Defendants' biosolids fertilizers.

83. On March 10, 2025, the City of Fort Worth filed a lawsuit against the U.S. Department of Defense and multiple manufacturers of PFAS chemicals to hold them accountable for contaminating Fort Worth's drinking water sources which the city admitted have been linked to serious health risks. The PFAS that the city admits is in its wastewater streams and is polluting the water supply ends up in the biosolids that Defendants' sell as safe and organic fertilizer.

84. On March 25, 2025, the City Council of Fort Worth unanimously approved the water department's recommendation to end its 10-year contract with Synagro which began in 2019.

G. Plaintiffs' Properties Are Polluted with PFAS and Other Deadly Contaminants.

85. In late November 2022, Synagro Granulite Fertilizer was left in "smoking" piles smelling like "death and sewage" at a property leased by Coy Nall; the property is located approximately 0.57 miles northeast along County Road 102 from the intersection with County

Road 204 near Grandview, Johnson County, Texas. The piles were not mixed into the soils until mid-January 2023.

86. Plaintiffs who live, work, and own property adjacent to the Nall site, complained of the smells and reported the biosolids piles to the Texas Commission on Environmental Quality and Johnson County Constable's Office. Detective Dana Ames, Johnson County's Environmental Crimes Investigator, opened an investigation.

87. Detective Ames obtained soil, surface water, and well water samples, and the County Commissioners' Court approved payment for their testing at a laboratory qualified to test for PFAS. The results indicate high levels of PFAS and other toxic chemicals in the soil, surface water, and well water. Thirty-two individual PFAS were found in the soil and water. All the sites tested had at least one PFAS. Moreover:

- **The drinking water well on the Alessi property tested at 90.9 ppt of PFAS.**
- **One drinking water well on the Schultz's property tested at 268.2 ppt of PFAS, and the other water well on the Schultz's property tested at 192.7 ppt of PFAS.**
- **The soils on the Plaintiffs' properties tested in the range of 97 ppt of PFAS to 6,291 ppt of PFAS.**
- **The surface water on the Plaintiffs' properties tested in the range of 84,700 ppt PFAS to 1,333.61 ppt of PFAS**.

88. Detective Ames then obtained tissue samples from two fish and two calves (one stillborn and one that died one week after birth) from Plaintiffs' properties and had those tested. **One fish tested at 74,460 ppt of PFAS** (including 74,000 ppt of PFOS), **and the other fish tested at 57,000 ppt of PFOS.** The week-old calf tissue tested at 3,200 ppt of PFAS (including 2,400 ppt of PFOS) (the liver was not tested). The stillborn calf tissue tested at 1,490 ppt of PFAS, **while the liver of the stillborn calf tested at 620,228 ppt of PFAS** (including 610,000 of PFOS).

89. To put these numbers in context, if a person consumed one of the fish in the pond on Plaintiffs Farmer and Alessi's property, one single serving (8 ounces) would exceed the EPA reference dose for PFOS exposure by ***30,000 times***.[33]

90. Similarly, if a person consumed the calf liver from the calf born on Plaintiffs Schultz and Coleman's ranch, one single serving would exceed the EPA reference does for PFOS exposure by ***250,000 times***.

91. Three of the water wells on Plaintiffs' properties that are polluted with PFAS are all cased wells drilled to about 250 feet below ground surface and draw from the Woodbine Aquifer, which is a minor aquifer located in northeast Texas. The Woodbine Aquifer provides water for municipal, industrial, domestic, livestock, and small irrigation supplies stretching across 17 counties. It overlays the Trinity Aquifer, which is a major aquifer and critical water source for millions of people in Texas.

H. Synagro's Granulite Fertilizer Tests Positive for PFAS.

92. At the grand opening of Synagro's Village Creek Biosolids Processing Facility on December 1, 2022, Synagro handed out samples of its finished biosolids product labeled Granulite ™ Fertilizer 4-4-0 (Produced @ Village Creek WRF-Fort Worth, TX). Detective Ames obtained a sample and had it tested.

93. Synagro's biosolids product tested positive for twenty-seven individual PFAS including: 1) PFBS; 2) PFHxA; 3) PFHxS; 4) PFHpA; 5) PFOA; 6) PFOS; 7) PFNA; 8) PFDA; 9) PFUnDA; 10) PFDoDA; and 11) PFBA. All of the 11 PFAS listed have sufficient scientific

[33] A reference dose ("RfD") is defined as an estimate of a daily exposure to the human population (including sensitive subpopulations) that is likely to be without an appreciable risk of deleterious effects during a lifetime.

information, including concentration data, human health toxicity data, ecological toxicity data, and environmental fate and transportation data, demonstrating that they adversely affect public health and the environment. The Synagro Granulite Fertilizer sample tested with a total of 35,610 ppt PFAS and other toxic chemicals and 13,000 ppt of PFOS.

94. Subsequent testing of Synagro's biosolids by the Office of State Chemist and by Plaintiffs tested positive for similarly high levels of PFAS as well as additional toxic chemicals.

95. The PFAS and other toxic chemicals identified on Plaintiffs' properties are consistent with those found in Synagro's biosolids. It is important to note that different batches of biosolids have different individual PFAS, depending on the municipal and industrial inputs. In addition, PFAS are a large body of chemicals numbering more than 10,000, and laboratories may test for different suites of PFAS in a targeted analysis for PFAS in biosolids. A laboratory may test for a few PFAS compounds or as many as 70+ individual PFAS and may use different extraction methods. Further, there are many precursors to PFAS in the biosolids, which may transform into other PFAS. Therefore, the species of PFAS found in the biosolids may be different than the PFAS found on a site where biosolids were applied. Moreover, the laboratory tests are capturing only a fraction of the PFAS in the samples, and no other possible sources of the contamination on Plaintiffs' properties have been identified.

I. Prior to Synagro, Renda Managed the City of Fort Worth's Biosolids Program.

96. Biosolids from the City of Fort Worth were previously managed by Renda. These Renda biosolids were applied to lands adjacent to Plaintiffs' properties by the same neighboring farmer. Renda continues to produce and market biosolids for land application in Johnson County and the surrounding counties.

97. Similar to Synagro, Renda touts "years of experience processing excellent quality biosolids" and beneficial reuse of the biosolids "to aid local farmers and ranchers" and for the "betterment of society." Yet, Renda, like Synagro, knew or should have known that its biosolid product contained PFAS and other toxic chemicals.

J. Impact on Plaintiffs

Plaintiffs Farmer and Alessi

98. Since Mr. Nall's application of the Synagro Granulite Fertilizer on his leased pastureland in November 2022 which has polluted the soil, surface water, and drinking water on Plaintiffs' property, Plaintiffs James Farmer and Robin Alessi have suffered medical issues that may be linked to PFAS exposure, including high blood pressure, respiratory and cardiac issues, generalized pain, and skin irritations.

99. Mr. Farmer and Ms. Alessi have many farm and household pets that have recently died including dogs, horses, a newborn bull calf, fish in their stock ponds (catfish, perch, bass, and minnow), peacocks, ducks, chickens, guineas, and cranes. Their cats and dogs appear to be suffering from new medical issues. All the animals drink well water or pond water directly, and they graze off the pastures and eat hay grown on the property.

100. Mr. Farmer and Ms. Alessi have grown a vegetable garden every year and relied on the produce as food, which they can no longer do.

101. Now that their property and only water source is polluted with "forever chemicals," they face the stark possibility of having to abandon the home they love and the property they have developed into a working ranch, raising cattle, freshwater fish, and game birds, which may have to be euthanized since they cannot be safely consumed.

102. Mr. Farmer and Ms. Alessi have started to purchase bottled water for drinking and cooking, but they must shower, do dishes, clean the house, and water their animals with well water which is polluted.

103. Their property is their main asset which has been rendered worthless and will be costly and difficult to clean up and restore.

Plaintiffs Schultz and Coleman

104. Since Mr. Nall's application of the Synagro Granulite Fertilizer on his leased pastureland in November 2022 which has polluted the soil, surface water, and drinking water on Plaintiffs' property, Plaintiffs Karen Coleman and Tony Coleman have suffered medical issues that may be linked to PFAS exposure. In August 2023, Mrs. Coleman suffered from a mass on her thoracic spine: a bone lesion and mass with severe compression of her spinal canal that presents a high risk of paralysis. She has continued intermittent pain that radiates around her left rib cage and weakness in her left hip and required insulin after the surgery. She now is being monitored for pre-diabetes. Mr. Coleman never suffered any medical issues until recently when he contracted an upper respiratory virus which continued to worsen for a lengthy period of time.

105. The Colemans lease Mrs. Schultz's property to raise cattle for hay production and, since the biosolids application in November 2022, many heifers, calves, and a bull have died.

106. The liver of the stillborn calf that died in December 2023 tested with 610,000 ppt of PFOS. Because the calf was stillborn, all the PFOS in the calf's body was from the mother cow (*e.g.*, the placenta and mother's blood). To put the PFOS level in perspective, Maine issued a consumption advisory for beef with PFOS with an action level of 3,400 ppt of PFOS for children

and 7,300 ppt of PFOS for adults.[34] In addition, Michigan requires a farm to shut down and issued a consumption advisory when beef from cattle tested between 980 to 2800 ppt of PFOS.[35] The PFOS level found in the Plaintiffs' stillborn calf exceeded those levels by magnitudes of hundreds.

107. Now that Mrs. Schultz's property and only water source are polluted with "forever chemicals," she and the Colemans (her daughter and son-in-law) face the stark possibility of having to abandon the home they love and the property they have developed into a working cattle ranch. They are suffering significant daily economic losses due to the inability to market their cattle or beef or hay and may have to euthanize their entire herd, a crushing and emotional task.

108. Mrs. Schultz and the Colemans have purchased and installed water filters for the house have purchased bottled water for drinking and cooking, but they must shower, do dishes, clean the house, and water their animals with well water which is polluted.

109. Mrs. Schultz's property is her main asset which has been rendered worthless and will be costly and difficult to clean up and restore. She had intended for her daughter and son-in-law to inherit the property they visit and work on daily. The Colemans have lost income and may have to completely shut down the business they have worked so hard to build.

Plaintiffs Alton and Christopher Bryant

110. Alton Bryant is the owner of property impacted by Defendants. Both Mr. Bryant, and his son Christopher Bryant, reside on the property. As with the other Plaintiffs named herein,

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[34] Maine Action Levels for PFOS in beef for use in determining whether beef at a farm is adulterated (Aug. 4, 2000) *available at* https://www.maine.gov/dep/spills/topics/pfas/PFOS-Action-Levels-for-Beef-Derivation-Memo-08.04.20.pdf (last visited Feb. 14, 2024).

[35] Garrett Ellison, "Advisory warns of PFAS in beef from Michigan cattle farm," *MLive* (Jan. 28, 2022) *available at* https://www.mlive.com/public-interest/2022/01/advisory-warns-of-pfas-in-beef-from-michigan-cattle-farm.html (last visited Feb. 14, 204).

the property has been in the family and was intended to stay within the family. The property is one of their main assets, has been rendered worthless and will be costly and difficult to clean up and restore.

CLASS ACTION ALLEGATIONS

111. Plaintiffs bring this action on behalf of themselves and on behalf of all others similarly situated pursuant to Federal Rule of Civil Procedure 23. The "Class" includes:

> All individuals who, from 2018 to date, are or were owners of real property and/or personal agricultural property to include livestock and dairy cattle, located in Bosque, Denton, Ellis, Hill, Hood, Johnson, Kaufman, Parker, Sommerville and/or Wise counties and who as a result of Defendants' biosolids have suffered a diminution in value of their property.

112. Excluded from the Class are Defendants' officers and directors, and any entity in which Defendants have a controlling interest; and the affiliates, legal representatives, attorneys, successors, heirs, and assigns of the Defendants. Excluded also from the Class are Members of the judiciary to whom this case is assigned, their families, and Members of their staff. Also excluded from the Class are claims for damages for personal injury.

113. Plaintiffs reserve the right to amend the class definition set forth above if discovery and/or further investigation reveals that the Class should be expanded, divided into subclasses, or modified in any way.

114. The definition of the Class is unambiguous. Plaintiffs are members of the Class they seek to represent.

Fed. R. Civ. P. 23(a) Prerequisites

115. **Numerosity:** The members of the Class are so numerous that joinder is impractical. The Defendants have sold between 6.5 million and 16 million pounds of biosolids during the applicable years to farmers and ranchers within Bosque, Denton, Ellis, Hill, Hood, Johnson,

Kaufman, Parker, Sommerville and/or Wise counties. As such, the Class consists of thousands of members, the identify of whom is within the knowledge of and can be ascertained by resort to Defendants' records.

116. **Existence and Predominance of Common Questions of Law and Fact:** Rule 23(a)(2) is satisfied in that Plaintiffs' claims raise questions of law or fact common to the questions of law or fact raised by the claims of each of the Class members. Further, Rule 23(a)(3) is satisfied in that these common questions of law or fact predominate over those affecting only individual class members. These common questions of law and fact include, without limitation:

a. Whether Defendants owed a duty to Plaintiffs and members of the Class to refrain from acts and/or omissions reasonably likely to result in PFAS or other toxic pollutant contamination of real and/or personal agricultural property;

b. Whether Defendants knew, foresaw, anticipated and/or should have known, anticipated, and/or foreseen that it was unreasonably dangerous to engage in acts and/or omissions that resulted in PFAS or other toxic pollutant contamination of real and/or personal agricultural property;

c. Whether Defendants knew, foresaw, anticipated and/or should have known, anticipated, and/or foreseen that their acts and/or omissions were likely to result in Plaintiffs and members of the Class having PFAS or other toxic pollutant contamination of real and/or personal agricultural property;

d. Whether Defendants' acts and/or omissions proximately caused Plaintiffs and members of the Class having PFAS or other toxic pollutant contamination of real and/or personal agricultural property;

e. Whether the Plaintiffs and members of the Class having PFAS or other toxic pollutant contamination of real and/or personal agricultural property is injurious, offensive and/or otherwise harmful to Plaintiffs and the members of the Class; and

f. Whether Defendants' conduct resulted in irreparable harm to Plaintiffs and the member of the Class; and

g. Whether Defendants' conduct warrants injunctive and/or declaratory relief.

117. **Typicality:** The claims of Plaintiffs are typical of the claims of the Class in that they, like all class members, were subjected to the same challenged conduct. Plaintiffs, like all class members, have been damaged by Defendants' biosolids-based fertilizers. Furthermore, the factual basis of Defendants' misconduct is common to all class members and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Class.

118. **Adequacy of representation:** Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of those injured by PFAS or other toxic pollutants. Such class counsel will act zealously on behalf of the Class. Plaintiffs have no conflicts of interest with the Class, have suffered the same type of losses as the Class and have the ability to play an active role in this litigation Accordingly, Plaintiffs are adequate representatives and will fairly and adequately protect the interests of the Class.

Fed. R. Civ. P. 23 (b) Factors

119. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation. Absent a class action, most Class

Members would likely find that the cost of litigating their individual claims is prohibitively high and would therefore have no effective remedy.

120. Even if class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

121. Defendants have acted on grounds that apply generally to the Class as a whole, so that class certification, injunctive relief, and any monetary relief are appropriate on a class-wide basis.

122. **Notice to the Classes:** Notice can be accomplished by direct mailing for most, if not all, class members based on Defendants' records and, if necessary, can be complemented by publication in news sources and town hall meetings.

123. The claims asserted herein are applicable to all individuals who, from 2018 to date, are or were owners of real property and/or personal agricultural property to include livestock and dairy cattle, located in Bosque, Denton, Ellis, Hill, Hood, Johnson, Kaufman, Parker, Sommerville and/or Wise counties and who as a result of Defendants' biosolids have suffered a diminution in value of their property.

124. All conditions precedent to bringing this action have been satisfied and/or waived.

EQUITABLE TOLLING OF APPLICABLE STATUTE OF LIMITATIONS

125. Plaintiffs incorporate each of the foregoing allegations as if fully stated herein.

126. To the extent there is any question as to the timeline of the filing of this action, the running of any statute of limitations has been tolled by reason of Defendants' fraudulent concealment. Defendants, through affirmative misrepresentations and omissions, actively concealed from Plaintiffs the true risks associated with their biosolids fertilizers.

127. At all times relevant, Defendants have maintained that their biosolids fertilizers are safe, organic, and non-toxic. Further, Synagro lobbied Congress and state legislatures including the Texas legislature to limit regulation of biosolids, despite knowing the risks to health and the environment the product presents.

128. As a result of Defendants' actions, Plaintiffs were unaware and could not reasonably have known or have learned through reasonable diligence, that the biosolids fertilizers exposed their property to the risks alleged herein and that those risks were the direct and proximate result of Defendants' actions and omissions.

129. Furthermore, Defendants are estopped from relying on any statute of limitations because of its fraudulent concealment of the true character, quality, and nature of their biosolids fertilizers because this was non-public information over which Defendants had and continues to have exclusive control, and because Defendants knew that this information was not available to Plaintiffs. In addition, Defendants are estopped from relying on any statute of limitations because of their intentional concealment of these facts.

130. Plaintiffs had no knowledge that Defendants were engaged in the wrongdoing alleged herein. Because of the fraudulent acts of concealment of wrongdoing by Defendants, Plaintiffs could not have reasonably discovered the wrongdoing at any time prior. Also, the economics of this fraud should be considered. Defendants had the ability to and did spend enormous amounts of money in furtherance of its purpose of marketing, promoting and/or

distributing a profitable fertilizer, notwithstanding the known or reasonably known risks. Plaintiffs could not have afforded and could not have possibly conducted studies to determine the nature, extent, and identity of related risks to health and the environment and were forced to rely on only the Defendants' representations. Accordingly, Defendants are precluded by the discovery rule and/or the doctrine of fraudulent concealment from relying upon any statute of limitations.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

NEGLIGENCE
(On behalf of Plaintiffs and the Class)

131. Plaintiffs incorporate each of the foregoing allegations as if fully stated herein.

132. Defendants had a legal duty to exercise reasonable care in the design, research, testing, manufacture, formulation, handling, control, disposal, supply, promotion, marketing, distribution, sale, testing, labeling, use, and provision of product information and instructions for use of their respective biosolids fertilizers, including a duty to assure that the product would not cause unreasonable risk of injury for its intended and foreseeable uses.

133. Defendants failed to exercise ordinary care in the design, research, testing, manufacture, formulation, handling, control, disposal, supply, promotion, marketing, distribution, sale, testing, labeling, use, and provision of product information and instructions for use of their respective biosolids fertilizers in that Defendants knew or should have known that their respective biosolids fertilizers created a high risk of unreasonable, dangerous effects, including but not limited to, livestock illness and death and long-lasting pollution of water and soil with persistent toxic and cancer-causing chemicals including PFAS, which are difficult if not impossible to remediate, thereby reducing the market value of their property.

134. Defendants so negligently, carelessly, and recklessly designed, researched, tested, manufactured, formulated, handled, controlled, disposed, supplied, promoted, marketed, distributed, sold, tested, labeled, used, and provided product information and instructions for use of their respective biosolids fertilizers that they breached their duties and each directly and proximately caused Plaintiffs' properties including their drinking water wells to be polluted with persistent toxic and cancer-causing chemicals including PFAS, resulting in livestock illness and death and loss of market value of their property.

135. The negligence by Defendants, their agents, servants, and/or employees, included but was not limited to the following acts and/or omissions:

a. Manufacturing, producing, promoting, formulating, creating, and/or designing their respective biosolids fertilizers without thoroughly testing them;

b. Failing to test their respective biosolids fertilizers and/or failing to adequately, sufficiently, and properly test their biosolids fertilizers to determine the presence and concentration of PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals);

c. Failing to conduct reasonable, appropriate, or adequate scientific studies to evaluate the environmental fate and transport characteristics of PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) in their respective biosolids fertilizers such as runoff and drainage assessments, including the likelihood that the use and disposal of their respective biosolids fertilizers would cause PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) to pollute properties and water supplies, render drinking water unusable and unsafe, and threaten public health and welfare and the environment;

d. Failing to take any action to prevent their respective biosolids fertilizers from polluting adjacent or nearby properties from land application sites;

e. Failing to adequately and correctly warn the public, users of biosolids, agricultural professionals, Plaintiffs, EPA, TCEQ, and the Texas Office of the State Chemist of the dangers of Defendants' respective biosolids fertilizers including the potential for migration from land application sites;

f. Failing to provide EPA, TCEQ, and the Texas Office of the State Chemist with adequate and accurate information regarding the chemical constituents in

Defendants' respective biosolids fertilizers and the risk to vegetation, crops, livestock, water supplies, and health and the environment posed by the use and disposal of biosolids fertilizers, especially in sensitive areas where people live off the products grown on or near land where biosolids are applied or near drinking water supplies and water bodies;

g. Marketing, advertising, selling, and recommending the use of their respective biosolids fertilizers without sufficient knowledge as to its dangerous propensities;

h. Representing that their respective biosolids fertilizers were safe for use for their intended purpose, including claiming they are organic and that the use of biosolids will "protect the health of our water, our Earth and those who depend upon them now and for the future"[36] when, in fact, their biosolids fertilizers were unsafe and contain chemicals not found in nature including PFAS;

i. Representing that their respective biosolids fertilizers had equivalent safety and efficacy as other forms of fertilizers;

j. Designing, manufacturing, producing, and formulating their respective biosolids fertilizers in a manner which was dangerous to those who live on or near where the biosolids fertilizers were land applied (including livestock) or use products grown from land on or near where the biosolids fertilizers were land applied;

k. Failing to use ordinary care in designing, manufacturing, producing, and formulating their respective biosolids fertilizers so as to avoid the aforementioned risks to health and the environment when the fertilizers were used as intended;

l. Concealing information from users of biosolids, agricultural professionals, Plaintiffs, EPA, TCEQ, and the Texas Office of the State Chemist while knowing that Defendants' respective biosolids fertilizers were unsafe, dangerous, and/or non-conforming with EPA and Texas regulations;

m. Concealing and/or misrepresenting information from users of biosolids, agricultural professionals, Plaintiffs, EPA, TCEQ, and the Texas Office of the State Chemist, concerning the severity of risk and dangers of Defendants' respective biosolids fertilizers compared to other forms of fertilizers;

n. Selling their respective biosolids fertilizers with a false and misleading label;

[36] "Synagro—Your Partner for a Cleaner, Greener World," *available at* https://www.synagro.com (last visited April 1, 2025).

o. Failing to accompany their respective biosolids fertilizers with adequate warnings regarding the risks to soil, vegetation, drinking water supplies, water bodies, human health, livestock, and the environment; and

p. By acting in an otherwise careless and/or negligent manner.

136. Defendants knew or should have known that those who live on or near properties or use products grown on or near properties where the Defendants' biosolids fertilizers were land applied would foreseeably suffer injury because of Defendants' failure to exercise ordinary care, as set forth above.

137. Defendants' violations of law and/or negligence were the proximate cause of Plaintiffs' injuries, harm and economic loss, which Plaintiffs have suffered and continue to suffer.

138. Plaintiffs have suffered actual injury or loss. As a direct and proximate result of Defendants' acts and omissions alleged in this Complaint:

a. Plaintiffs' land water supplies were and continue to be polluted with PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals);

b. Plaintiffs were exposed to PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) through their ordinary use of polluted water for drinking, cooking, bathing, and cleaning;

c. Plaintiffs' livestock were exposed to PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) and have suffered illness and death;

d. Plaintiffs' properties were and continue to be polluted with PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) which will be costly to remediate (if even possible), thereby reducing their market value;

e. Plaintiffs have incurred, are incurring, and will incur, substantial costs for investigation, remediation, cleanup, restoration, removal, treatment, and monitoring of their soil and water and for veterinary treatment and expenses related to the illness and death of their livestock;

f. Plaintiffs have lost income and incurred substantial expenses because they cannot market their livestock, which have been exposed to with PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) and tested positive for the same.

139. As a further direct and proximate result of the acts and omissions of the Defendants alleged in this Complaint, Plaintiffs have sustained and will sustain other substantial expenses and damages, in an amount within the jurisdictional limits of this Court for which Defendants are strictly, jointly, and severally liable.

140. Existing federal safety standards and regulations applicable to biosolids fertilizers are inadequate to protect the public from unreasonable risks of injury or damage.

141. Defendants knew it was substantially certain that the acts and omissions described above would threaten public health and cause extensive pollution of property and drinking water supplies. Defendants committed each of the above-described acts and omissions with conscious or deliberate disregard of the foreseeable harm resulting from the defective product. Such conduct was not the result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing, but was a bad faith decision to market and promote sales of biosolids fertilizer, knowing of the defect and danger, in conscious or deliberate disregard of the threat to the safety of Plaintiffs. Therefore, Plaintiffs request an award of exemplary and punitive damages in an amount reasonable, appropriate, and sufficient to punish these Defendants and deter them from ever committing the same or similar acts.

142. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs' favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees and all relief as this Court deems just and proper.

143. Plaintiffs further seek a mandatory injunction requiring (1) a site investigation resulting in full vertical and horizontal delineation of impacted soils, groundwater, and surface

water on Plaintiffs' properties, and (2) cleanup and restoration of the Plaintiffs' properties that results, at a minimum, in the complete removal of chemical constituents released to Plaintiffs' properties, no impact to surface or groundwater on Plaintiffs' properties, and Plaintiffs' land returned to the condition prior to any pollution or contamination.

SECOND CAUSE OF ACTION

STRICT PRODUCTS LIABILITY—DESIGN DEFECT
(On Behalf of Plaintiffs and the Class)

144. Plaintiffs incorporate each of the foregoing allegations as if fully stated herein.

145. At all times herein mentioned, Defendants designed, researched, tested, manufactured, formulated, handled, controlled, disposed, supplied, promoted, marketed, distributed, sold, tested, labeled, used, and provided product information and instructions for use of their respective biosolids fertilizers that were land applied near Plaintiffs' properties.

146. Defendants' respective biosolids fertilizers were defective because they contain PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine disrupters, and pharmaceuticals) in levels that exceed acceptable risk thresholds to human health and the environment and cause illness and death in both humans and livestock.

147. Defendants' biosolids fertilizers were defective when they left the Defendants' hands.

148. Defendants' biosolids fertilizers reached the consumer in the same condition that it was in when it left the manufacturer's custody. The biosolids fertilizers were expected to and did reach users such as Coy Nall without substantial change in its condition in which it was produced, manufactured, sold, distributed, and marketed by the Defendants.

149. Defendants' respective biosolids fertilizers were defective in design and/or formulation, in that, when they left the hands of the Defendants' manufacturer and/or supplier, the

foreseeable risks exceeded the benefits associated with the design or formulation of the biosolids fertilizers.

150. Defendants' respective biosolids fertilizers were defective in design and/or formulation, in that, when they left the hands of the Defendants' manufacturer and/or supplier, it was unreasonably dangerous, unreasonably dangerous in normal use, and it was more dangerous than an ordinary consumer would expect.

151. At all times herein mentioned, Defendants' respective biosolids fertilizers were in a defective condition and unsafe, and Defendants knew or had reason to know that said product was defective and unsafe, especially when used in the form and manner as provided by Defendants. Defendants' respective biosolid fertilizers were defective in the following ways:

a. When placed in the stream of commerce, Defendants' biosolids fertilizers were defective in design and formulation and, consequently, dangerous to an extent beyond that which an ordinary consumer would anticipate.

b. When placed in the stream of commerce, Defendants' biosolids fertilizers contained unreasonably dangerous design defects and were not reasonably safe when used in a reasonably anticipated manner.

c. Defendants did not sufficiently test, investigate, or study its biosolids fertilizers.

d. Exposure to the pollutants in Defendants' biosolids fertilizers presents a risk of harmful side effects that outweigh any potential utility stemming from the use of the fertilizers.

e. Defendants knew or should have known at the time of marketing its biosolids fertilizers that exposure to the fertilizers could result in cancer and other severe illnesses in humans and livestock and presented an unreasonable risk to health and the environment.

f. Defendants did not conduct adequate post-marketing surveillance of its biosolids fertilizers.

g. Defendants' biosolids fertilizers contain high levels of PFAS, which:

    i. are persistent in the environment and resist degradation;

ii. are mobile in the environment;

iii. cause extensive groundwater contamination when used and disposed of in a foreseeable and intended manner;

iv. render drinking water unsuitable for human use and consumption, even at extremely low levels;

v. pose significant threats to the public health and welfare and the environment because exposure can lead to adverse health effects, including high cholesterol, changes in liver enzymes, decreased immune response to vaccination, thyroid disorders, pregnancy-induced hypertension and preeclampsia, and cancer (testicular and kidney for PFOA, liver and thyroid for PFOS) and may cause livestock illness and death;

vi. and certain PFAS compounds biodegrade to other more harmful PFAS compounds.

h. Defendants' biosolids fertilizers also contain other toxic chemicals (including heavy metals, estrogens/endocrine disrupters, and pharmaceuticals) that remain after the wastewater treatment process and cause illness and death.

i. Defendants' biosolids fertilizers violated the applicable federal requirements found at 40 CFR Part 503 and the applicable state requirements found at 30 Tex. Admin. Code Chapter 312.

j. Defendants' biosolids fertilizers violated the provisions of the Texas Commercial Fertilizer Control Act, Chapter 63.142(a).

152. Defendants knew or should have known that at all times mentioned herein their respective biosolids fertilizers were in a defective condition and were and are inherently unsafe.

153. Plaintiffs and their properties were exposed to Defendants' respective biosolids fertilizers without knowledge of the fertilizers' dangerous characteristics.

154. At the time the Defendants' respective biosolids fertilizers were land applied near Plaintiffs' properties, the fertilizers were being used for the purposes and in a manner normally intended, as a fertilizer.

155. Defendants with this knowledge voluntarily designed and formulated their respective biosolids fertilizers with a dangerous condition for use by the public and for land application by Coy Nall near Plaintiffs' properties.

156. Defendants had a duty to create a product that was not unreasonably dangerous for its normal, intended use.

157. Defendants created a product that was and is unreasonably dangerous for its normal, intended use.

158. Defendants marketed and promoted a product in such a manner to make it inherently defective as the marketing and promotion downplayed the product's suspected, probable, and established risks to health and the environment inherent with its normal, intended use.

159. Defendants designed, researched, tested, manufactured, formulated, supplied, promoted, marketed, distributed, sold, and labeled a defective product, which created an unreasonable danger to health and the environment, and Defendants are therefore strictly liable for the injuries and damages sustained by Plaintiffs.

160. Plaintiffs could not, by the exercise of reasonable care, have discovered the biosolids fertilizer defects herein mentioned or perceived its danger.

161. A safer alternative design to Defendants' biosolids was available, including the following:

a. Manure: Manure is a more appropriate fertilizer for sustained agriculture than biosolids because manure provides a moderate, sustained source of nitrogen for plants, while nitrogen in biosolids exists primarily in a mineralize form leading to quick, short-lived supply of nitrogen to plants.

b. Organic Compost: Made from plant materials and animal manure, organic compost provides nutrients without the risk of chemical contamination.

c. Biofertilizers: Microbial inoculants can enhance soil fertility naturally.

d. Chemical Fertilizers: Chemical Fertilizers provide similar growth outcomes (plant height, plant diameter, or dry weight yield) in crops such as wheat, sugar cane, and corn, without the same risks from biosolids.

e. Pretreatment: Defendants could have required pretreatment from dischargers into the wastewater treatment plant to remove the PFAS from the sources, which would not have increased costs for Defendants.

f. Treatment of the Biosolids: Defendants could have used chelators to bind or remove heavy metals from the biosolids.

162. A safer design such as those set forth above would have prevented or significantly reduced the risk of injury or damage without limiting the utility of the product.

163. A safer design alternative such as those set forth above was economically feasible at the time the product was released.

164. Defects in Defendants' respective biosolids fertilizers were the cause or a substantial factor in causing Plaintiffs' injuries and damages.

165. Plaintiffs have suffered actual injury or loss. As a direct and proximate result of Defendants' defective design of their respective biosolids fertilizers alleged in this Complaint:

a. Plaintiffs' land water supplies were and continue to be polluted with PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals);

b. Plaintiffs were exposed to PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) through their ordinary use of polluted water for drinking, cooking, bathing, and cleaning;

c. Plaintiffs' livestock were exposed to PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) and have suffered illness and death;

d. Plaintiffs' properties were and continue to be polluted with PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) which will be costly to remediate (if even possible), thereby reducing their market value;

e. Plaintiffs have incurred, are incurring, and will incur, substantial costs for investigation, remediation, cleanup, restoration, removal, treatment, and monitoring of their soil and water and for veterinary treatment and expenses related to the illness and death of their livestock;

f. Plaintiffs have lost income and incurred substantial expenses because they cannot market their livestock, which have been exposed to with PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) and tested positive for the same.

166. As a result of the defect in Defendants' respective biosolids fertilizers, Plaintiffs' have suffered property harm including the loss of market value of their land, livestock illness and death, related expenses, and lost income.

167. Existing federal safety standards and regulations applicable to biosolids fertilizers are inadequate to protect the public from unreasonable risks of injury or damage.

168. Defendants' defective design of their respective biosolids fertilizers amount to willful, wanton, and/or reckless conduct by Defendants.

169. Defendants knew that it was substantially certain that the acts and omissions described above would threaten public health and cause extensive pollution of property and drinking water supplies. Defendants committed each of the above-described acts and omissions with conscious or deliberate disregard of the foreseeable harm resulting from the defective product. Such conduct was not the result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing, but was a bad faith decision to market and promote sales of biosolids fertilizer, knowing of the defect and danger, in conscious or deliberate disregard of the threat to the safety of Plaintiffs.

170. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs' favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees and all relief as this court deems just and proper.

171. Plaintiffs further seek a mandatory injunction requiring (1) a site investigation resulting in full vertical and horizontal delineation of impacted soils, groundwater, and surface water on Plaintiffs' properties, and (2) cleanup and restoration of the Plaintiffs' properties that results, at a minimum, in the complete removal of chemical constituents released to Plaintiffs' properties, no impact to surface or groundwater on Plaintiffs' properties, and Plaintiffs' land returned to the condition prior to any pollution or contamination.

THIRD CAUSE OF ACTION

STRICT PRODUCTS LIABILITY—FAILURE TO WARN
(On Behalf of Plaintiffs and the Class)

172. Plaintiffs incorporate each of the foregoing allegations as if fully stated herein.

173. Defendants have engaged in the business of selling, testing, distributing, supplying, manufacturing, marketing, and/or promoting their respective biosolids fertilizers, and through that conduct have knowingly and intentionally placed their respective biosolids fertilizers into the stream of commerce with full knowledge that it reaches consumers such as Coy Nall who land applied it near Plaintiffs' properties and exposed Plaintiffs and their property to the fertilizers through ordinary and reasonably foreseeable uses.

174. Defendants did in fact sell, distribute, supply, manufacture, and/or promote biosolids fertilizers to the public, and Defendants' biosolids fertilizers reached the consumer in the same condition that it was in when it left the manufacturer's custody. The biosolids fertilizers were expected to and did reach users such as Coy Nall without substantial change in the condition of the product from when Defendants initially distributed it.

175. At the time of manufacture, Defendants' respective biosolids fertilizers were defective and unsafe in manufacture such that it was unreasonably dangerous those living on or

near impacted sites (*i.e.,* where biosolids are land applied) or those that rely primarily on their products (*e.g.,* food crops, animal products, drinking water) and was so at the time Defendants distributed it and at the time Plaintiffs and their property were exposed to it. The defective condition of the biosolids fertilizers was due in part to the fact that they were not accompanied by proper instructions and warnings regarding their carcinogenic and toxic qualities, fate and transport after land application, and possible side effects, including, but not limited to livestock illness and death and long-lasting soil and water pollution with PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals).

176. Defendants' respective biosolids fertilizers did not contain instructions or caution or warning statement adequate to protect health and the environment for those living on or near impacted sites (*i.e.,* where biosolids are land applied) or those that rely primarily on their products (*e.g.,* food crops, animal products, drinking water).

177. Defendants' respective biosolids fertilizers did not contain proper instructions or adequate caution or warning statements as required by 40 U.S.C. § 503.14(e).

178. Defendants could have amended the label of their respective biosolids fertilizers to provide additional instructions and warnings.

179. This defect caused serious injury to Plaintiffs who live near a land application site where Coy Nall used the product in its intended and foreseeable manner.

180. At all times herein mentioned, Defendants had a duty to properly design, manufacture, formulate, test, inspect, package, label, distribute, market, examine, maintain supply, provide proper warnings, and take such steps to assure that the product did not cause those who living on or near impacted sites (*i.e.,* where biosolids are land applied) or those that rely primarily

on their products (*e.g.*, food crops, animal products, drinking water) to suffer from unreasonable and dangerous side effects.

181. Defendants labeled, distributed, marketed, and promoted the aforesaid product such that it was dangerous and unsafe for the use and purpose for which it was intended.

182. Defendants failed to provide instructions and warn of the nature and scope of the side effects associated with their respective biosolids fertilizers, namely that they contain PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine disrupters, and pharmaceuticals) in levels that exceed acceptable risk thresholds to human health and the environment and cause illness and death in both humans and livestock. These side effects were known or reasonably scientifically knowable at the time of distribution.

183. Defendants were aware of the probable consequences of the aforesaid conduct. Despite the fact that Defendants knew or should have known that their respective biosolids fertilizers caused serious injuries to those who live on or near impacted sites (*i.e.*, where biosolids are land applied) or those that rely primarily on their products (*e.g.*, food crops, animal products, drinking water), Defendants failed to exercise reasonable care to include instructions or warn of the dangerous properties of their fertilizers. Defendants willfully and deliberately failed to avoid the consequences of their own failure to warn, and in doing so, Defendants acted with conscious disregard for the safety of Plaintiffs and their property.

184. At the time that Plaintiffs and their property were exposed to Defendants' biosolids fertilizers, Plaintiffs could not have reasonably discovered any defect in the fertilizers prior through the exercise of reasonable care.

185. Defendants, as the manufacturers and/or distributors of the subject product, are held to the level of knowledge of an expert in the field.

186. Plaintiffs and users such as Coy Nall reasonably relied upon the skill, superior knowledge, and judgment of the Defendants.

187. Had Defendants properly disclosed the risks associated with their respective biosolids fertilizers, Plaintiffs would have avoided the risk of exposure to themselves and their property. Farmers like Coy Nall would have been properly informed such that he did not use the product or used it in a way to avoid runoff to his neighbors. Plaintiffs would have taken all possible affirmative action to prevent runoff of the biosolids fertilizer to their property. Further, as a result of Plaintiffs having publicized the risks associated with Defendants' biosolids fertilizers, EPA has issued a draft risk assessment to form the basis for regulation of PFOA and PFOS in sludge and has recommended farmers consider using a different fertilizer and test their water, the Texas legislature is considering legislation to regulate PFAS in biosolids, and the City of Fort Worth has ended its contract with Defendant Synagro for managing the biosolids program.

188. The information that Defendants did provide or communicate failed to contain adequate instructions, warnings, and precautions that would have enabled users like Coy Nall and similarly situated individuals to utilize the product safely and for those who live on or near impacted sites (*i.e.*, where biosolids are land applied) or those that rely primarily on their products (*e.g.*, food crops, animal products, drinking water) to take necessary precautions. Instead, Defendants disseminated information that was inaccurate, false, and misleading and which failed to communicate accurately or adequately the comparative severity, duration, and extent of the risk of injuries associated with the use of and/or exposure to their respective biosolids fertilizers; continued to promote the efficacy and "organic" nature of biosolids, even after they knew of should have known of the unreasonable risks from use and exposure; and concealed, downplayed, or otherwise suppressed, through aggressive marketing, promotion, and lobbying efforts, any

information or research about the risks and dangers of exposure to Defendants' respective biosolids fertilizers.

189. To this day, Defendants have failed to adequately warn of the true risks of Plaintiffs' injuries associated with the use and exposure of biosolids and contend Plaintiffs' claims are novel and unproven, despite EPA's published draft risk assessment which corroborates them.

190. As a result of the inadequate instructions and warnings, Defendants' respective biosolids fertilizers were defective and unreasonably dangerous when they left the possession and/or control of Defendants, were distributed by Defendants, and used by Plaintiffs' neighbor Coy Nall.

191. As a direct and proximate result of Defendants' actions as alleged herein, and in such other ways to be later shown, the subject product caused Plaintiffs to sustain injuries.

192. As a direct and proximate result of Defendants' defective design of their respective biosolids fertilizers alleged in this Complaint:

a. Plaintiffs' land water supplies were and continue to be polluted with PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals);

b. Plaintiffs were exposed to PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) through their ordinary use of polluted water for drinking, cooking, bathing, and cleaning;

c. Plaintiffs' livestock were exposed to PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) and have suffered illness and death;

d. Plaintiffs' properties were and continue to be polluted with PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) which will be costly to remediate (if even possible), thereby reducing their market value;

e. Plaintiffs have incurred, are incurring, and will incur, substantial costs for investigation, remediation, cleanup, restoration, removal, treatment, and

monitoring of their soil and water and for veterinary treatment and expenses related to the illness and death of their livestock;

f. Plaintiffs have lost income and incurred substantial expenses because they cannot market their livestock, which have been exposed to with PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine receptors, and pharmaceuticals) and tested positive for the same.

193. As a result of the defect in Defendants' respective biosolids fertilizers, Plaintiffs' have suffered property harm including the loss of market value of their land, livestock illness and death, related expenses, and lost income.

194. Existing federal safety standards and regulations applicable to biosolids fertilizers are inadequate to protect the public from unreasonable risks of injury or damage.

195. Defendants knew that it was substantially certain that the acts and omissions described above would threaten public health and cause extensive pollution of property and drinking water supplies. Defendants committed each of the above-described acts and omissions with conscious or deliberate disregard of the foreseeable harm resulting from the defective product. Such conduct was not the result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing, but was a bad faith decision to market and promote sales of biosolids fertilizer, knowing of the defect and danger, in conscious or deliberate disregard of the threat to the safety of Plaintiffs.

196. WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs' favor for compensatory and punitive damages, together with interest, costs herein incurred, attorneys' fees and all relief as this court deems just and proper.

197. Plaintiffs further seek a mandatory injunction requiring (1) a site investigation resulting in full vertical and horizontal delineation of impacted soils, groundwater, and surface water on Plaintiffs' properties, and (2) cleanup and restoration of the Plaintiffs' properties that

results, at a minimum, in the complete removal of chemical constituents released to Plaintiffs' properties, no impact to surface or groundwater on Plaintiffs' properties, and Plaintiffs' land returned to the condition prior to any pollution or contamination.

DAMAGES

198. Defendants' conduct as alleged hereinabove, was a direct, proximately, and producing cause of Plaintiffs' injuries, which resulted in the following damages:

a. Loss of market value for property, including livestock;

b. Cost of repairs;

c. Diminution in market value after repair, including stigma damages;

d. Expenses;

e. Lost income;

f. Exemplary damages for the wanton, willful, fraudulent, and reckless acts and omissions of the Defendants which demonstrate a complete disregard and reckless indifference for the safety and welfare of the general public and to Plaintiffs in an amount sufficient to punish Defendants and deter future similar conduct, to the extent allowable by applicable law; and

g. Court costs.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, individually and on behalf of the Class, pray for judgment against the Defendants for the following:

a. An Order certifying this action as a class action and appointing Plaintiffs and their counsel to represent the Class;

b. Actual, special, and consequential damages;

c. Mandatory injunction requiring (1) a site investigation resulting in full vertical and horizontal delineation of impacted soils, groundwater, and surface water on Plaintiffs' properties and (2) cleanup and restoration of the Plaintiffs' properties that results, at a minimum, in the complete removal of chemical constituents released to Plaintiffs' properties, no impact to surface or groundwater on Plaintiffs' properties, and the Plaintiffs' land returned to the condition prior to any pollution or contamination.

d. Exemplary damages;

e. Prejudgment and postjudgment interest;

f. Court costs;

g. Attorneys' fees; and

h. All other relief to which Plaintiffs are entitled.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury as to all issues.

DATE: April 4, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been electronically served on all parties and/or their counsel of record via CM/ECF on April 4, 2025.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
(Dallas Division)

ROBIN ALESSI, *et. al.*	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**Civil No. 3:25-CV-0445-K**
	§	
SYNAGRO TECHNOLOGIES, INC., *et. al.*	§	
	§	
Defendants.	§	

SYNAGRO DEFENDANTS' MOTION TO DISMISS PURSUANT TO RULE 12(B)(1) AND RULE 12(B)(6) AND BRIEF IN SUPPORT THEREOF

Defendants Synagro Technologies, Inc. and Synagro of Texas-CDR, Inc. (collectively, "Synagro") move to dismiss Plaintiffs' Second Amended Complaint—Class Action, ECF No. 36 ("Compl.") under Federal Rule of Civil Procedure 12(b)(1) because governmental immunity deprives the Court of subject matter jurisdiction to hear Plaintiffs' claims, and under Federal Rule of Civil Procedure 12(b)(6) because Plaintiffs' claims are barred by the Texas Right to Farm Act, TEX. AGRIC. CODE § 251.001, and because Plaintiffs have inadequately pled their products liability and negligence claims. In support, Synagro attaches their Brief and Appendix of documents.

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INTRODUCTION

Plaintiffs' Complaint contravenes governmental immunity protections, attacks essential and highly regulated farming activities, and fails to properly plead any viable cause of action. Plaintiffs' suit should be dismissed.

The City of Fort Worth owns and operates the Village Creek Water Reclamation Facility ("Village Creek") where it produces biosolids to the highest standards set by the Environmental Protection Agency ("EPA") and Texas Commission on Environmental Quality ("TCEQ"). Synagro constructed and, until recently, operated a drying facility where biosolids were dried to create fertilizer pellets, meeting EPA and TCEQ standards. Farmers picked up the pellets, which Synagro registered as its Granulite fertilizer, for use as a fertilizer and soil amendment. Compl. ¶ 28. This lawsuit is brought by neighbors of a farmer who claim that a one-time application of the pellets on his farm somehow damaged their nearby properties. Plaintiffs allege products liability and negligence, asserting that the Granulite fertilizer contains high levels of per- and polyfluoroalkyl substances ("PFAS"), as well as other constituents like heavy metals, estrogen and endocrine disrupters, and pharmaceutical compounds, which have allegedly caused them a litany of harms.

Generation of biosolids fertilizer from wastewater is a core government function and Plaintiffs' claims are barred by Fort Worth's governmental immunity, which Synagro shares under governing Texas law. Because immunity attaches, the Court lacks subject matter jurisdiction.

Even if not immunity-barred, the Texas Right to Farm Act, TEX. AGRIC. CODE § 251.001, precludes private suits like this targeting lawful agricultural operations, including the provision of fertilizer to Texas farms and ranches. With one of the nation's strongest right-to-farm acts, Texas prohibits tort suits seeking to damage a long-standing, government-approved fertilizer.

Moreover, Plaintiffs' products liability claims fail because Plaintiffs refuse to conduct any risk-utility analysis, suggest any feasible design alternative, or offer a theory of causation for harms

from the one-time use of Synagro's Granulite fertilizer. Plaintiffs' negligence claim must be dismissed for similar shortcomings; however, it is subsumed by the products liability claims. Lastly, Plaintiffs plead no facts to support exemplary damages.

BACKGROUND

A. Regulatory: Biosolids are subject to extensive federal and state regulations and oversight.

Biosolids are the semi-solid organic residuals of treatment of wastewater from homes, businesses, and institutions. EPA has regulated biosolids and their use on farms under the Clean Water Act since the 1970s and adopted comprehensive regulations in 1993, encouraging the nationwide adoption of this critical recycling practice. Plaintiffs' criticisms of land application of biosolids-derived fertilizer ignore decades of scientific studies, public policy decisions, and agricultural experience demonstrating the high value and low risk of this bulk organic fertilizer.

EPA promulgates and enforces federal biosolids standards under the Clean Water Act, including limits on constituents of certain pollutants, pathogens, and metals in biosolids. 40 C.F.R. § 503.13, 503.15. EPA specifically limits levels of arsenic, mercury, selenium, molybdenum, zinc, cadmium, copper, lead, and nickel. Compl. ¶ 42; 40 C.F.R. §§ 503.8 & 503.13; Appx., Item No. 1. EPA regulates application levels, pH composition, cumulative loading rates, and application methodology (like surface water buffers, preventing runoff, and uniform application over land).

Implementing EPA's standards, TCEQ manages a comprehensive program for farm use of biosolids, regulating biosolids composition, management practices, application methodology, and notice and recordkeeping. 30 TEX. ADMIN. CODE §§ 312.1-.150; Appx., Item No. 2. Fort Worth is permitted by TCEQ to produce biosolids at Village Creek. Appx., Item No. 3 ("TCEQ Permit").[1]

[1] Fort Worth Texas Pollutant Discharge Elimination System permit, renewed on January 29, 2024. *See Funk v. Stryker Corp.*, 631 F.3d 777 (5th Cir. 2011). Synagro requests the Court

On top of EPA's requirements, TCEQ requires that samples be tested for various heavy metals, fecal coliform, enteric viruses, and others. 30 TEX. ADMIN. CODE §§ 312.43, 312.82, & 312.124.

While many constituents in biosolids and associated fertilizers are regulated, no agency has adopted limits for the substances mentioned by Plaintiffs, including non-regulated metals like titanium and antimony, estrogen and endocrine disruptors, pharmaceutical compounds, or PFAS.

The Texas Feed and Fertilizer Control Service's Office of the Texas State Chemist ("State Chemist") requires biosolids-based fertilizers be registered, labeled, and tested for compliance with pollutants, pathogens, and vector standards. 4 TEX. ADMIN. CODE § 65.13; Appx., Item No. 4. Synagro maintains its label with the Texas Feed and Fertilizer Control Service. Compl. ¶ 28

Fort Worth and Synagro are compliant with all applicable regulations. In fact, TCEQ's investigation of the 2022-2023 Synagro land application event at issue yielded *no violations*. *See* Appx., Item No. 5.[2] When TCEQ reviewed the samples referenced in the Complaint, it determined that the PFAS levels on Plaintiffs' properties did not "present a risk of harm to human health or the environment." Appx., Item No. 6 at 3.[3]

B. Factual: Fort Worth's biosolids are dried to create Synagro's Granulite fertilizer, which a farmer neighboring the Plaintiffs used.

1. Fort Worth's biosolids program.

Fort Worth has operated a biosolids program for over a century because of its core public health and infrastructure obligation to manage wastewater and the resulting biosolids. *See* Appx.,

take judicial notice of this and other government document referenced below under Federal Rule of Evidence 201.

[2] The investigation report concluded: "No violations resulted from this investigation" and "no violations are being alleged." The report notes that only products meeting TCEQ's standards are applied to farmland. Synagro requests the Court take judicial notice of this report.

[3] A Johnson County Constable transmitted to the State Chemist a report that the Constable's Office described as "TCEQ's official position on Johnson County's biosolids contamination case."

Item No. 7 at 1.[4] Under its TCEQ Permit and EPA regulations, Fort Worth must comply with specific conditions for testing, reporting, managing, marketing, distributing, and applying biosolids. *See* TCEQ Permit at 17-39. In response to rising program costs and an increase in odor complaints, Fort Worth developed a Biosolids Master Plan to evaluate the best methods for biosolids processing and reuse. With financing from the Texas Water Development Board via an EPA grant, Fort Worth paid Synagro to build and put into operation Fort Worth's drum dryer to pelletize biosolids. *See* Appx., Item No. 7 at 1.; Appx., Item No. 8 (the "Contract");[5] Compl. ¶ 26. Synagro celebrated the grand opening of the drying facility on December 1, 2022. Compl. ¶ 92.

Wastewater enters Village Creek through sewer mains and undergoes screening, filtering, treatment, and dewatering, during which solid residuals are separated from liquid effluent. *See* Appx., Item No. 9 at 1.[6] Treated effluent is discharged into the Trinity River. Treated residuals are delivered to the drying facility that Synagro operated. *Id.* at 4. Fort Worth ensures that Village Creek complies with all federal, state or local laws, regulations, and permits, as required both by its TCEQ Permit and the Contract. Appx. Item Nos. 2 and 8 at 0036. Feedstock from Village Creek delivered to the drying facility that contains toxic substances, hazardous materials, metals exceeding standards, or that otherwise "adversely impacts" Synagro's performance is deemed non-

[4] A printed version of Fort Worth's website wherein it describes its biosolids program. Fort Worth Water Department, *Biosolids Program*, City of Fort Worth, (last visited Apr. 24, 2025) available at https://www.fortworthtexas.gov/departments/water/wastewater/biosolids.

[5] Plaintiffs incorporate the contract between the City of Fort Worth and Synagro. Compl. ¶¶ 26, 27 "[C]ourts may consider the terms of a contract attached in a motion to dismiss where the contract was referred to in the complaint and the contract is central to the plaintiff's claims." *Partners & Friends Holding Corp. v. Cottonwood Mins. L.L.C.*, 653 F. Supp. 3d 344, 348 (N.D. Tex. 2023), *aff'd*, No. 23-10192, 2023 WL 8649880 (5th Cir. Dec. 14, 2023).

[6] A printed version of Fort Worth's website wherein it describes its wastewater treatment process. Fort Worth Water Department, *Wastewater Treatment*, City of Fort Worth, (last visited Apr. 24, 2025) available at https://www.fortworthtexas.gov/departments/water/wastewater/treatment.

compliant. *Id*. at 9. Fort Worth recently sued the U.S. Department of Defense and multiple PFAS manufacturers to recover costs the City contends were caused by PFAS, including costs related to its wastewater treatment and biosolids program. Compl. ¶ 83.

Synagro constructed and, until recently, operated the thermal drum dryer connected to Village Creek. At the drying facility, the biosolids were sampled and tested for all constituents that EPA and TCEQ regulate (like certain metals and pathogens). Compl. ¶ 4; s*ee also* 30 TEX. ADMIN. CODE § 312.7, 40 C.F.R. § 503.13. The drying facility produced about 26,500 dry tons of fertilizer each year, which Synagro made available to farmers and ranchers in nearby counties to pick up and apply to their properties as a cost-effective, organic alternative to commercial chemical fertilizers. Compl. ¶¶ 26, 28. The Fort Worth City Council voted to end the contractual relationship with Synagro in April 2025, taking over management of the drying facility. Compl. ¶ 12.

2. Plaintiffs' alleged impacts.

Synagro sold Granulite fertilizer to Plaintiffs' neighbor, which he picked up from the drying facility and applied to his farm, one time in 2023. Compl. ¶ 85. Plaintiffs allege that this application led to the migration of constituents from the Granulite fertilizer onto their land. Compl. ¶¶ 85-91.

Plaintiffs attribute a range of human and animal health effects, water contamination, property value loss, and other costs to constituents in the Granulite fertilizer. Compl. ¶¶ 8, 98-110. At the same time, Plaintiffs explain the ubiquity of PFAS in American households and the environment,[7] frequently asserting that PFAS are persistent, mobile, and "biomagnify." Compl. ¶¶ 38-39, 55-57, 65, 68, & 70. Plaintiffs also disclose another source of PFAS on their property: a 17-county aquifer overlaying an even larger aquifer serving *millions* of Texans. Compl. ¶ 91.

[7] Plaintiffs acknowledge that, "PFAS are environmentally persistent," "leach into the groundwater," "can cause . . . harm long after their release," "are ubiquitous in consumer products," "migrate great distances," "resist biodegradation," and "cause extensive groundwater contamination." Compl. ¶¶ 44-45, 126.

The many sources of PFAS compounds may explain the mismatch between Plaintiffs' samples of PFAS on their properties and those they claim are in Synagro's Granulite fertilizer: Plaintiffs identify 32 different types of PFAS in their soil and water, Compl. ¶ 87, but only 27 types of PFAS in their Granulite fertilizer sample, Compl. ¶ 93.[8] Plaintiffs try to explain this inconsistency with the conclusion that different batches of biosolids contain different PFAS, Compl. ¶ 95, while conflictingly asserting that their properties' PFAS came from a single application of Granulite fertilizer, from a batch Plaintiffs never tested. Compl. ¶¶ 85, 98, 104, 110.

TCEQ further evaluated the sample results for these properties and concluded that "all the measured PFAS concentrations are below TCEQ's comparison values and therefore do not represent levels that would harm human health or the environment." Appx., Item No. 6 at 3. TCEQ compared the values to their "Protective Concentration Levels," "the concentration of a chemical of concern which can remain within the source medium and not result in levels which exceed the applicable human health risk-based exposure limit or ecological protective concentration level at the point of exposure for that exposure pathway." 30 TEX. ADMIN. CODE § 350.4 (68).

Aside from PFAS, Plaintiffs generally allege that biosolids contain heavy metals, estrogen and endocrine disrupters, and pharmaceutically active compounds. Compl. ¶¶ 42-47. Plaintiffs fail to specify how these "other toxins" may have affected them or their properties.

C. Procedural: Amended class claims supported removal.

Plaintiffs filed this case in the 249th District Court of Johnson County, Texas on November 15, 2024. ECF No. 1-4. Plaintiffs later amended, adding class claims on January 23, 2025. ECF No. 1-11. Defendants removed this action to this Court on February 21, 2025. ECF Nos. 1 and 14.

[8] In their prior version of the Complaint, Plaintiffs provided more information and noted eleven of the PFAS alleged to be in Granulite adversely affect human health, ECF 1-11, ¶ 88, and only eight of those were found in "high" concentrations on the property, *Id.* ¶ 89. Plaintiffs removed these telling sample results on amendment after Synagro noted this conflict.

Plaintiffs claim products liability and negligence, and demand both injunctive relief and damages, including exemplary damages. Despite pleading on behalf of a class, Plaintiffs do not state how any unnamed Plaintiffs are actually affected. Compl. ¶¶ 131- 197. Synagro will thus oppose class certification, which is rarely appropriate for environmental tort claims.

STANDARD OF REVIEW

A complaint must be dismissed if the court lacks subject matter jurisdiction. FED. R. CIV. P. 12(b)(1); *Home Builders Ass'n of Miss., Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998). When facially attacked, dismissal "is warranted if the allegations in a plaintiff's complaint, taken as true, together with any undisputed facts establish that the district court lacks jurisdiction." *Hobbs v. Hawkins,* 968 F.2d 471, 475 (5th Cir.1992); *see also S. Jet, Inc. v. Childs*, No. 3:08-CV-0680-K, 2008 WL 4642948, at *1 (N.D. Tex. Oct. 18, 2008) (Kinkeade, J.).

A complaint should also be dismissed if it fails to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). Plaintiffs must state a claim that is plausible on its face, not merely possible or conceivable. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). And a claimant must include sufficient factual allegations to allow a court to reasonably infer liability. *Id.* at 678-79. In turn, a complaint's factual allegations may also ultimately negate a cause of action. *Id.* at 666. In analyzing the sufficiency of a claim, federal courts should disregard conclusory statements and determine whether the remaining factual allegations plausibly state a claim that raises the plaintiffs' right to relief above the speculative level. *Id.* at 678-79; *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Cicalese v. Univ. of Texas Med. Branch*, 924 F.3d 762, 766 (5th Cir. 2019).

Courts "must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007). "If, based on the facts

pleaded and judicially noticed, a successful affirmative defense appears, then dismissal under Rule 12(b)(6) is proper." *Hall v. Hodgkins*, 305 F. App'x 224, 227-28 (5th Cir. 2008); *see also Murthy v. Abbott Lab'ys*, 847 F. Supp. 2d 958, 973 (S.D. Tex. 2012) (dismissing products claims based on TEX. CIV. PRAC. & REM. CODE § 82.007). Rule 12(b)(6) also allows dismissal of improper relief, like exemplary damages, when supported by only threadbare recitals. *Williams v. Gen. Binding Corp.,* No. 3:23-CV-00850-K, 2024 WL 628850, at *5 (N.D. Tex. Feb. 14, 2024) (Kinkeade, J.).

ARGUMENT

Plaintiffs' suit is barred outright, first by governmental immunity, which protects municipal biosolids programs, and also by the Right to Farm Act, which prohibits lawsuits against agricultural operations. Should the Court reach the products liability claims, they do not state a claim because they fail to articulate any defect, any duty not observed, any safer alternative not employed, or any causal link between Synagro's actions and Plaintiffs' alleged harms. Plaintiffs' negligence claim, as a matter of law, is subsumed into the products claim and fails for the same reasons. Last, the exemplary damages demand lacks a factual basis and should be dismissed.

I. Governmental immunity deprives the Court of jurisdiction.

"The burden of proof for a Rule 12(b)(1) motion to dismiss lies with the party asserting jurisdiction." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). Thus, "the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist." *Id*. "A political subdivision enjoys governmental immunity from suit to the extent that immunity has not been abrogated by the Legislature." *Morgan v. Plano Indep. Sch. Dist.*, 724 F.3d 579, 582 n.4 (5th Cir. 2013). "[G]overnmental immunity from suit defeats a trial court's jurisdiction." *Id* at 582.

Fort Worth has immunity for tort claims targeting its biosolids, so Plaintiffs sued the City's contractor, Synagro. This sleight of hand cannot overcome Synagro's derivative immunity in this heavily regulated facet of public infrastructure. Fort Worth, not Synagro, was permitted by TCEQ

to produce biosolids. Fort Worth, not Synagro, is responsible for processing and managing wastewater at Village Creek. And Fort Worth, not Synagro, had final approval for the design and operation of its drying facility. Plaintiffs' claims against Fort Worth, which they attempt to cast against Synagro, are barred under basic principles of derivative governmental immunity.

A. Biosolids-based fertilizer distribution is an immune governmental function.

Fort Worth enjoys governmental immunity when it is "acting as the State's agent and performing governmental functions for public benefit." *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 433 (Tex. 2016). Texas recognizes a non-exclusive list of 36 governmental functions, which include "sanitary and storm sewers," "waterworks," and "water and sewer service." TEX. CIV. PRAC. & REM. CODE § 101.0215(a)(9), (11), and (32). Biosolids production and recycling to farmland is a core wastewater service that Fort Worth, like many thousands of cities nationwide, performs every day.

Texas courts have held that operations of biosolids and wastewater reuse programs are immune governmental functions. *City of Merkel v. Copeland*, 561 S.W.3d 720, 723 (Tex. App.—Eastland 2018, pet. denied) (sale of treated wastewater to golf course under TCEQ permit); *Davis v. City of Lubbock*, No. 07-16-00080-CV, 2018 WL 736344, at *4 (Tex. App.—Amarillo Feb. 6, 2018, no pet.) (use of treated wastewater to irrigate crops and sale of baled hay related to TCEQ permit.); *San Jacinto River Auth. v. Simmons*, 167 S.W.3d 603, 610 (Tex.App. — Beaumont 2005, no pet.) (operation of a biosolids drying facility where an employee slipped). Governmental immunity attaches and flows through to a contractor performing a routine, core public service.

B. Texas law recognizes immunity for government contractors like Synagro.

The Texas Supreme Court recognizes that contractors may be entitled to governmental immunity protections when liability for a claim derivative to one that is immunity barred (*e.g.*, contractor aided tort committed by a governmental entity), or when the contractor was merely

implementing the government's decisions (*i.e.*, the tortious action was effectively attributed to the government). *Nettles v. GTECH Corp*., 606 S.W.3d 726, 731 (Tex. 2020) (barring claims against lottery ticket distributor relating back to Texas Lottery Commission's printing of misleading and deceptive instructions); *see also Foster v. Teacher Retirement System*, 273 S.W.3d 883, 890 (Tex.App.–Austin 2008, no pet.) (extending immunity to retirement system's insurer that "provides administrative services to facilitate the provision of health care.")

Here, the allegedly wrongful acts Plaintiffs point to—dealing with designing, or "formulating" the biosolids, or making the biosolids available for agricultural use —are entirely based on the thousands of tons of wastewater residuals coming directly and only from the Fort Worth treatment plant. Plaintiffs correctly link the composition of the Granulite-fertilizer back to the feedstock delivered by Village Creek, which Fort Worth manages, and with which Synagro had no involvement. *See* Compl. ¶¶ 4, 32. Plaintiffs acknowledge Synagro does not "make" biosolids, but merely dries and distributes what is received from Fort Worth's Village Creek wastewater treatment process. Compl. ¶ 4; Appx, Item No. 9 at 0033 ("Company shall, collect, receive, and treat feedstock"). Plaintiffs' claims against Synagro thus stem directly from Fort Worth's conduct.

Any liability Synagro could have for wastewater treatment (which Plaintiffs contend should have undergone more pre-treatment or deployed additional technology to bind metals, Compl. ¶ 161) is derivative of Fort Worth's. *See, e.g., Fid. & Guar. Ins. Underwriters Inc. v. Wells Fargo Bank, Nat. Ass'n*, No. CIV.A. H-04-2833, 2006 WL 870683, at *6 (S.D. Tex. Mar. 31, 2006) (derivative liability involves "wrongful conduct both by the person who is derivatively liable and the actor whose wrongful conduct was the direct cause of injury to another"). Where liability derives from an otherwise immune tort, immunity extends. *Nettles*, 606 S.W.3d at 739. Even if Synagro were a manufacturer and Fort Worth's biosolids were a "component" of the Granulite

fertilizer, it is still Fort Worth who would be subject to liability. *Cimino v. Raymark Indus., Inc*., 151 F.3d 297, 333 (5th Cir. 1998) (seller of the raw materials is subject to liability for harm caused by contaminated or otherwise defective raw materials).

Even if shared misconduct were alleged, Synagro was under Fort Worth's control under the Contract. The rationale for extending immunity to governmental contractors is simple.

> Where the government hires a contractor . . . and specifies the manner in which the task is to be performed, and the contractor is later haled into court to answer for a harm that was caused by the contractor's compliance with the government's specifications, the contractor is entitled to the same immunity the government would enjoy, because the contractor is, under those circumstances, effectively acting as an organ of government, without independent discretion.

Brown & Gay Eng'g, Inc. v. Olivares, 461 S.W.3d 117, 125 n.9 (Tex. 2015) (declining to extend immunity to engineering firm when suit challenged negligent design for signs and traffic layouts causing traffic collision, not the decision to build the tollway or the mere fact of its existence).

Here, Fort Worth chose to land apply biosolids to area farms and bought a thermal dryer to improve the process. The Contract gave Synagro no discretion over the design or process, whether biosolids would be distributed, whether thermal drying was utilized, whether or how the pellets would be made, the way those tasks were performed, or the final design of the drying facility. *See* Appx., Item No. 7 at 1 (Fort Worth "determined that direct thermal drying was the best option for Fort Worth"). Indeed, under the Contract, Fort Worth was financially penalized if residuals were landfilled instead of being put to beneficial reuse by land application. Appx., Item No. 8 at 0389.[9] Synagro had no ability to second-guess the directions it received from Fort Worth,[10] and it was

[9] Appx., Item No. 8 at 0499 (requiring Synagro to adopt a Residuals Management Plan that "shall state that biosolids will not be sent to a landfill without prior approval of the City.").

[10] Under the Contract, Fort Worth had final control over all aspects of the design and construction of the biosolids processing facility. *See* Appx., Item No. 8 at 0059 ("The Company acknowledges the City's material interest in each provision of the Design and Construction Requirements and agrees that no change to the Design and Construction Requirements shall be

unable to exercise discretion in implementing the design. To ensure compliance with its directives, Fort Worth had 24-hour access to its drying facility. *Id.* at ¶ 0038. Synagro is entitled to derivative immunity as an "organ" of the City. *See Brown & Gay,* 461 S.W.3d at 125 n.9.

Plaintiffs want to regulate Fort Worth and stop land application of biosolids through a massive tort lawsuit against its contractors. But the Complaint and judicially noticeable evidence establish Synagro performed a core government function that is immune.

II. The Texas Right to Farm Act precludes this lawsuit.

If the Court declines the jurisdictional challenge, the lawsuit should still be dismissed because the Right to Farm Act bars tort lawsuits against farming, ranching, and all supporting agricultural activities. Organic bulk fertilizers like manure and biosolids have long been central and essential to improving soil and fertilizing crops and are a key component of the agricultural endeavors that the Act shields from tort litigation. For decades the Legislature has recognized the paramount need to support Texas farms, adopting the Right to Farm Act (and recently clarifying its intended, and longstanding, broad scope) to prohibit private litigation from threatening to restrain lawful agricultural operations such as Synagro's. The Right to Farm Act passed over forty years ago to "reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be legally threatened, subject to suit, regulated, or otherwise declared to be a nuisance." TEX. AGRIC. CODE § 251.001.

The Act plainly and comprehensively states that "[n]o nuisance action or other action to restrain an agricultural operation may be brought against an agricultural operation that has lawfully

made except with the written consent of the City.") Further, while Synagro could propose design and construction requirement changes, all suggestions were subject to the City's consideration. *Id.* (¶ 10.7(a)). Fort Worth had the "absolute right to accept, reject or modify any Design and Construction Requirement Change proposed by the Company pursuant" to ¶ 10.7(a), and thus exercised complete control. *Id.*

been in operation and substantially unchanged for one year or more prior to the date on which the action is brought." TEX. AGRIC. CODE § 251.004(a). Here, Plaintiffs' factual allegations invoke the Right to Farm Act. Its application here to bar this large putative class action that would undermine and perhaps eliminate use of this fertilizer is necessary and appropriate.

A. Processing, distribution, and application of Synagro's Granulite fertilizer is a protected agricultural operation.

Suits are barred if they inhibit "agricultural operations," which include, but are expressly not limited to: "[C]ultivating the soil; producing crops for human food, animal feed, planting seed, or fiber; floriculture; viticulture; horticulture; raising or keeping livestock or poultry; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure." TEX. AGRIC. CODE § 251.002. Biosolids obviously come under this broad definition, consistent with the national trend in right-to-farm law protection.

First, Plaintiffs establish that Synagro's production and distribution of its Granulite fertilizer constitutes a covered agricultural operation. Synagro turns biosolids—organic matter derived from wastewater treatment—into compost, fertilizer pellets, and soil conditioners. Compl. ¶¶ 32-33 & 48. Plaintiffs state that the Granulite fertilizer is applied ("spread" and "mixed into the soil") to farms, including their neighbor's farm, as a fertilizer and soil conditioner to improve soil health, and was used by their neighbor as intended. Compl. ¶¶ 1, 26, 35, 85, 138, 154 and 179. Synagro's production and distribution for land application of its Granulite fertilizer is thus used in producing crops and cultivating the soil and is shielded from suit under the Right to Farm Act. TEX. AGRIC. CODE § 251.002.

Plaintiffs may argue that Synagro was not itself producing crops or cultivating soil, but Texas courts hold that activities that are "part of the process" for other listed agricultural operations receive protection under the Right to Farm Act. *See, e.g.*, *Cal-Co Grain Co. v. Whatley*, No. 13-

05-120-CV, 2006 WL 2439973, at *5 (Tex. App.—Corpus Christi-Edinburg Aug. 24, 2006, pet. denied) (mem. op.) (grain storage facility was "part of the process" of feeding livestock and safeguarded by the Right to Farm Act); *Adcock v. Cal-Maine Foods, Inc.*, No. 03-22-00418-CV, 2024 WL 201963, at *1 (Tex. App.—Austin [3rd Dist.] Jan. 19, 2024, no pet.) (mem. op.) (applying Right to Farm Act to a chickenfeed mill).

Determining whether an agricultural operation falls within the Act's protections is a legal question for the Court. *See Hendrickson v. Swyers*, 9 S.W.3d 298, 300 (Tex. App.—San Antonio 1999, pet. denied) (using statutory construction that fighting cocks are not protected because the Right to Farm Act is intended to protect "activities that produce food"). Here, Synagro's work falls under the statute's umbrella– preparing and distributing fertilizer to grow crops and improve soils.

Texas's expansive Right to Farm Act is consistent with laws other states have adopted to protect agriculture from ruinous litigation by neighbors and anti-agriculture interest groups. Courts regularly protect all facets of agricultural production, including basic farming operations like compost, fertilizer, and pesticides. *See Collett v. Weyerhaeuser Co.*, No. CV 19-11144, 2020 WL 6828613 (E.D. La. Nov. 19, 2020) (Louisiana's farming protection law barred a suit against timber companies related to their application of chemicals close to their property line); *Odum v. Frey Spray, LLC*, 557 P.3d 1283 (Nev. App. 2024) (protecting pesticide application); *Vicwood Meridian P'ship v. Skagit Sand & Gravel*, 98 P.3d 1277 (Wash. App. 2004) (protecting composting operation at mushroom farm).

In fact, courts in several states have confirmed that their similar right-to-farm laws protect biosolids operations as agricultural functions, including the Pennsylvania Supreme Court in a case involving Synagro. *Gilbert v. Synagro Cent., LLC*, 131 A.3d 1 (2015) (dismissing tort claims because Synagro's biosolids distribution and application was a "normal agricultural operation"

under Pennsylvania's right to farm law); *Matter of Lewis*, 316 A.3d 570, 574 (2024), cert. granted, 322 A.3d 1257 (2024) (upholding agricultural board's conclusion that "the application and stockpiling of" biosolids at farm "was a generally accepted agricultural practice," and thus protected from tort claims under Maryland right to farm laws). This is not surprising, given that bulk organic fertilizers have been integral to farming for millennia and that biosolids are recognized and regulated by EPA and the states.

B. Plaintiffs complain of conditions and circumstances that have existed substantially unchanged for more than one year before filing suit.

The Right to Farm Act functions as a statute of repose that bars suit when a lawful agricultural operation existed for over a year before the suit and its conditions have remained unchanged. *Holubec v. Brandenberger*, 111 S.W.3d 32, 38 (Tex. 2003). The defendant need not prove the exact start date—only that the operation began more than a year before the plaintiff filed suit. *Ehler v. LVDVD, L.C.*, 319 S.W.3d 817, 821 (Tex. App.—El Paso 2010, no pet.).

Here, Plaintiffs only plead their neighbor obtained Granulite fertilizer in November 2022 that he tilled in January 2023. Compl. ¶ 85. Synagro was operating in Fort Worth for well over a year before November 2022, and this lawsuit was not filed until November 15, 2024, over two years after the application. Plaintiffs waited too long to file suit, clearly establishing this element, and triggering the statute of repose, no matter when Plaintiffs discovered any alleged injuries. Compl. ¶¶ 26, 92; TEX. AGRIC. CODE § 251.004; *see also Holubec*, 111 S.W.3d at 38 (under the Right to Farm Act "it does not matter when the complaining party discovers the conditions or circumstances constituting the basis for the nuisance action.").[11]

[11] The Right to Farm Act clarifies that while *private parties* cannot restrain agricultural operations, *governmental* actions, including enforcement by TCEQ, are not similarly barred. *Id*.

C. Plaintiffs' causes of action are the type barred by the Act.

The Complaint's causes of action for negligence and product liability qualify as a "nuisance or other action" that seeks to "restrain an agricultural operation," and no artful pleading can avoid the Right to Farm Act bar. Under Texas law there is no requirement that the action be formally pled as a nuisance action.[12] Plaintiffs plead that their alleged injury is that their "land and water supplies were and continue to be polluted with PFAS and other toxic chemicals," causing exposure to humans and animals and costs for remediation and market value loss. Compl. ¶ 138 (negligence); ¶ 165 (products liability). Further, Plaintiffs define their purported class to include only those "who as a result of Defendants' biosolids have suffered a diminution in value of their property." Compl. ¶ 111.

The Right to Farm Act applies to all causes of action that target nuisance injuries from agriculture and seek to stop an agricultural practice. *See generally*, *Ehler*, 319 S.W.3d at 824 (barring trespass claims because allowing plaintiffs to simply plead a nuisance as another action would "eviscerate the statute and deny [a defendant] the protection intended by the Legislature"). Particularly here, where Plaintiffs base their products liability and negligence claims "on the same alleged conditions and circumstances creating a nuisance," courts do not hesitate to apply the statute of repose. *Adcock*, 2024 WL 201963, at *4 (Act "applies to trespass actions based on the same alleged conditions and circumstances creating a nuisance").

[12] Under Texas law, the "nuisance" "does not refer to the 'wrongful act' or to the 'resulting damages,' but only to the legal injury—the interference with the use and enjoyment of property—that may result from the wrongful act and result in the compensable damages." *Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 595 (Tex. 2016) ("nuisance" is "a legal injury that may support a cause of action, but it is not itself the cause of action or the conduct that is necessary to support the cause of action"). Accordingly, the Complaint's averments of chemical contaminants moving onto their land and causing damage are classic nuisance injuries.

The Legislature codified these holdings in 2023, clarifying that the Right to Farm Act prohibits not only claims for nuisance injuries but any "action to restrain an agricultural operation." TEX. AGRIC. CODE § 251.004. The request for injunctive relief against the farm use of biosolids is precisely the type of restraint the Act bars. *See* TEX. R. CIV. P. § 683 (every order granting an injunction "shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail … *the act or acts sought to be restrained.*") (emphasis added). Plaintiffs ask the Court to force Synagro to return the land to its condition prior to any "pollution or contamination," which they say originates from the land application of the Granulite fertilizer at their neighbor's property. ECF No. 1-11, ¶¶ 9 & 80. Thus, if Synagro is required to remove the Granulite fertilizer, Plaintiffs' neighbor may not continue to apply biosolids, nor could the neighbors of any of the numerous unnamed, putative class members or their neighbors.[13] Furthermore, exemplary damages are a restraint: "Plaintiffs request an award of exemplary and punitive damages in an amount reasonable, appropriate, and sufficient to punish these Defendants *and deter them from ever committing the same or similar acts*." Compl. ¶ 141 (emphasis added); *see also Ehler*, 319 S.W.3d at 824 (applying the Right to Farm Act to bar claim for damages).

Plaintiffs here attack a major fertilizer used across Texas and the Unted States, presenting a textbook application of the Right to Farm Act under the statute, Texas precedent, and the protection of biosolids by other state courts. The facts pled by the Plaintiffs demonstrate that Plaintiffs' claims are extinguished.

[13] Plaintiffs further fail to state plausible class allegations to satisfy Rule 12, and Synagro reserves all rights to subsequently challenge the class allegations in future motions practice if the suit continues.

III. Plaintiffs fail to plead a products liability claim.

Plaintiffs' claims further fail because Texas law only recognizes claims for products liability for a seller who, among other requirements, "sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property." *Am. Tobacco Co., Inc. v. Grinnell*, 951 S.W.2d 420, 426 (Tex. 1997). Plaintiffs make no such cognizable claim.

A. Plaintiffs fail to state a claim for design defect.

Plaintiffs argue that Synagro's product was "defective because it contained PFAS and other toxic chemicals," Compl. ¶ 146, but fail to plead facts to support a design defect claim. Under TEX. CIV. PRAC. & REM. CODE § 82.005(a), to recover for a claim of defective design, a plaintiff must plead and ultimately prove that: (1) the product was defectively designed so as to render it unreasonably dangerous; (2) a safer alternative design existed; and (3) the defect was a producing cause of the injury for which the plaintiff seeks recovery. *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 311 (Tex. 2009). Plaintiffs do not meet their pleading burden on any element.

1. Plaintiffs omit any necessary risk-utility analysis.

A "design is generally defective only if it yields a product that is unreasonably dangerous because its utility to its user and the public is less than the risks created by its use, considering both the gravity and likelihood of the risks." *Williams*, 2024 WL 628850, at *2. To plead unreasonable danger, claimants must engage a five-factor risk-utility analysis. *Grinnell*, 951 S.W.2d at 432. But Plaintiffs fail to do so, omitting the product's utility, possible substitutes, associated costs, and what *Synagro*—as opposed to Fort Worth—could have done to eliminate any danger. At most, Plaintiffs offer conclusory statements regarding an alleged danger, *e.g.*, Compl. ¶ 151, empty assertions that alleged danger is "unreasonable," and conclusory and readily contradicted allegations that Synagro violated applicable state and federal requirements. Plaintiffs provide no plausible explanation to support these alleged shortcomings. Compl. ¶ 151(i)-(j). Such

unsupported assertions are fatal. *See Elmazouni v. Mylan, Inc.*, 220 F. Supp. 3d 736, 741 (N.D. Tex. 2016) (dismissing when Plaintiffs did not plead a "specific manufacturing defect").

2. Plaintiffs do not identify any safer alternative design.

Plaintiffs alleged alternatives are not alternatives and, based on the facts alleged, are not feasible. A "safer alternative design" is a design that in "reasonable probability":

> (1) would have prevented or significantly reduced the risk of the claimant's personal injury, property damage, or death without substantially impairing the product's utility; and (2) was economically and technologically feasible at the time the product left the control of the manufacturer or seller by the application of existing or reasonably achievable scientific knowledge.

TEX. CIV. PRAC. & REM. CODE § 82.005(b). Plaintiffs need "a reasonable alternative design that, at a reasonable cost, would have reduced [the] foreseeable risk of harm." *Timpte Indus., Inc.*, 286 S.W.3d at 314 ; TEX. CIV. PRAC. & REM. CODE § 82.005(a). Plaintiffs fail to address this prerequisite. Compl. ¶¶ 162-63*; Hernandez v. Tokai Corp*., 2 S.W.3d 251, 258 (Tex. 1999), *see also Franklin v. Apple Inc*., 569 F. Supp. 3d 465, 477 (E.D. Tex. 2021) (dismissing design defect claim without "specific factual allegations describing the purported safer alternative design").

Four of Plaintiffs' "alternative designs" (manure, compost, biofertilizers, and chemical fertilizers) are different products. Compl. ¶ 161(a)-(d); *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig*., 888 F.3d 753, 766 (5th Cir. 2018) (a "substantially different product" cannot constitute a safer alternative design). Plaintiffs baldly assert that another alternative would be for Fort Worth to require dischargers to remove the PFAS from their wastewater before it enters Village Creek. Compl. ¶ 161(e). This regulatory reform is, of course, not within Synagro's power. After all, Synagro is merely acting as Fort Worth's contractor, operating Fort Worth's facility, in a manner designed and directed by Fort Worth. The same goes

for requiring Village Creek to use chelators to "bind or remove heavy metals."[14] Compl. ¶ 161(f). This is another alternative that falls outside of Synagro's control. *Uniroyal Goodrich Tire Co. v. Martinez*, 977 S.W.2d 328, 335 (Tex. 1998) ("[A] claimant must establish, among other things, that the *defendant* could have provided a safer alternative design.") (emphasis added).

Separately, Plaintiffs fail to state a design defect, because their proposed alternatives would not impact their alleged injury—Plaintiffs tell the Court that PFAS *cannot* be removed through treatment, *see* Compl. ¶¶ 4, 8, 36, 40, 66, and further argue that treatment causes some PFAS to biodegrade into other PFAS, *see* Compl. ¶ 40.

3. Plaintiffs lack causation.

Plaintiffs must demonstrate that their alleged defect caused their injury, meaning it was "a substantial factor in bringing about an injury, and without which the injury would not have occurred." *Goodner v. Hyundai Motor Co.*, 650 F.3d 1034, 1044 (5th Cir. 2011); TEX. CIV. PRAC. & REM. CODE § 82.005(a). Even assuming *arguendo* that Synagro's Granulite fertilizer contained PFAS, Plaintiffs fail to demonstrate how those particular PFAS caused their injuries.

Plaintiffs' allegations stress the ubiquity of PFAS in the environment, that PFAS are environmentally persistent, highly mobile, and "biomagnify." Compl. ¶¶ 38-39, 57, 68, & 70. All of this decisively undercuts any causation claims. Plaintiffs admit that even though no two "batches" of biosolids are alike, Plaintiffs did not test the batch applied. Compl. ¶ 95. Even the sample they tested did not align with PFAS compounds allegedly found on two of their properties. Compl. ¶¶ 87, 93. And even if Plaintiffs accurately tested the PFAS on their properties, TCEQ nonetheless determined those PFAS levels did "not represent levels that would harm human health

[14] And even if Fort Worth bound metals differently, Plaintiffs do not plead any actual harms derived from metals nor do they allege the Granulite fertilizer did not comply with the established regulatory limits for metals. *See* 30 TEX. ADMIN. CODE §§ 312.43, 312.82, & 312.124 & 40 C.F.R. § 503.13, 503.15.

or the environment." Appx., Item No. 6 at 3. Plaintiffs also admit that their properties are fed by water wells that draw from an aquifer stretching across 17 different counties and overlaying an even larger aquifer that serves *millions* of people. Compl. ¶ 91. According to Plaintiffs, the aquifer has received PFAS discharges over the years that traveled great distances to appear in the groundwater, commingling and persisting, ensuring that Plaintiffs cannot plausibly plead that the specific PFAS in Synagro's Granulite fertilizer was what caused any PFAS-derived injury.[15] Plaintiffs simply plead themselves out of causation.

B. Plaintiffs fail to state a claim for marketing defect.

A marketing defect occurs when "a defendant knows or should know of a potential risk of harm presented by a product but markets it without adequately warning of the danger or providing instructions for safe use." *Wright v. Ford Motor Co*., 508 F.3d 263, 274 (5th Cir. 2007).

Despite including the product label—which contains warnings—Plaintiffs inexplicably claim the label fails to warn a user. Compl. ¶¶ 28, 175-77. Synagro's label warns about application and molybdenum rates, human ingestion, water proximity, flooded or frozen land, and storage conditions. Compl. ¶ 28. Plaintiffs conclude with no factual support that the Granulite label fails to comply with 40 C.F.R. § 503.14(e),[16] Compl. ¶ 177, even though the face of the label meets the standard. Compl. ¶ 28. They argue a user might have avoided runoff if the label were different, Compl. ¶ 175-78, disregarding its warning not to apply "in or near any public or private water supplies including wells, streams, or lakes," Compl. ¶ 28. Plaintiffs claim the label's instructions

[15] Plaintiffs do not attribute any actual injuries to non-PFAS constituents.

[16] Plaintiffs wrongly cite 40 **U.S.C**. § 503.14(e) but intended to cite 40 **C.F.R.** § 503.14(e) (Clean Water Act requirement to provide the name of the preparer of the product, a statement that application of the product be according to the instructions on the label or information sheet, and that the annual application rate does not exceed regulated loading rates.).

are insufficient but fail to explain how. *Williams*, 2024 WL 628850, at *4 (dismissing marketing defect claim when plaintiff "does not clarify what sort of warning might mitigate the risk.")

Just as Plaintiffs fail to articulate any cognizable theory of causation for their design defect claim, so too do they fail for the marketing defect claim. *See* Section III.A.3; *see also Doyle v. Combined Sys., Inc.*, No. 3:22-CV-01536-K, 2023 WL 5945857, at *13 (N.D. Tex. Sept. 11, 2023) (Kinkeade, J.) (dismissing marketing defect claim when plaintiffs fail to allege how communicating dangers to non-users of the product would have prevented harm). Plaintiffs' marketing defect claim is "simply a recitation of . . . elements and legal jargon" requiring dismissal. *Charles v. K-Pats., Inc*., No. 1:17-CV-339, 2018 WL 9869532 at *6 (E.D. Tex. 2018).

IV. Plaintiffs do not plead a cognizable negligence claim.

A. Plaintiffs' claim is subsumed in their product liability theories.

Plaintiffs' negligence claim repeats their strict products liability theory under a different title. In Texas, when plaintiffs allege no negligence other than producing and selling a defective product, their "negligence theories are encompassed and subsumed in their defective product theories." *See Smith v. Chrysler Grp., L.L.C.*, 909 F.3d 744, 750 (5th Cir. 2018). Under the statute a "products liability action" is

> any action against a manufacturer or seller for recovery of damages arising out of personal injury, death, or property damage allegedly caused by a defective product whether the action is based in strict tort liability, strict products liability, *negligence*, . . . or any other theory or combination of theories."

TEX. CIV. PRAC. & REM. CODE § 82.001(2) (emphasis added). Accordingly, Plaintiffs' negligence claim will "stand or fall on the outcome of their products liability claims." *Shaun T. Mian Corp. v. Hewlett-Packard Co.,* 237 S.W.3d 851, 857 (Tex. App.—Dallas 2007, pet. denied); *Williams*, 2024 WL 628850, at *2 ("If she fails to sufficiently plead that the [product] was defective for purposes of the strict liability [claim], then the negligence-based [claim] fails, too.").

Each of the alleged negligence elements are based solely on products liability theory. The alleged duty arises from the development and marketing of the product. Compl. ¶ 132 (e.g., "design . . . manufacture . . . marketing . . . labeling"). And the alleged misconduct is that Defendants made the biosolids fertilizers without satisfactory testing, studies, warning, reporting, representations, labeling, or protective measures. Compl. ¶ 135. The entirety of the negligent acts or omissions alleged deal in the product and its marketing. Compl. ¶¶ 141, 151, 183. Indeed, even the alleged injuries are identical between negligence and products liability. *Compare* ¶¶ 192, 165 *with* 138; ¶¶ 195, 169 *with* 141. The negligence claim exclusively centers on the same alleged duty, conduct, knowledge, and harm that underlie the products liability claims, and must be dismissed.[17]

B. Even if it were not subsumed, Plaintiffs fail to adequately plead negligence.

As with other jurisdictions, in Texas, "negligence has three elements: (1) a legal duty; (2) a breach of that duty; and (3) damages proximately resulting from the breach." *Praesel v. Johnson*, 967 S.W.2d 391, 394 (Tex. 1998). The threshold inquiry is duty: if there is no duty, liability for negligence cannot exist. *Thapar v. Zezulka*, 994 S.W.2d 635, 637 (Tex.1999).

To determine that a duty exists, Texas courts "consider several interrelated factors, including the risk, foreseeability, and likelihood of injury weighed against the social utility of the actor's conduct, the magnitude of the burden of guarding against the injury, and the consequences of placing the burden on the defendants." *JPMorgan Chase Bank, N.A. v. Pro. Pharmacy II*, 508 S.W.3d 391, 417 (Tex. App.—Fort Worth 2014, no pet.) ("foreseeability is the foremost and dominant consideration"). The test for foreseeability is "whether a person of ordinary intelligence would have anticipated the danger his negligence creates." *Id.*

[17] Even if product liability claims survive, negligence claims should be dismissed where they merely restate the same theory. *E.g., Swagger v. Mack Trucks, Inc.,* No. 1:20-CV-1206-RP, 2023 WL 2557402 (W.D. Tex. Jan. 6, 2023) (dismissing duplicative negligence claims).

Plaintiffs allege Synagro's product contains PFAS or "other toxins," causing foreseeable harm to nearby properties. Compl. ¶ 136. However, they fail to explain how Synagro could have foreseen such risks. Compl. ¶ 66. Regulators have long known about PFAS but have not restricted use in biosolids. Compl. ¶¶ 64, 66. Nonetheless, the alleged PFAS levels on Plaintiffs' properties meet established human health and environmental thresholds. Appx., Item No. 6 at 3. It's unreasonable to claim Synagro should have foreseen harm where regulators still do not. *Lorenz v. Celotex Corp.*, 896 F.2d 148, 150-51 (5th Cir. 1990) ("[C]ompliance with government safety standards is strong and substantial evidence that a product is not defective.").

To plead breach of a duty, Plaintiffs must state how Synagro acted outside ordinary care, *Boudreaux v. Swift Transp. Co*., 402 F.3d 536, 541 (5th Cir. 2005), but they merely assert negligence without facts. Compl. ¶ 134. Plaintiffs rely on PFAS, a constituent ubiquitous in American life, but never explain how its presence shows negligence. No regulator has found any violation related to Synagro's activities. Appx., Item No. 4 (TCEQ specifically found "no violations" concerning the relevant land application of biosolids.)[18] Failing to indicate that Synagro acted less than "an ordinarily prudent person exercising ordinary care" under these circumstances, *see Boudreaux*, 402 F.3d at 541, the Court must dismiss.[19]

For a negligent act to be cause-in-fact, it "must have been a substantial factor in bringing about the harm," *Rodriguez-Escobar v. Goss*, 392 S.W.3d 109, 113 (Tex. 2013), not simply "a condition which made the injury possible," *Doe v. Boys Club of Greater Dall., Inc.*, 907 S.W.2d 472, 477 (Tex. 1995). Plaintiffs offer no facts supporting causation of any actual harm, offering

[18] Despite pleading that Johnson County "opened an investigation" in 2022, Plaintiffs allege no further action. Compl. ¶ 86.

[19] *White v. Royal Am. Mgmt*., No. 4:23-CV-792-P, 2024 WL 2805926 at *6 (N.D. Tex. May 15, 2024), Rpt. and Rec. adopted, 2024 WL 2805314 (N.D. Tex. May 31, 2024) (dismissing where plaintiff "fail[ed] to allege what duty [was] owed her and how [it was] breached").

only the remote possibility that the Granulite fertilizer may have contributed to alleged injuries. *See* Section III.A.3. Thus, Plaintiffs fail to plead a viable claim. *See Cuevas v. Westerman*, No. 1:14-CV-133, 2016 WL 11529760, at *11 (S.D. Tex. Nov. 10, 2016) (dismissing negligence claim)

V. The request for exemplary damages is improper.

Plaintiffs are not entitled to exemplary damages, Compl. ¶¶ 135, 151, 175, 195, & 198, which may be awarded "only if the claimant proves . . . (1) fraud; (2) malice; or (3) gross negligence." TEX. CIV. PRAC. & REM. CODE § 41.003(a). Plaintiffs fail to reach the high bar for exemplary damages; again, they fail to state a prerequisite negligence claim. Plaintiffs offer no facts to show "extreme" risk or "conscious indifference," to support a gross negligence theory, *see Id.* § 41.001, just the recital that Synagro acted with "deliberate disregard." Compl. ¶¶ 141, 169.[20] Nor could Plaintiffs plausibly plead exemplary damages for a practice approved by three government entities – EPA, TCEQ, and the City of Fort Worth. Appx., Item Nos. 1, 2, and 8.

CONCLUSION

Plaintiffs' attempt at policymaking-by-lawsuit should end now. Importantly, Plaintiffs have a remedy for their concerns– Federal and state lawmakers and regulators, particularly TCEQ, can consider Plaintiffs' desire to ban this agricultural practice.

The threshold jurisdictional bar is dispositive of this lawsuit. Derivative government immunity bars this attempt to secure damages for and injunctive relief from Synagro regarding Fort Worth's wastewater treatment and management. If jurisdiction exists, the Legislature made the policy decision to protect farming and fertilizer when it adopted the Right to Farm Act decades ago. Moreover, Plaintiffs' template tort claims cannot plausibly satisfy the well-established pleading requirements of products and negligence law. Plaintiffs' suit should be dismissed.

[20] Plaintiffs' group pleading further forecloses exemplary damages. *Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 667 (Tex. 2008) (requiring individual allegations).

Dated: April 25, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 25, 2025, a true and correct copy of the foregoing document has been served electronically on all counsel of record through the electronic filing manager.

/s/ Christian Ellis
Christian Ellis

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROBIN ALESSI, et al.,	§	
Plaintiffs	§	
	§	
v.	§	**Civil Action No. 3:25-CV-0445-K**
	§	
SYNAGRO TECHNOLOGIES, INC., et al.,	§	
Defendants	§	

PLAINTIFFS' RESPONSE IN OPPOSITION TO SYNAGRO DEFENDANTS' MOTION TO DISMISS PURSUANT TO FEDERAL RULES 12(B)(1) AND 12(B)(6)

COME NOW PLAINTIFFS Robin Alessi and James Farmer, Alton Morton Bryant and Christopher Michael Bryant, Karen Coleman and Tony Coleman, and Patsy Schultz, individually and on behalf of those similarly situated, and file this Response in Opposition to the Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) filed by Defendants Synagro Technologies, Inc., and Synagro of Texas-CDR, Inc. ("Synagro").

As set forth more fully in their opposition brief, which is incorporated herein, Plaintiffs[1] dispute each of the grounds for dismissal asserted by Synagro. First, Synagro has failed to demonstrate that it should be protected from liability for its own design, production, marketing, and sale of its trademarked Synagro Granulite Fertilizer by a claim of derivative "governmental immunity," which is the sole basis of the Rule 12(b)(1) motion.

As for the remaining arguments raised under Rule 12(b)(6), Synagro's motion should be denied, particularly when viewed with all reasonable inferences in favor of Farmers. Farmers disagree that their claims are subject to the Texas Right to Farm Act, TEXAS AGRIC. CODE §251.001

[1] Each of the named Plaintiffs are farmers or ranch owners; for the sake of consistency, the motion and accompanying brief refers to them as either "Plaintiffs" or "Farmers."

et seq. Synagro, as a designer, producer, and marketer of Synagro Granulite Fertilizer, is not an "agricultural operation" as that term is used in the Act, nor has Synagro pointed to any case applying the Texas Right to Farm Act to protect a manufacturer or seller of an injurious product under a strict liability or negligence cause of action. *See id.* at §251.002, 251.004. Moreover, Farmers' allegations, as contained in their Second Amended Complaint, fall outside the scope of the Right to Farm Act as they neither plead a "nuisance" nor do they seek to restrain Synagro. *Id.*

Synagro also argues that Farmers have failed to state a claim under generally-recognized theories of strict liability, negligence, or in their request for punitive damages. As discussed more fully in their opposition brief, Farmers dispute this argument and have demonstrated that each of their theories of recovery have been adequately plead.

Accordingly, Farmers respectfully request the Court deny Synagro's motion to dismiss in its entirety, and further request all additional relief to which they are entitled in law or equity. Alternatively, in the event the Court finds that Farmers' pleadings do not adequately state a claim for any of their causes of action, Farmers request leave to amend their petition to address any issues identified by the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Federal Rules of Civil Procedure, through the ECF system of the Court, on May 23, 2025.

/s/ Mary Whittle

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROBIN ALESSI, et al.,	§	
Plaintiffs	§	
	§	
v.	§	**Civil Action No. 3:25-CV-0445-K**
	§	
SYNAGRO TECHNOLOGIES, INC., et al.,	§	
Defendants	§	

PLAINTIFFS' BRIEF IN OPPOSITION TO THE SYNAGRO DEFENDANTS' MOTION TO DISMISS

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Plaintiffs ("Farmers") file this Brief in Opposition to the Motion to Dismiss pursuant to Federal Rules 12(b)(1) and 12(b)(6) filed by Defendants Synagro Technologies, Inc., and Synagro of Texas-CDR, Inc. ("Synagro"). Farmers respectfully request the Court deny Synagro's Motion in its entirety and allow this case to proceed to trial on the merits.

I. INTRODUCTION

Plaintiffs' farms were poisoned by toxic chemicals in a biosolids[1] fertilizer produced and marketed by Synagro when a neighboring farmer spread it on his crops. Synagro falsely claims to "turn waste into worth"[2] and produced and marketed a defective dry pellet fertilizer called Synagro Granulite Fertilizer developed from City of Fort Worth sewage sludge, which is the solid, semi-solid, or liquid residue generated during the treatment of sewage[3].

Synagro has failed to demonstrate that it should be protected from liability for its defective biosolids fertilizer by a claim of "governmental immunity," which is the sole basis of the Rule 12(b)(1) motion. Synagro's remaining arguments raised under Rule 12(b)(6) also should be denied. Farmers' claims are not subject to the Texas Right to Farm Act ("TRFA"), TEXAS AGRIC. CODE §251.001 *et seq*, because Synagro is not an "agricultural operation" as that term is used in the Act, nor has Synagro pointed to any case applying the TRFA to protect a manufacturer or seller of a defective product under a negligence or strict liability cause of action. *See id.* at §251.002, 251.004. Further, Farmers neither plead "nuisance" nor do they seek to restrain Synagro, which is no longer producing its product. *Id.* Finally, Farmers have adequately pled each of their theories of recovery.

[1] "EPA typically uses the term 'biosolids' to mean sewage sludge that has been treated to meet the requirements" at 40 C.F.R. part 503 "and intended to be applied to land as a soil conditioner or fertilizer." Draft Sewage Sludge Risk Assessment, 90 Fed. Reg. 3859 (Jan. 15, 2025).
[2] Dkt. 36 at ¶25 n. 1.
[3] *See* 40 C.F.R. § 503.9(w) (defining "Sewage sludge").

II. APPLICABLE LEGAL STANDARDS

A Rule 12(b)(1) motion should be granted only "if it appears certain that the plaintiff cannot prove a plausible set of facts" to establish jurisdiction. *Castro v. United States*, 560 F.3d 381, 386 (5th Cir. 2009) (emphasis added). Under Rule 12(b)(6), dismissal is appropriate only if plaintiff has not provided fair notice of its claims and the facts alleged do not sufficiently show a plausible claim for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A motion to dismiss pursuant to Rule 12(b)(6) is "viewed with disfavor and is rarely granted." *Lowrey v. Texas A&M Univ. Sys.*, 117 F.3d 242, 247 (5th Cir. 1997). When considering a motion to dismiss, the Court must liberally construe the pleadings in plaintiff's favor, taking as true all facts pleaded therein. *See, e.g. Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996).

III. ARGUMENTS & AUTHORITIES

A. Synagro is Not Entitled to Dismissal Based on "Governmental Immunity."

Synagro argues this Court lacks jurisdiction because Synagro enjoys governmental immunity based on its cancelled contract with the City of Fort Worth ("the City"). Synagro further contends Farmers desired to sue the City but used a "sleight of hand" to sue Synagro instead. *Motion* at 8. Farmers never sought to sue the City and initially sued Synagro in Baltimore where it is headquartered because Synagro independently manufactures and markets toxic fertilizer nationwide. First, Synagro has not shown the City's biosolids fertilizer program falls within the aegis of governmental immunity. Second, even if the City was entitled to such immunity, Synagro asks the Court to speculate that the City's immunity would extend to protect Synagro—a conclusion that would create new law. Synagro has not cited a single case extending government immunity to an independent contractor sued for a defective or negligent product. Finally, the contract between the City and Synagro is clear on its face that Synagro was responsible for its own actions, separate from the City. The contract includes explicit and plain language that Synagro is

responsible for damage to private property resulting from the contract and required Synagro maintain sufficient liability insurance including for pollution and environmental liability.

1. The Production, Marketing, and Sale of Biosolids Fertilizer are Not Governmental Functions Protected Under CPRC §101.0215.

Synagro begins with the presumption that the City's operation of a wastewater treatment facility, which chose to convert sewage sludge into biosolids fertilizer automatically falls within the definition of a "governmental function." TEX. CIV. PRAC. REM. CODE §101.0215(a). Synagro points to Sections 101.0215(a)(9), (11), and (32), which refer to "sanitary and storm sewers," "waterworks," and "water and sewer service," respectively. But none of these categories of services requires the creation of a discretionary treatment program which designs, produces, and sells biosolids fertilizer to farmers in the surrounding counties. While Synagro glosses over this analytical step, the Texas Supreme Court provided a useful framework to distinguish between "governmental" and "proprietary" functions in *Wasson Interests, Ltd. v. City of Jacksonville*, 559 S.W.3d 142 (Tex. 2018).

In *Wasson*, the Court explained that governmental functions "are enjoined on a municipality by law and are given it by the state as part of the state's sovereignty, to be exercised by the municipality in the interest of the general public," while proprietary functions are ones "that a municipality may, in its discretion, perform in the interest of the inhabitants of the municipality." *Wasson*, 559 S.W.3d at 150, *quoting* TEX. CIV. PRAC. REM. CODE § 101.0215(a), (b). To determine the type of function, a trial court should consider: (1) whether the City's decision (*i.e.,* to enter into the contract) was mandatory or discretionary; (2) whether the contract was intended to benefit the general public or the City's residents; (3) whether the City was acting on behalf of the State, or on its own behalf; and (4) whether the City's act of entering into the contract was "sufficiently related"

to a governmental function to render the act governmental even if it would otherwise have been proprietary." *Id.* at 150.[4]

Applying the four factors here, the City's decision to create a discretionary biosolids fertilizer program as a way to manage its sewage sludge, and then take the additional discretionary step of contracting out those services to a third-party, is a proprietary function, not a purely governmental one because: (1) it was a discretionary decision (*i.e.,* nothing required the creation of a biosolids fertilizer program, and other Texas cities do not do so); (2) the contract with Synagro was intended primarily to benefit the City's residents, rather than the general public (and harmed the surrounding rural counties); (3) there is no evidence the City was acting on behalf of the State, rather than on its own behalf; and (4) the City's decision to enter into a voluntary, discretionary contract to create a biosolids fertilizer program was not "sufficiently related" to the core governmental function of providing wastewater services to its customers.

On this last point, *Wasson* rejected the notion that an entire function should be considered "governmental" if any one component was governmental. *Id.* at 152. For example, a city's "discretionary operation of a garbage-truck repair shop" was not a governmental function, simply because it was associated with the governmental function of garbage collection. *Id.* (internal citation omitted). Instead, the Court chose to draw a line at which "the city ceases to be immune to liability," otherwise the result would be that "any operation necessary to the collection of garbage" would be immune. *Id.* at 152-53 (citations omitted). In fact, the *Wasson* court pointed to numerous examples in which proprietary conduct that "touches upon" a governmental function is

[4] In *Wasson*, the city argued its lease of lakefront property was part of its broader conduct in support of governmental services, *e.g.,* waterworks, reservoirs, and water and sewer service. The court of appeals agreed with the city but was reversed when the Texas Supreme Court held the lease was proprietary and not "essential" to the city's operation or maintenance of a lake.

not sufficient to confer immunity. *Id.* at 153, *citing City of Corpus Christi v. Absolute Indus.*, 120 S.W.3d 1, 4 (Tex. App.—Corpus Christi 2001, pet. denied) (city's threat of retaliation against refineries which did not use city landfill was proprietary, even if it was related to "waste and disposal"); *Williams v. City of Midland*, 932 S.W.2d 679, 683–84 (Tex. App.—El Paso 1996, no writ); *City of Dallas v. Arnett*, 762 S.W.2d 942, 953 (Tex. App.—Dallas 1988, writ denied). Instead, a city's proprietary action may be treated as governmental only if it is essential to the city's governmental actions. *Wasson*, 559 S.W.3d at 153; *see also DM Arbor Court, Ltd. v. City of Houston*, No. CV H-18-1884, 2021 WL 4926015, at *33 (S.D. Tex. Oct. 21, 2021) (citing *Wasson* to deny City's 12(b)(1) motion). The fact that other Texas cities do not choose to hire contractors to turn their sewage sludge in biosolids fertilizers and market them demonstrates the City's action was not "essential."

Moreover, the product Synagro manufactured and marketed is a Synagro-branded product named Synagro Granulite Fertilizer. Synagro had broad discretion over the manufacturing of this product including "determining end use of the product."[5] Synagro was singularly responsible for the "marketing and distribution" of this product and separately maintained the defective label with the Office of the State Chemist which said: "Guaranteed by: Synagro of Texas—CDR," and arranged sales out of a Synagro office in Virginia.[6] In fact, Synagro Granulite Fertilizer is trademarked, and the trademark is held by Synagro in Baltimore. *Id.* Synagro had discretion and control over each of these activities as an independent contractor, and its contention that the manufacture and sale of this product was under the full control of the City is pure fiction.

2. The Cases Cited by Synagro are Distinguishable and Not Controlling.

[5] *See* Doc 45-1, Appendix to Synagro's Motion at APPX291.
[6] *Id.; see also* Dkt. 36 at ¶28.

None of the cases cited by Synagro establish that the process of manufacturing or marketing a biosolids fertilizer from sewage sludge is an immune government function. Synagro relies on *City of Merkel v. Copeland*, 561 S.W.3d 720 (Tex. App. – Eastland 2018, pet. denied) and *Davis v. City of Lubbock*, 2018 WL 736344 (Tex. App. – Amarillo, Feb. 6, 2018, no pet.). However, neither of these cases involved the use of biosolids at all, much less a private independent contractor manufacturing sewage sludge into a fertilizer or marketing the same. Synagro also cites *San Jacinto River Auth. v. Simmons*, 167 S.W.3d 603 (Tex. App. – Beaumont 2005, no pet.). Yet, *Simmons* was a personal injury and premises liability case involving the Texas Tort Claims Act ("TTCA"), and while it happened to occur at a plant that handled sewage sludge, the governmental immunity discussed in the case derived from the TTCA, which is not at issue here. Each of these cases are distinguishable and inapplicable to the facts here: an independent contractor turning sewage sludge into fertilizer and then selling it without proper warnings.

3. Defendants are Not Entitled to "Derivative" Immunity.

Since the manufacture and marketing of biosolids are not government functions and therefore not immune, the inquiry should end here. However, even if the manufacture and marketing of biosolids were immune government functions, Synagro would still not benefit from "derivative" immunity and cites no authority supporting its position. To enjoy "derivative" immunity, the contractor must establish that it did not have discretion to perform its work. *See Nettles v. GTECH Corp.*, 606 S.W.3d. 726, 736-37 (Tex. 2020). But here, Synagro had broad discretion over its work, and, by the explicit terms of its contract with the City, Synagro was an independent contractor.[7] In defining Synagro's status as an independent contractor, the contract

[7] *See* Doc 45-1, Appendix to Synagro's Motion at APPX 401, Section 18.2.

clearly states that Synagro was not a "partner, agent or legal representative" of the City.[8]

In *Nettles*, the Texas Supreme Court focused on a control-based standard, stating that where a contractor exercises discretion in its work like Synagro does in this case, derivative immunity will not attach.[9] The Court unequivocally disclaimed any precedential value of *Nettles*—and *Brown & Gay*—on the question of derivative sovereign immunity where a Defendant argues that ***some*** degree of control by the government would extend sovereign immunity to a private party:

> Here, the parties have not briefed the questions whether we should recognize a doctrine of derivative sovereign immunity for contractors, or if so, what standard we should adopt for determining the scope of that immunity. As in *Brown & Gay*, we need not decide those questions today.

Nettles, 606 S.W.3d at 733 (emphasis added).

Farmers do not concede the City exercised any control over Synagro's manufacturing or marketing of Synagro Granulite Fertilizer, but, even if it did, *Nettles* simply does not stand for the proposition that where the government might exercise some limited control, derivative immunity attaches. In fact, the Texas Supreme Court makes clear that, even where a contract grants the government final approval of work, a contractor still retains control where it has discretion in the first place. *Id.* at 737.[10]

Notably, at least two appellate courts after *Nettles* declined to extend any "derivative"

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[8] *Id.*

[9] As discussed in *Nettles*, the control-based standard is like the standard to distinguish between independent contractors and employees, focusing on who "has the right to control the progress, details and methods of operations of the work." *Nettles,* 606 S.W.3d at 732, FN 3. Here, Synagro had the right to control the progress, details and methods of operations of the work, consistent with its explicit contractual status as an independent contractor.

[10] Synagro also cites *Foster v. Teacher Retirement Sys.*, 273 S.W.3d 883 (Tex. App. – Austin 2008, no pet.) as an example of derivative immunity for a state contractor. However, *Foster* is distinguishable because: (1) the contractor explicitly acted as an agent and fiduciary for the state; and (2) the immunity derived from the contractor's role as a "fiduciary intermediary" and the agency relationship. *Id.* at 888-90. None of those facts exist in this case.

governmental immunity to a contractor. *See Sai Monahans Brother Hosp., LLC v. Monahans Econ. Dev. Corp.*, 657 S.W.3d 438, 452 (Tex. App.—El Paso 2022, no pet.) (no derivative immunity for economic development non-profit created by City of Monahans); *see also Cheney v. Levy Co.*, No. 03-19-00243-CV, 2020 WL 6265656, at *6 (Tex. App. – Austin Oct. 23, 2020, no pet.) (mem. op.) (no derivative immunity when contractors could not conclusively establish a lack of direction to support extension to them of City's governmental immunity).

Synagro also argues that, because the City provides the "feedstock" (*e.g.,* sewage sludge) from which Synagro produces its Granulite Fertilizer, the Court should find derivative immunity because allegedly "Plaintiffs' claims against Synagro thus stem directly from Fort Worth's conduct." *Motion* at 10. But the source of Synagro's sewage sludge is irrelevant to the inquiry set forth in *Nettles*, which instead focuses on Synagro's discretion and control of its *subsequent* production of the fertilizer product and marketing of the same, which is the basis of Farmers' claims.[11] Importantly, Synagro had independent responsibilities to ensure its products were protective of the environment and minimized nuisance conditions, as well as independent laboratory testing and sampling responsibilities,[12] and Synagro marketed and sold the product independently of the City as well.

[11] Synagro cites no authority that obtaining sewage sludge from the City would somehow confer sovereign immunity because no such authority exists. Defendants' reliance on *Fidelity & Guar. Ins. Underwriters Inc. v. Wells Fargo Bank, Nat. Ass'n*, 2006 WL 870683 (S.D. Tex., Mar. 31, 2006) and *Cimino vs. Raymark Indus., Inc.*, 151 F.3d 297 (5th Cir.1998) is misplaced. Neither of these cases either involve or discuss derivative sovereign immunity.

[12] Synagro argues it "had no involvement" in the composition of the City's sewage sludge in what appears to be an attempt for Synagro to feign ignorance that sewage sludge is composed of domestic and industrial waste. *See Motion* at 10. But Synagro was fully aware that sewage sludge consists of the residue from treatment of wastewater, and Synagro markets its ability to "turn waste into worth." *Pl. Second Amended Compl.* at ¶25. Synagro also knew the sewage sludge and resulting biosolids fertilizer contained toxic chemicals, including "forever chemicals." *Id.* at ¶¶48-54. Any suggestion that this was unknown or was a surprise to Synagro is ludicrous. Synagro had an independent responsibility to ensure that the product it created and then marketed was safe.

Finally, Farmers highlight Justice Boyd's policy rationale to deny derivative governmental immunity in his partial concurrence in *Nettles*; as the same reasoning applies here:

> "[J]ust as immunity is inherent to sovereignty, unfairness is inherent to immunity," *City of Galveston v. State*, 217 S.W.3d 466, 480 n.38 (Tex. 2007) (Willett, J., dissenting). Sovereign immunity from suit "allows the 'improvident actions' of the government to go unredressed," and thus "places the burden of shouldering" the "costs and consequences" of those actions "on injured individuals," rather than on the entity that caused those consequences, *Brown & Gay*, 461 S.W.3d at 121. …
>
> Recognizing that sovereign immunity derives solely from sovereignty, divests courts of their constitutional powers, and defends the sovereign even when it wrongfully harms one of the sovereign's citizens, I see no reason why sovereign immunity from suit should ever apply to protect a non-sovereign entity—even those that contractually agree to allow the sovereign to control their actions.

Nettles, 606 S.W.3d at 742–43 (emphasis added) (internal citations omitted) (noting that "sovereign immunity" is also known as "governmental immunity" when referring to political subdivisions, such as municipalities). Justice Boyd's concern is well-taken: extending immunity to a non-sovereign contractor such as Synagro would both divest courts of their constitutional powers and unduly burden Farmers with the "costs and consequences" rather than Synagro, the party that actually "caused those consequences." *Id.*

4. Numerous Contractual Provisions Indicate Synagro Maintained Control of Biosolids Manufacturing, Marketing, and Sales and Was Liable for Damages to Private Property.

Synagro also points to a handful of provisions in the contract between the City and Synagro for the proposition that the City retained control, leaving Synagro with no discretion in how it performed under the contract. First, Synagro's cherry-picked citations are largely from the portion of the contract governing the design-build phase of the facility, not the overall operations when

the Synagro product was being manufactured, marketed, or sold.[13] Second, the contract establishes that Synagro was an independent contractor and includes numerous references which demonstrate that Synagro actually retained a control and discretion, and even accepted liability for its work. For example:

- **Section 6.10(B)** – "The Company[14] shall perform and provide all sampling, laboratory testing, analyses, and quality assurance and quality control procedures and programs as required by the Contract Standards, …. The Company explicitly assumes the risk of incorrect sampling, testing, and laboratory work and any consequences thereof or actions taken or corrections needed based thereon…"

- **Section 8.8** – "The Company shall promptly repair or replace all City Property and all private property damaged by the Company … in connection with the performance of, the failure to perform, the Contract Services. The repair and replacements, to the maximum extent reasonably practicable, shall restore the damaged property to its character and condition existing immediately prior to the damage."[15]

- **Section 18.2** – Establishes that the Company "is an independent contractor of the City," such that "neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party." This section also states that neither party should be considered a "partner, agent, or legal representative" of the other party. Finally, "no liability or benefits … shall arise or accrue to any party's agent or employee as a result of this Service Contract."[16]

- **Section 18.6(B)** – This provision guarantees that all the intellectual property developed by Synagro connected to the performance of the contract is owned by Synagro, and is only licensed to the City on a "non-exclusive, cost-free perpetual basis." The intellectual property owned and controlled by Synagro includes "technology, inventions, innovations, processes, know-how, formulas, and software, whether protected as proprietary information, trade secrets, or patents," even if the City has perpetual and unrestricted right to use it.

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[13] The City owns the facility and land where Synagro Granulite is produced, but Farmers' claims are negligence and product liability claims regarding the design, production, marketing, and sale of Synagro Granulite, all of which are acts within Synagro's control.

[14] Throughout the contract, "the Company" refers to Synagro.

[15] While Section 8.8 is under a section titled "Managed Assets," this specific paragraph is not limited to "Managed Assets" as it refers to the performance of the Contract Services as a whole, which includes both Management Services and Design-Build Work. *See* Doc 45-1, Appendix to Synagro's Motion at APPX 309, 312 (defining "Management Services" to include "everything required to be furnished and done for and relating to the operation and management of the Managed Assets by the Company pursuant to the Service Contract during Management Period").

[16] In other words, to the extent immunity is a benefit, the Contract did not extend it to the Company's employees or agents.

- **Section 3.4.2 (Appendix 3, Biosolids & Air Regulatory Guarantee)** – "The Company will be responsible for all regulatory activities associated with the biosolids program, including but not limited to sampling, reporting, and record keeping requirements," in addition to other responsibilities that are coordinated with the City.

- **Section 10.3 (Appendix 10, Operation & Maintenance Plan)** – "The Company shall develop and implement standard operating procedures associated with the operation and maintenance of the biosolids processing facility, as well as its transportation, storage, and beneficial use activities." This includes laboratory protocols and sampling, residuals management disposal, public outreach, and "environmental management system.

- **Section 16.1(B) Management Period Insurance—**Requires Synagro to maintain General Liability Insurance (CGL) and Environmental Impairment Liability (EIL) and /or Pollution Liability Insurance.

See Fort Worth-Synagro Contract, included in Doc 45-1, Appendix to Synagro's Motion at APPX 332, 342, 395, 401, 402, 686, 785-86.

As noted above, Synagro was singularly responsible for the "marketing and distribution" of the product, and for "determining end use of the product."[17] This included obtaining the Granulite label from the Office of the State Chemist, which states that Synagro Granulite is "Guaranteed by: Synagro of Texas—CDR."[18] Even if the Court were to determine that the *design* of Granulite somehow involved the City and found that derivative immunity barred Farmers' design defect claims—and Farmers strenuously dispute this—the marketing and sales of Synagro Granulite (including the defective label) were Synagro's responsibility alone. Accordingly, Farmers' failure to warn and negligence claim, at a minimum, must survive because no derivative immunity can attach to acts that were solely those of Synagro.

In short, Synagro's arguments regarding derivative governmental immunity must be

[17] *See* City of Fort Worth Biosolids Program Webpage, included in Doc 45-1, Appendix to Synagro's Motion at APPX 291 (stating Synagro was responsible for "Marketing and distribution" of Synagro Granulite and that "Synagro is responsible for determining end use of the product"); *see also* Fort Worth-Synagro Contract, *Id.* at APPX 657-59.
[18] The product label is reproduced in its entirety at Dkt. 36 at ¶28.

rejected. Even if the court were to find that the City's operation of a discretionary biosolids fertilizer program was governmental rather than proprietary in nature, Synagro's attempt to extend any immunity afforded to the City to its for-profit contractors must fail. Such an extension is not supported by the case law. Nor is derivative governmental immunity appropriate given the facts of this case, which demonstrate that Synagro retained discretion and control of its work and agreed to accept liability for any resulting damage to private property, as happened here.

B. Defendants are Not Entitled to Dismissal Under the TRFA.

The Texas Right to Farm Act (TRFA) is a statute designed to protect farmers from nuisance actions and other actions seeking to restrain an agricultural operation. *See* TEX. AGRIC. CODE § 251.001 ("It is the purpose of this chapter to reduce the loss to the state of its agricultural resources) and §251.004(a) ("No nuisance action or other action to restrain an agricultural operation may be brought against an agricultural operation that has lawfully been in operation and substantially unchanged for one year or more prior to the date on which the action is brought"); *see also Hendrickson v. Swyers*, 9 S.W.3d 298, 300 (Tex. App. – San Antonio 1999) (noting that §251.001 "[c]learly … is directed towards protecting farmers and ranchers who engage in activities that produce food."). Similar to its misguided attempt to expand derivative sovereign immunity to shield itself from responsibility for manufacturing, marketing, and selling a defective product that has ruined agricultural land in Texas and harmed Farmers, Synagro attempts to greatly expand the scope of TRFA from a statute designed to protect farmers and agricultural producers, to one that instead provides broad protection to manufacturers of any products used in agriculture. Synagro's attempts to rewrite TRFA to shield defective products are baseless and should be rejected.

1. Defendants are Not an "Agricultural Operation" as Defined by the TRFA.

Section 251.002(1) of the TRFA states that the term "agricultural operation" includes the

following activities:

> (A) cultivating the soil; (B) producing crops or growing vegetation for human food, animal feed, livestock forage, forage for wildlife management, planting seed, or fiber; (C) floriculture; (D) viticulture; (E) horticulture; (F) silviculture; (G) wildlife management; (H) raising or keeping livestock or poultry, including veterinary services; (I) planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure; and (J) the commercial sale of animals, as defined by Section 252.001 of this code.

Synagro does none of these things; it does not cultivate the soil, produce crops, grow vegetation, or engage in any of the activities enumerated in Section 251.002(1). In fact, Synagro is not an "operation" at all. Farmers have sued Synagro for its production and sale of a defective product which poisoned Farmers' agricultural land and killed their livestock. A company that designs, produces, and markets a defective product to those engaged in actual agricultural operations and who are then harmed by the product is not covered by TRFA's protection. Synagro asks the Court to read in language which simply does not appear in the statutory text, and Synagro's cynical proposition is ironic because the company wants the Court to protect it from liability by using a shield that was meant to protect those Synagro harmed.

In fact, Synagro is not able to cite a single Texas case which has held that the TRFA "agricultural operation" definition applies to a producer or seller of fertilizers (much less, defective biosolids fertilizers), nor has it cited to a single case that applied the shield to the makers of herbicides or pesticides that caused harm, which are similarly situated and are subject to ongoing lawsuits. As the Texas Supreme Court has repeatedly held, the "chief objective" of statutory construction is to effectuate legislative intent, with the "truest manifestation of what lawmakers intended is what they enacted." *Combs v. Roark Amusement & Vending, L.P.*, 422 S.W.3d 632, 635 (Tex. 2013); *see also Christus Health Gulf Coast v. Aetna, Inc.*, 397 S.W.3d 651, 653 (Tex. 2013) (in matters of statutory construction we "begin (and often end) with the Legislature's chosen

language"). In short, the Texas Legislature could have drafted the TRFA to protect producers and sellers of products used in agricultural operations, but it did not. The Court should not expand the TRFA's protection past the plain language. Such a result would leave agricultural operations that used Synagro's defective product and were harmed by the toxic chemicals in it without a remedy—a distortion of the TRFA and contrary to its purpose.

Synagro points to two Texas appellate cases, both unreported, which can be distinguished from the case at bar,[19] as well as a slew of out-of-state cases which are also inapposite. First, Synagro cites *Cal-Co Grain Co. v. Whatley*, 2006 WL 2439973 (Tex. App. – Corpus Christi-Edinburg, Aug. 24, 2006, pet. denied) (mem. op.), in which plaintiffs brought a breach of settlement agreement and nuisance suit against Cal-Co Grain, a grain storage facility. At trial (*i.e.,* based on evidence presented by witness testimony, and well after the pleading stage), the jury found that Cal-Co was engaged in "agricultural operations" under §251.004. The appellate court agreed, relying on testimony that Cal-Co "takes in grain and stores it for farmers" as part of the process of getting the grain from the farmers to "humans and livestock," that it "handles farmers' and ranchers' grain," and that it was a "distribution point" for grain. *Id.* at *5. Importantly, *Whatley* involved a stationary facility that stored already-grown grain for animal or human consumption and was arguably an essential cog in the farm-to-market distribution chain. It was neither a manufacturer nor a seller of a specific type of fertilizer. *Whatley* does not stand for the proposition that any entity with any plausible connection to agriculture is protected under the TRFA, and certainly not at the pleading stage without any supporting evidence.

[19] Synagro also cites *Hendrickson*, but only for the proposition that the question of statutory construction is within the Court's discretion. In *Hendrickson*, the Court merely held that raising cocks for fighting did not fall within the TRFA's definition of an "agricultural operation" because fighting cocks were not "poultry" or an "agricultural product." *Id.* at 300-01.

Next, Synagro cites *Adcock v. Cal-Maine Foods, Inc.*, 2024 WL 201963 (Tex. App. – Austin, Jan. 19, 2024)(pet. granted)(mem. op.), in which plaintiff sued Cal-Maine Foods, a chicken-feed mill operating on adjacent property, for nuisance and trespass. The case concerned whether Cal-Maine Foods was entitled to summary judgment on TRFA's statute of repose (*i.e.,* based on the evidentiary record as to whether the operation was "substantially unchanged"), and whether the trespass claim was covered by the TRFA's language which states that "no nuisance or other action to restrain an agricultural operation…" can be brought outside the one-year period. *Id.* at *4-5. There is zero discussion in *Adcock* as to whether the chicken-feed mill constituted an "agricultural operation," and thus this opinion, which is currently before the Texas Supreme Court, provides no support for the idea that Synagro, as a producer and seller of fertilizer, is entitled to protection under the TRFA as an "agricultural operation."

Synagro also cites out-of-state cases from Louisiana, Nevada, and Washington for the proposition that courts routinely protect "all facets of agricultural production under right to farm laws," but each of the cited cases discusses only the application of chemicals or pesticides, or nuisance caused by an established farm's composting process to newly-arrived neighbors. Dkt. 45 at 14-15. Leaving aside the fact that these cases are not controlling on this Court, or on its determination of the TRFA's statutory construction, none of these cases protected manufacturers or sellers of defective or dangerous products sued in that capacity. Synagro also cites two out-of-state cases involving Synagro products, but those cases are also distinguishable. First, they point to *Gilbert v. Synagro Cent., LLC*, 131 A.3d 1 (Pa. 2015), in which plaintiffs sued Hilltop Farm and Synagro for nuisance, negligence, and trespass for the application of biosolids fertilizer.[20]

[20] The alleged negligence was only for the "duty to handle and dispose of the biosolids," *i.e.,* as the contracting applier of the product, not for its design, sale, or failure to warn. *Id.* at 4.

Importantly, and contrary to Synagro's representation of this case in their brief, Synagro's "distribution" (*i.e.,* sale) of biosolids fertilizer was not discussed or part of the Court's analysis; the case dealt squarely and exclusively with the land application of fertilizer, which is a distinct process. *See Gilbert*, 131 A.3d 1 (the words "distribution" or "distributor" appearing nowhere in the opinion). Instead, the Court noted that "the only question was whether the application of biosolids is a 'normal agricultural operation'." *Id.* at 16 (emphasis added); *see also id.* at 20 (noting that "we find support for the trial court's conclusion that the use of biosolids as fertilizer falls within the definition of 'normal agricultural operation,' as set forth in §952 of the RTFA").

Synagro also cites *Matter of Lewis*, 316 A.3d 570 (Md. App. Ct. 2024), *cert. granted*, 322 A.3d 1257 (Md. 2024), but this case is also distinguishable. *Lewis* was based on a complaint against a farm, not the product manufacturer, unlike the instant case where the Farmers have sued only the product manufacturer under a negligence and products liability theory and not the neighbor who used the product. In its key holding, which is now pending before the Maryland Supreme Court, the intermediate court held that "there was substantial evidence to support the Board's decision that the storage of the biosolids and soil conditioners on the Foster Farm amounted to a protected agricultural operation" under the Maryland statute which defines an "agricultural operation." *Id.*, 316 A.3d at 583. Again, *Lewis* does not involve product liability causes of action, nor does it contain any discussion which would expand the definition of "agricultural operation" to include product manufacturers or suppliers.

2. The TRFA's Prohibition does not Apply to Farmers' Lawsuit.

a. Farmers do not bring a nuisance claim, nor do they seek "nuisance" damages.

Synagro next argues that Farmers' complaint runs afoul of TRFA Section 251.004(a). This argument fails for several reasons. First, Farmers amended their complaint to omit a cause of action

for private nuisance, as the Texas Supreme Court has described "nuisance" as "a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy it." *Crosstex North Texas Pipeline v. Gardiner*, 505 S.W.3d 580, 605-07 (Tex. 2016). It further clarified, "[t]o reduce the confusion that has resulted from these varied uses of the term, we believe the better approach is to utilize the term 'nuisance' to refer not to a cause of action or to the defendant's conduct or operations, but instead to the particular type of *legal injury* that can support a claim or cause of action seeking legal relief." *Id.* at 594 (emphasis in original) (citing *City of Tyler v. Likes*, 962 S.W.2d 489, 504 (Tex. 1997)). In this case, Farmers are not asserting a "nuisance" cause of action, nor are they seeking "nuisance" damages (*i.e.,* loss of enjoyment of property, or "personal discomfort, annoyance, frustration, and inconvenience"). *See Crosstex*, 505 S.W.3d at 596; *City of Tyler*, 962 S.W.2d at 504 (internal citations omitted). Instead, Farmers' second amended complaint alleges causes of action for negligence and strict products liability and seeks damages including loss of market value for property, including livestock; cost of repairs; diminution in market value after repair, including stigma damages; expenses; and lost income.

Synagro also cites *Ehler v. LVDVD, L.C.*, 319 S.W.3d 817, 821 (Tex. App. – El Paso 2010, no pet.) and *Adcock*, *supra*, to argue that courts have applied the TRFA to apply to more than nuisance claims. The *Ehler* court held that Section 251.004 barred both nuisance and trespass claims against a neighboring dairy farm for damages caused by manure-tainted stormwater runoff. *Ehler*, 319 S.W.3d at 819 (noting that plaintiffs were relying on the same "alleged encroachment of waste from the dairy" and alleged the same damages, *i.e.,* temporary physical harm to property, to support both their nuisance and trespass actions). Similarly, in *Adcock*, the court held that plaintiffs' trespass claims for odor, dust, and runoff emanating from a chicken-feed mill onto

neighboring properties were barred by the TRFA. Neither case resembles Farmers' allegations and causes of action in this case, which is a lawsuit alleging product liability claims grounded in strict liability and negligence against Defendants who manufactured and sold a dangerous and injurious product. Synagro has not cited any cases in which the TRFA has been applied to bar a products liability claim, and the Court should not ignore the statutory language, which refers only to a "nuisance action or other action to restrain an agricultural operation," to vastly expand the reach of Section 251.004 well past the Legislature's chosen scope.

b. This is not an action "to restrain an agricultural operation."

Synagro argues Farmers' lawsuit, apart from being deemed a "nuisance" action, falls within the ambit of Section 251.004 because its effect would be to "restrain an agricultural operation." This argument misconstrues the relief Farmers are seeking. With regard to injunctive relief, Farmers seek a cleanup order, which would not restrain Synagro from continuing its own (non-tortious) operations. Moreover, no other claim would enjoin any "agricultural operation" because Synagro is no longer contracting with the City as of April 1, 2025.

Synagro argues the injunctive relief sought by Farmers is "precisely the type of restraint the Act bars," but offers no case law in support, other than an incomplete excerpt from Texas Rule of Civil Procedure 683 that governs both injunctions and restraining orders (and not merely injunctions, as the motion appears to imply). Similarly, Synagro argues that Farmers' request for punitive damages is a restraint but offers no legal basis for this argument. Dkt. 45 at 17.

Importantly, Synagro's biosolids migrated to Farmers' properties—Plaintiffs that include farmers who grow hay, cattle, fish, and poultry for food. Farmers' negligence and product liability claims are because the toxic chemicals not visible to the naked eye in the Synagro Granulite Fertilizer moved from where it was placed to their properties, which is part of why it is defective.

For Synagro—who designed and marketed a deadly and defective product—to argue Farmers' claims are an attempt to restrain a protected agricultural operation, when Farmers have lost over 50 head of cattle among other livestock and their rural farmland is forever ruined because of Synagro's product is incongruous with the legislative intent of the TRFA.

3. Synagro's Suggested Interpretation Turns the TRFA's Purpose on Its Head.

Finally, if the Court were to apply the TRFA to bar lawsuits against Synagro in this case, it would defeat the statute's purpose, which clearly is "directed towards protecting farmers and ranchers who engage in activities that produce food." *Hendrickson*, *supra*, 9 S.W.3d at 300 (analyzing TEX. AGRIC. CODE §251.001). Synagro's interpretation would mean farmers who used defective and toxic biosolids on their own land (who are members of Plaintiffs' class) could not bring tort claims against Synagro, which is nonsensical. The purpose of the TRFA is to protect the farmer— not any company whose product the farmer buys and uses.

Synagro argues that because its products are "*used* in producing crops and cultivating the soil" the TRFA shields them. *Motion* at 13. But countless products are *used* in producing crops and cultivating the soil including farming implements (such as tractors, trailers, shovels, rakes, wheelbarrows, irrigation equipment, fencing materials); personal protective equipment, (such as boots, clothing, sun visors, glasses, sunscreen, hearing protection devices); agricultural supplies (seed, plants, soil amendments, pesticides, herbicides). If any of these products failed due to defect, or were determined to be toxic, such as the herbicide Roundup, a plaintiff—including the farmer or any individual who used the product—would have a claim for damages. Yet, Synagro's argument would broadly extend TRFA protection to all these products which are used in producing crops and cultivating the soil and would prevent a farmer from suing for <u>any</u> defective products they used. This is especially troubling in cases such as the instant one, where the defect involves

polluting, toxic, and bioaccumulative chemicals not discovered until after the one-year bar runs. Under Synagro's reasoning, herbicides like Roundup would be covered by TRFA, thereby converting the Act from one designed to protect farmers to one which would protect product manufacturers from farmers (and other users). TRFA is not a product liability statute; nor can Synagro point to any authority that suggests the Act is meant to immunize manufacturers from product defects. The TRFA's explicit language plainly does not protect *products used* in producing crops and cultivating the soil, and Synagro's arguments should be rejected.

C. Farmers Adequately Pled Each of Their Causes of Action.

Under Texas law, a plaintiff can bring a product liability action under three distinct theories of recovery: (1) strict liability under Restatement (Second) of Torts §402A; (2) breach of UCC warranty; and (3) negligence. *See Syrie v. Knoll Int'l*, 748 F.2d 304, 306 (5th Cir. 1984); *Lashley v. Pfizer, Inc.,* 750 F.3d 470, 477 (5th Cir. 2014) (same); TEX. CIV. PRAC. & REM. CODE ANN. § 82.001(2). Farmers bring causes of action for strict liability and negligence. Synagro argues Farmers have not adequately pled strict liability causes of action for manufacturing defect, design defect, or marketing defect (*i.e.,* failure to warn). First, Farmers note that their Second Amended Complaint—Class Action does not contain a "manufacturing defect" theory of recovery, so the motion is moot on that point. As for Farmers' strict liability claims for design defect and failure to warn, Farmers aver these theories have been adequately pled under Texas law. Synagro also argues that Farmers' negligence claim is "subsumed" by their strict liability claim, but Farmers' negligence allegations are not wholly or solely reliant on whether Synagro's product was defective. Instead, the gravamen of Farmers' negligence claim focuses on Synagro's acts and whether it exercised ordinary care in design and production. Finally, Synagro argues Farmers cannot plausibly plead exemplary damages for a practice approved by three government entities, but

Synagro actively lobbied those agencies to approve unsafe practices and limit Synagro's liability, and Farmers pled sufficient facts to demonstrate fraud, malice, and gross negligence.

1. Strict Liability – Design Defect

To succeed on a design defect claim, Farmers must show that "(1) the product was defectively designed so as to render it unreasonably dangerous; (2) a safer alternative design existed; and (3) the defect was the producing cause of the injury for which the plaintiff seeks recovery." *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 311 (Tex. 2009) (citing TEXAS CIV. PRAC. & REM. CODE § 82.005(a)) (further citations omitted). To defeat a 12(b)(6) challenge, "the complaint must contain either direct allegations on every material point necessary to sustain a recovery or contain allegations from which an inference fairly may be drawn that evidence on these material points will be produced at trial." *Rios v. City of Del Rio, Tex.*, 444 F.3d 417, 420–21 (5th Cir. 2006) (citation omitted). Farmers pled sufficient direct allegations and allegations from which an inference fairly may be drawn that evidence will be produced at trial demonstrating that Synagro's Granulite Fertilizer was defectively designed to render it unreasonably dangerous (*i.e.*, that its utility was exceeded by the gravity and likelihood of risk), *see* Dkt. 36 *at* ¶¶1, 3-4, 6-9, 25-28, 32-95, 98-110, 144-160, 167; a safer fertilizer design existed, *id.* at ¶¶161-163; and the defect was the producing cause of Farmers' injuries, *id.* at ¶¶164-166.

Farmers allege six safer alternative design fertilizers that in reasonable probability would have prevented or significantly reduced Farmers' injuries without substantially impairing the fertilizers' utility, and Farmers allege a safer alternative design was economically and technologically feasible at the time Synagro sold its biosolids fertilizer to Coy Nall. *See* Dkt. 36. at ¶¶161-163. Synagro argues the safer alternative design pled must be for a biosolids-based fertilizer as opposed to a fertilizer. First, Farmers do allege two safer designs for biosolids

fertilizers. *Id.* at ¶161(e)-(f). Second, no caselaw supports Synagro's position so-limiting the safer alternative design is nonsensical. For example, a plaintiff need not demonstrate that a safer glyphosate-based herbicide exists in a products liability case alleging Roundup is a defective product; instead, a plaintiff need only demonstrate other, safer alternative designs for an herbicide. Nor would a plaintiff need to demonstrate a safer lead-based paint exists in a products liability case alleging lead-based paint is a defective product; instead, a plaintiff need only demonstrate other, safer alternative designs for paint.

Farmers also clearly allege the defective design of the Synagro Granulite Fertilizer was a direct and proximate cause of Farmers' injuries. *Id.* at ¶164-166. Farmers plead EPA recently found the agency's acceptable human health risk thresholds for cancer and non-cancer effects are exceeded even when sludge is applied to land only one time and contains only 1 part per billion (ppb) of PFOA or PFOS. *Id.* at ¶75. The Synagro Granulite Fertilizer levels of toxic chemicals far exceed the parameters modeled by EPA. *Id.* at ¶76 and ¶93 (just one sample of Synagro Granulite Fertilizer tested as having over 35 ppb PFAS and over 17 ppb PFOA, with risk profiles many orders of magnitude higher than EPA's models). In fact, EPA recommends farmers "[c]onsider an alternative source of fertilizer from biosolids moving forward." *Id.* Farmers' properties are polluted with PFAS and other toxic chemicals present in the biosolids fertilizer, and the testing shows a gradient moving away from the source property, which is clear evidence of causation. *Id.* at ¶¶85-95, 98-110. There are no other possible sources of the severe levels of contamination on Farmers' rural properties—this is not a matter of the ubiquity of PFAS. *Id.* at ¶95. Synagro's product supercharged and concentrated PFAS from the worst sources, yet Synagro sold it as "safe" and "nutrient-dense" fertilizer. Further, contrary to Synagro's contention, Farmers do allege injury from the other toxic constituents in the biosolids fertilizer throughout their complaint. Specifically,

the livestock deaths—including 50 head of cattle—are likely caused by multiple toxic chemicals found in the biosolids based on the autopsy results, and the land and water are poisoned as well. In sum, Farmers have adequately pled their theory of defective design under Texas law.

2. Strict Liability – Failure to Warn

Failure to warn issues generally raise fact questions. *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753, 774 (5th Cir. 2018). "Generally, a manufacturer has a duty to warn if it knows or should know of the potential harm to a user because of the nature of its product." *Am. Tobacco Co., Inc. v. Grinnell*, 951 S.W.2d 420, 426 (Tex. 1997). To prevail on a claim for failure to warn (or marketing defect), a plaintiff must prove that "(1) a risk of harm is inherent in the product or may arise from the intended or reasonably anticipated use of the product, (2) the product supplier actually knew or should have reasonably foreseen the risk of harm at the time the product was marketed, (3) the product possessed a marketing defect, (4) the absence of the warning or instructions rendered the product unreasonably dangerous to the ultimate user of the product, and (5) the failure to warn or instruct constituted a causative nexus in the product user's injury." *DeGrate v. Executive Imprints, Inc.*, 261 S.W.3d 402, 411 (Tex. App. – Tyler 2008, no pet.); *see also Doyle v. Combined Sys., Inc., 2023 WL 5945857*, at *12 (N.D. Tex. Sept. 11, 2023)(Kinkeade, J.)(noting that plaintiff need not identify a "specific warning Defendants should have used" at pleading stage). Farmers sufficiently plead their failure to warn cause of action and address both the specific missing warnings and how failing to communicate dangers to non-users of the product like Farmers would have prevented harm (*i.e.,* "Plaintiffs would have taken all possible affirmative action to prevent runoff of the biosolids fertilizer to their property," and Farmers actions since discovery have caused regulatory and legislative change prohibiting its use and resulted in the City voiding its contract with Synagro). Dkt. 36 at ¶¶172-197.

3. Synagro is Not Entitled to Dismissal of Farmers' Negligence Claims.

To prevail on a negligence claim, a party must establish the existence of a duty, a breach of that duty, and damages proximately caused by that breach. *See, e.g., Greater Houston Transp. Co. v. Phillips*, 801 S.W.2d 523, 525 (Tex. 1990)(citations omitted). While Synagro argues that Farmers' negligence claim is "subsumed" by their strict liability claim, numerous courts have emphasized that negligence is a distinct cause of action from strict liability. *See McLennan v. Am. Eurocopter Corp.*, 245 F.3d 403, 431 (5th Cir. 2001); *Grinnell*, *supra*, 951 S.W.2d at 437; *Gonzales v. Caterpillar Tractor Co.*, 571 S.W.2d 867, 871-72 (Tex. 1978). In *Gonzales*, the Texas Supreme Court made this distinction clear:

> The care taken by the supplier of a product in its preparation, manufacture, or sale, is not a consideration in strict liability; this is, however, the ultimate question in a negligence action. Strict liability looks at the product itself and determines if it is defective. Negligence looks at the acts of the manufacturer and determines if it exercised ordinary care in design and production.

Gonzales, 571 S.W.2d at 871 (emphasis added); *Simien v. C. R. Bard, Inc.,* 2020 WL 4922331, at *9 (E.D. Tex. Aug. 20, 2020). The trial court's analysis in *Simien* explored this question further, concluding: "whether a negligence claim fails following a finding of no strict products liability depends on the type of negligence asserted." *Simien*, 2020 WL 4922331, at *9. When the alleged negligence is "premised solely on a defect in the product and the evidence is 'directed entirely to the issue of whether the product was unreasonably dangerous,'" a finding that the product is not unreasonably dangerous is "inherently" a finding of no negligent design. *Id.* (emphasis added). Here, Farmers' negligence allegations are not wholly or solely reliant on whether Synagro's product was defective; the gravamen of their negligence claim focuses, as instructed by the Texas Supreme Court in *Gonzales*, on the "acts of the manufacturer and [whether] it exercised ordinary care in design and production," *Gonzales*, 571 S.W.2d at 871.

Further, Farmers adequately plead their negligence cause of action, and Synagro's arguments are limited to disputes with Farmers' allegations and evidence. *See* Dkt. 36 at ¶¶131-143. For example, Synagro argues it could not have foreseen risks from PFAS in biosolids, but Farmers allege Synagro knew of the risks and prior to Coy Nall's use of the biosolids, Synagro's Chairman personally lobbied Congress and EPA to avoid liability for PFAS pollution. *Id.* at 48-54. That is clear evidence of knowledge and intent—well beyond the foreseeability test for negligence. Moreover, the entity that regulates Synagro's product in Texas, the Office of State Chemist (and not TCEQ), did cite Synagro for regulatory violations, contrary to Synagro's claims. *Id.* at ¶94. And Farmers have alleged sufficient facts from which a reasonable juror could infer causation. *Id.* at ¶¶32-47, 55-72, 85-95, 98-110, 137-139.

4. Synagro Is Not Entitled to Dismissal of the Request for Punitive Damages.

Taking Farmers' allegations as true, they have pled sufficient facts to demonstrate fraud, malice, or gross negligence to support an award of exemplary damages. *See generally* Dkt. 36. Further, despite Synagro's well-funded lobbying efforts to hide the risks and avoid liability for selling a toxic product that is ruining America's remaining farmland, state legislatures and EPA are starting to take action to ban the use of biosolids fertilizers and have determined the risk from Synagro's product is overwhelming. *Id.* at ¶¶48-84.

IV. CONCLUSION & PRAYER

For the reasons set forth above, Farmers respectfully request the Court deny Synagro's Motion to Dismiss in its entirety. Farmers further request any additional relief to which they are entitled in law or equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Federal Rules of Civil Procedure, through the ECF system of the Court, on May 23, 2025.

/s/ Mary Whittle

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
(Dallas Division)

ROBIN ALESSI, *et al.*	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**Civil No. 3:25-CV-0445-K**
	§	
SYNAGRO TECHNOLOGIES, INC., *et al.*	§	
	§	
Defendants.	§	

SYNAGRO DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS

Plaintiffs struggle to characterize their suit as a "product liability" claim against a "manufacturer" of some sort of "product." Their Response falls short because, even after five iterations of their complaint, they do nothing more than attack municipal recycling of biosolids to farmland, a core government and agricultural activity conducted every day for many decades across America and Texas. Plaintiffs' remedy, if any, is with EPA and TCEQ, which have closely regulated this practice for decades, not class action tort litigation.

Plaintiffs misconstrue Texas law on governmental immunity and the Right to Farm Act to suggest this is an ordinary tort lawsuit rather than an assault on government and agricultural infrastructure. But Texas immunizes both governmental *functions* and agricultural *operations* regardless of how plaintiffs style their claims. Plaintiffs acknowledge they cannot sue Fort Worth (which designed, produced, and required distribution of the biosolids) or the farmer who actually applied the biosolids, and thus strain their pleadings to target a middleman, Synagro, that simply processed Fort Worth biosolids into fertilizer. Despite the Response's recasting of Plaintiffs' case, their Complaint only alleges that Synagro operated a dryer to support Fort Worth's biosolids program and allowed farmers to pick up dried pellets, conduct for which Synagro enjoys Fort Worth's derivative governmental immunity and the farmer's "part of the process" Right to Farm

Act protections. Plaintiffs plead no contravening facts nor introduce any legal authority abrogating these statutory safeguards for the longstanding government practice of recycling municipal biosolids to farmland. Their objections to federal and state environmental rules encouraging and allowing this practice are no basis for tort litigation.

Plaintiffs' remaining arguments fare no better. Plaintiffs declined to plead any safer design alternative within Synagro's control or identify any necessary but absent warning, so their products and negligence claim fails. Last, exemplary damages are unavailable for the highly regulated conduct despite Plaintiffs' rote rhetoric about "toxic" products.

A. Synagro's operation of Fort Worth's biosolids facility is shielded by government immunity, regardless of the type of tort claim.

Plaintiffs fail to carry their "constant" burden to prove that jurisdiction does in fact exist. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). Texas courts of appeals rely on *Brown & Gay Eng'g Inc. v. Olivares*, 461 S.W.3d 117, 124-27 (Tex. 2015), which confirmed derivative governmental immunity for independent contractors and provides "guiding rules and principles that apply to that general concept." *R&T Ellis Excavating v. Page,* No. 09-20-00080-CV, 2020 WL 1592977, at *3 (Tex. App.—Beaumont 2020, pet. denied). Contrary to Plaintiffs' suggestions, "whether the independent contractor is entitled to derivative governmental immunity from liability depends on an analysis of the *function* performed, not simply the characterization of the *claim.*" *Martin K. Eby Constr. Co. v. LAN/STV*, 205 S.W.3d 16, 20 (Tex. App.—Dallas 2006, pet. denied) (emphasis added); *see also Nettles v. GTECH Corp.*, 606 S.W.3d 726, 733 (Tex. 2020) (a derivative immunity determination "must first define precisely what conduct of [defendant] is at issue.").[1]

[1] Plaintiffs quote from the *Brown & Gay Eng'g Inc.* dissent questioning whether derivative governmental immunity should exist is of no moment and is an argument for the Legislature, which has chosen not to limit immunity in the decades the doctrine has been applied.

Plaintiffs' long discussion of governmental versus proprietary functions misses the mark. Texas courts have settled that selling treated wastewater effluent (the liquid counterpart to biosolids) for land application under the same TCEQ permit used for Fort Worth's biosolids program is a governmental function, not a proprietary one. *City of Merkel v. Copeland*, 561 S.W.3d 720, 725 (Tex. App.—Eastland 2018, pet. denied) (applying *Wasson* to decide that the City "exercised a governmental function when it contracted to dispose of its treated wastewater/effluent by sale"). Operating a biosolids plant to remove solids from Fort Worth's wastewater is the same governmental function. *See San Jacinto River Auth. v. Simmons,* 167 S.W.3d 603, 610 (Tex. App.—Beaumont 2005, no pet.). Nor did *Simmons* limit its holding to personal injury cases (as Plaintiffs argue) to exclude other tort claims, like products liability.

Plaintiffs draw the wrong conclusion from the never-pled fact that "other Texas cities do not choose to hire contractors to turn their sewage sludge in [*sic*] biosolids fertilizers." ECF No. 49, p 5. That most cities (including now, Fort Worth, ECF No. 36, ¶ 31) operate their own biosolids or composting program shows that it *is* a governmental function.[2] Contracting the work does not change whether a function is governmental. *Merkel*, 561 S.W.3d, at 725-26 (construing contract between City and company accepting wastewater). Neither does the sale of a product. *Davis v. City of Lubbock*, No. 07-16-00080-CV, 2018 WL 736344, at *4 (Tex. App.—Amarillo, Feb. 6, 2018, no pet.) (in suit alleging injuries to horses from hay irrigated with wastewater effluent, "the sale of the baled hay is sufficiently closely related to the performance of the City's TCEQ-permitted

[2] For example, the Trinity River Authority (serving Dallas and surrounding communities), and the City of Waco, recycle biosolids for agricultural land application. Biosolids Land Application, TRINITY RIVER AUTHORITY OF TEX. (last visited June 3, 2025), https://www.trinityra.org/about_us/environmental_sustainability/biosolids_land_application.php; Wastewater, CITY OF WACO, TEX., Water Utility Services Dept. (last visited June 3, 2025), https://www.waco-texas.com/Departments/Water-Utility-Services/Wastewater#section-3.

activities as to come within the governmental functions the permit authorizes"). The Response offers no authority distinguishing a products liability claim from other torts for governmental immunity purposes, and there is none. *See Nat'l Sports & Spirit, Inc. v. Univ. of N. Tex.*, 117 S.W.3d 76, 81 (Tex. App.—Fort Worth 2003, no pet.) (finding no waiver of immunity for products liability claim against university). The federal corollary is instructive: contractors are frequently immune from products liability claims. *Kerstetter v. Pac. Sci. Co*., 210 F.3d 431, 435 (5th Cir. 2000) (the government need not prepare the product specifications itself for derivative immunity to apply).

Synagro does not merely "touch upon" Fort Worth's biosolids operations—it directly performs this governmental function. And the City did far more than supply feedstock, it started a biosolids program a century ago, Appx., Item No. 7 at 1; obtained a TCEQ permit for testing, reporting, managing, marketing, distributing, and land applying biosolids, Appx., Item No. 3 at 17-39; determined thermal drying was a preferred vehicle for land application in accordance with its Biosolids Master Plan, Appx., Item No. 7 at 1; obtained state financing to purchase the thermal dryer, *id*.; required Synagro to thermally dry Fort Worth's biosolids into pellets for land application, Appx, Item No. 8 at 0033; prohibited Synagro from changing the design of the facility, *id.* at 0059; and penalized Synagro for *not* distributing the pellets for land application, *id*. at 0389.[3] Irrelevant insurance and indemnity contract provisions do not show that Synagro had discretion in the alleged injury-causing conduct (*i.e.,* that the biosolids the farmer picked up contained PFAS or "other toxins"). Synagro had no discretion to reject wastewater with PFAS, *id.* at 0042, and neither the Complaint nor the Response establish otherwise.

[3] The Response states "Synagro had the right to control the progress, details and methods of operations . . . consistent with its explicit contractual status as an independent contractor." ECF No. 49, at 7 n.9. Plaintiffs plead no such facts, which the contract anyway contravenes.

The alleged actions underlying Plaintiffs' design claim ("design and formulation," ECF No. 36, ¶ 151) were invariably in compliance with specifications set by Fort Worth in accordance with its TCEQ permit, and therefore entitled to governmental immunity. So too are the alleged actions supporting Plaintiffs' marketing claim ("sell, distribute, supply," ECF No. 36, ¶ 174) because Synagro also lacked discretion with respect to those actions. *See* Appx., Item No. 8 at 363-64 ("Required services include . . . transportation & marketing of dried/dewatered biosolids, land application of produced biosolids . . ."). *Lincoln Prop. Co. v. Herrera*, No. 13-23-00276-CV, 2025 WL 339036, at *5 (Tex. App.—Corpus Christi-Edinburg, Jan. 30, 2025, no pet.) (derivative governmental immunity when contractor "had no discretion to act with respect to the complained-of defect, and could not have replaced the broken sidewalk/entryway without [government's] authority"). The Response offers nothing tangible to counter these plain contract terms and derivative immunity applies.

B. The Texas Right to Farm Act protects operations like Synagro's.

Faced with one of the country's strongest Right to Farm laws, Plaintiffs are reduced to arguing that the lack of precise on-point precedent somehow renders the statute inapplicable. Of course, that is not how courts apply statutes, much less a broad bar on tort litigation like the Right to Farm Act. The Legislature and Texas courts extend the Act to protect any operation that is "part of the process" within a non-exhaustive list of agricultural activities, including cultivating soil and growing crops.[4] *Cal-Co Grain Co. v. Whatley*, No. 13-05-120-CV, 2006 WL 2439973, at *5 (Tex. App.—Corpus Christi-Edinburg, Aug. 24, 2006, pet. denied) (mem. op.) (protecting off-site grain storage facility from negligence claim even though it was not a listed agricultural operation); *Adcock v. Cal-Maine Foods, Inc.*, No. 03-22-00418-CV, 2024 WL 201963, at *1 (Tex. App.—

[4] The definition of "agricultural operation" includes an enumerated list of exemplar activities with no limiting language. TEX. AGRIC. CODE § 251.002.

Austin Jan. 19, 2024) (no pet.)[5] (protecting feed mill from trespass claim that "sludge and runoff" harmed neighboring property). Plainly, the provision of fertilizer is at the heart of farming.

Texas's Right to Farm protections surpass those in some states, which are limited to specific defendants or claims. *See*, *e.g.*, Md. Cts. & Jud. Proc. § 5-403 (Maryland act covering "processing of agricultural crops or *on–farm* production" done "by the *farmer*") (emphasis added); 3 P.S. § 952 (Pennsylvania defining "normal agricultural operation" as "activities, practices, equipment and procedures that *farmers* adopt, use or engage") (emphasis added).[6] Under Plaintiffs' theory, distributing biosolids-based fertilizer is tortious but land applying it a few hours later is protected. The Legislature did not restrict the Right to Farm Act this way, nor should the court.

The Response incorrectly tries to hamstring the Act by cabining it to narrowly defined nuisance cases. Plaintiffs offer a technical and semantic defense that they do not bring a nuisance claim nor seek "nuisance damages." ECF No. 49, at 16. Nuisance is not a "claim" or "damages." Synagro shows, and the law supports, that Plaintiffs claim a nuisance *injury*—a legal injury that "substantially interferes with the use and enjoyment of land." *Crosstex North Texas Pipeline v. Gardiner*, 505 S.W.3d 580, 600 (Tex. 2016); *Ehler v. LVDVD, L.C.*, 319 S.W.3d 817, 823 (Tex. App.—El Paso 2010, no pet.) (a trespass action is included in the phrase "nuisance action" under the Act when based on the alleged migration of manure from the dairy causing "physical harm to their property"). Plaintiffs' claims directly target alleged circumstances constituting interference with the use and enjoyment of their land. ECF No. 36, ¶¶ 98-110 (alleging the soil, surface water,

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[5] Plaintiffs mistakenly attempt to distinguish this adverse precedent by arguing that a petition for review is pending before the Texas Supreme Court, ECF No. 49 at 15, but the mandate issued April 18, 2024, and no petition for review was filed.

[6] Plaintiffs wrongly assert that *Gilbert v. Synagro Cent., LLC* dealt "exclusively" with the application of biosolids, but those plaintiffs brought a negligence claim against Synagro for the marketing and transporting of biosolids, among other actions that the trial court dismissed as barred under the Pennsylvania act. 2012 WL 11943695, at *13 (Pa.Com.Pl.).

and drinking water are all polluted; that their land may have to be abandoned; that they can no longer farm; and that their properties, which they allege are their main assets, have been rendered worthless). Further, the damages sought, loss of property use and diminution of property value, are routine remedies for nuisance. *See Crosstex*, 505 S.W.3d, at 610-11 (a claimant may recover lost market value for a permanent nuisance injury); 54 Tex. Jur. 3d Nuisances § 105 (same).

Plaintiffs test credulity in denying that this lawsuit will "restrain an agricultural operation," meaning this lawsuit is barred even if Plaintiffs do not claim a nuisance injury. What could be a bigger deterrent to fertilizing crops than seeking damages for every land application of biosolids across ten counties? Their lawsuit's artful pleading can't mask its obvious purpose to restrain and destroy use of biosolids as a fertilizer[7] For example, Plaintiffs cannot explain how the requested injunctive relief—complete removal of chemical constituents, and the Plaintiffs' land returned to the condition prior to alleged contamination—could be accomplished *without* discontinuing land application of biosolids as Plaintiffs describe them. And exemplary damages they seek are definitionally intended to restrain a party from engaging in the conduct at issue. *Waste Disposal Ctr., Inc. v. Larson*, 74 S.W.3d 578, 588 (Tex. App.—Corpus Christi–Edinburg 2002, pet. denied) ("levied for the purposes of punishment and deterrent.").

Plaintiffs' suggestion that applying the Act to Synagro's lawful fertilizer production and distribution would immunize any conduct by a product manufacturer is wrong. ECF No. 49, at 19.[8]

[7] According to the article incorporated in the Complaint, ECF No. 36, ¶ 31, it is this very lawsuit that ended the Fort Worth contract. "Fort Worth ends 10-year contract with fertilizer company accused of water, land contamination," Nicole, Lopez, Fort Worth Report (March 26, 2025) https://www.keranews.org/environment-nature/2025-03-26/fort-worth-ends-10-year-contract-with-fertilizer-company-accused-of-water-land-contamination (last visited June 3, 2025).

[8] Plaintiffs' extreme slippery slope fallacy is just as ridiculous in the other direction—if the Right to Farm Act did not apply to farm-servicing operations, plaintiffs could simply sue grain suppliers and trailer manufacturers for dairy cows creating nuisance odors.

The Act does not limit any claims if operations were "conducted in violation of a federal, state, or local statute or governmental requirement." TEX. AGRIC. CODE § 251.004(c).[9]

C. Plaintiffs' inability to identify any safer design alternatives or useful warnings requires dismissal of the products liability claim.

Plaintiffs argue that a safer alternative design need not relate to the actual product, undermining the test prong's purpose. They ignore the Texas Supreme Court's requirement to name a feasible alternative the defendant could have provided. ECF No. 45, at 20. Plaintiffs offer no support for their claim that an alternative can be loosely connected to the original product. ECF No. 49, at 22. By their logic, a tractor could be deemed defectively designed because a wheelbarrow is "safer" for moving material.[10] Plaintiffs' only biosolids-related alternatives—screening PFAS from wastewater before it arrives at Village Creek or using chelators to bind metals at Village Creek[11]—are under Fort Worth's control, not Synagro's, thus failing to plead any alternatives that were "economically and technologically feasible" designs within Synagro's control. TEX. CIV. PRAC. & REM. CODE § 82.005(b)(2).[12] Plaintiffs still fail to explain what is missing in the Granulite product label.[13] All the while, Plaintiffs ignore and fail to refute that the label provides the required warnings. *Cf.* ECF No. 36, ¶ 28 *with* 40 C.F.R. § 503.14(e).[14] Plaintiffs

[9] Of course, Plaintiffs allege nothing of the kind because Synagro has done nothing in violation of the applicable requirements and regulations.

[10] Safer alternative designs are variants of the product in question. *See Genie Indus., Inc. v. Matak*, 462 S.W.3d 1, 7-9 (Tex. 2015) (different designs for aerial lifts, not aerial lifts to ladders); *Uniroyal Goodrich Tire Co. v. Martinez*, 977 S.W.2d 328, 332-34 (Tex. 1998) (different tire bead designs, not motor vehicles to bicycles).

[11] Moreover, using chelators to bind heavy metals would do nothing to ameliorate the PFAS migration of which Plaintiffs complain.

[12] Additionally, Plaintiffs fail to address their lack of the required risk-utility analysis.

[13] As Synagro previously noted, the label warns users against applying the product near bodies of water, applying on frozen or flooded land, ingestion and inhalation, and exceeding application rates, among other things. ECF No. 36, ¶ 28 & ECF No. 45, at 21.

[14] Plaintiffs erroneously assert in their Response that the State Chemist "cited" Synagro. ECF No. 49, at 25. The State Chemist did not, and Plaintiffs rely on their pleading which does not mention a citation, nor do Plaintiffs provide this alleged "citation" as an exhibit.

cite *Doyle v. Combined Sys., Inc.*, for the contention that Plaintiffs need not specify at the pleading stage the particular warning a defendant should have used, but in that case, the plaintiffs alleged defendants failed to warn that their products were unreasonably dangerous when used for crowd control purposes, unlike here where Plaintiffs fail to identify any basis for their claim. No. 3:22-CV-01536-K, 2023 WL 5945857, at *3 (N.D. Tex. Sept. 11, 2023) (Kinkeade, J.). Plaintiffs again nebulously assert that if something was different about Synagro's label they, as non-users, "would have taken all possible affirmative action to prevent runoff of the biosolids to their property," ECF No. 49, at 23, but in so arguing, Plaintiffs (i) improperly extend a duty to warn to non-users of a product and (ii) withhold any information about what actions the farmer applying the fertilizer could have taken or how a different warning would have made any difference. In short, the Plaintiffs' marketing defect claims have no basis.

As to causation, Plaintiffs do not address at all the ubiquity of PFAS and assertions in their own pleading that PFAS travel great distances and persist in the environment from a multitude of sources found in almost every American household. ECF No. 36, ¶¶ 38-39, 57, 68, & 70. Despite this, Plaintiffs claim that a single application of biosolids fertilizer can be the sole source of the alleged contamination.[15] ECF No. 49, at 22. Such fanciful and conclusory allegations fall short of pleading standards, and as such the claims must be dismissed.

D. Plaintiffs' negligence claim—based on identical allegations as their products claims—is subsumed and should be dismissed.

In Texas, negligence claims are absorbed into product liability when both arise from the same conduct. *See Smith v. Chrysler Grp., L.L.C.*, 909 F.3d 744, 750 (5th Cir. 2018). Plaintiffs' negligence claim rests on the same alleged acts as their product liability claim. ECF No. 36, ¶¶ 132-36, 144-52, 172-82. Plaintiffs incorrectly cite *Gonzales v. Caterpillar Tractor Co*. to distinguish

[15] Plaintiffs again cite *a draft* assessment in the absence of any binding law or regulation.

between strict liability and negligence claims, 571 S.W.2d 867, 871-72 (Tex. 1978), overlooking that the Texas legislature later consolidated negligence and strict liability into a products liability action. TEX. CIV. PRAC. & REM. CODE § 82.001(2) (effective 1993). Accordingly, if one product liability claim fails, so do the others. *See, e.g., Smith v. Chrysler Grp. L.L.C.*, 909 F.3d 744 (dismissing alternative product liability claims when one for strict liability fails); *see also*, *Williams v. Gen. Binding Corp*., No. 3:23-CV-00850-K, 2024 WL 628850, at *2 (N.D. Tex. Feb. 14, 2024) (Kinkeade, J.) ("[I]f [plaintiff] fails to sufficiently plead [her] strict liability [claim], then the negligence-based version fails, too.").

Plaintiffs misleadingly cite an unpublished Eastern District of Texas case to contend that nuisance-claim-subsumption applies only when the alleged negligence is "solely" the product or the evidence is "entirely" directed at unreasonable danger, ECF No. 49, at 24 (citing S*imien v. C. R. Bard, Inc.,* No. 1:20-CV-131, 2020 WL 4922331, at *9 (E.D. Tex. Aug. 20, 2020)), but they draw no distinctions between negligence and product facts within their own pleadings. *Cf. Shaun T. Mian Corp. v. Hewlett-Packard Co*., 237 S.W.3d 851, 857 (Tex. App.—Dallas 2007, pet. denied) (subsuming negligence claims when "[A]ppellants alleged no negligence other than conduct relating to whether the [product] was unreasonably dangerous when sold").

E. Nothing in Plaintiffs' Complaint supports exemplary damages.

The claim for punitive damages is unsupported window dressing and should be dismissed. Plaintiffs incredibly and without any authority allege that lobbying—a core First Amendment activity—somehow supports exemplary damages. Plaintiffs' claims against Synagro's permitted, government-directed, regulatory-compliant activities do not justify such damages.

Dated: June 6, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 6, 2025, a true and correct copy of the foregoing document has been served electronically on all counsel of record through the electronic filing manager.

/s/ Christian Ellis
Christian Ellis

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROBIN ALESSI, et al., Plaintiffs, *v.* SYNAGRO TECHNOLOGIES, INC., et al., Defendants.	)	**Civil Action No. 3:25-cv-00445-K**

[PROPOSED] BRIEF FOR CITY OF FORT WORTH, TRINITY RIVER AUTHORITY, AND CITY OF AUSTIN AS AMICUS CURIAE

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IDENTITY AND INTERESTS OF AMICUS CURIAE

The City of Fort Worth, Texas ("Fort Worth"); the Trinity River Authority ("TRA"); and the City of Austin, Texas ("Austin") (together, "Amici") are political subdivisions in Texas that operate wastewater treatment facilities and manage resulting sewage sludge and biosolids as a public service (generally, "biosolids operations" or "biosolids management").[1] Their interest in this case is preserving, as an enumerated governmental function, statutory governmental immunity for political subdivisions that perform such essential services.

Fort Worth is a municipality in Texas that operates the Village Creek Water Reclamation Facility, a wastewater treatment plant that serves most of Fort Worth and twenty-three other communities at a capacity of up to 166 million gallons per day. The biosolids from this facility are processed into a Class A dried pellet, which is used by customers including farmers, ranchers, golf courses, and others. The Class A dried pellets produced from Fort Worth's biosolids are the product at issue in Plaintiffs' Second Amended Complaint (Doc. No. 36).

TRA is a conservation and reclamation district in Texas and the largest wholesale provider of wastewater treatment services in the State. TRA operates five regional wastewater collection and treatment facilities in North Texas, treating up to 233.5 million gallons of wastewater per day from forty-one wholesale municipal and district customers and serving a total population of over

[1] The terms "biosolids" and "sewage sludge" are often used interchangeably by the public and in lay documents. The U.S. Environmental Protection Agency ("EPA"), other regulatory agencies, and waste management professionals typically distinguish between them, using "'biosolids' to mean sewage sludge that has been treated to meet the requirements in the EPA's regulation entitled, 'Standards for the Use or Disposal of Sewage Sludge,' promulgated at 40 C.F.R. Part 503, and intended to be applied to land as a soil conditioner or fertilizer." EPA, *Basic Information about Sewage Sludge and Biosolids*, https://www.epa.gov/biosolids/basic-information-about-sewage-sludge-and-biosolids (last visited July 7, 2025). Because the distinction is not essential to the points that Amici seek to make in this brief, and in the interest of simplicity, the terms are at times used interchangeably herein.

two million Texans. The biosolids produced by TRA's Central Regional Wastewater System plant are land-applied with specially designed spreading equipment for local farmers as fertilizer.

Austin is a municipality that operates two wastewater treatment plants, with a combined capacity of up to 150 million gallons of wastewater per day, as well as one biosolids management plant. Austin's Hornsby Bend Biosolids Management Plant treats the leftover wastewater sludge from Austin's wastewater treatment plants, converting biosolids into an EPA-certified soil conditioner called "Dillo Dirt."

STATEMENT OF THE CASE

In this case, Plaintiffs bring individual and class negligence and product liability claims against Defendants Synagro Technologies, Inc. and Synagro of Texas-CDR, Inc. (together, "Synagro") and Renda Environmental, Inc. ("Renda") for conduct relating to "biosolids fertilizers containing PFAS and other toxic chemicals (including heavy metals, estrogens/endocrine disrupters, and pharmaceuticals)." Doc. No. 36 ¶ 2. Fort Worth previously contracted with Synagro and Renda to manage the City's biosolids program, which included dewatering biosolids and selling the dried fertilizer to customers for land application. *Id.* ¶¶ 26, 28, 30, 31.

Synagro and Renda have each moved to dismiss this case. Doc. Nos. 43, 45. They assert, among other things, that they are entitled to derivative governmental immunity because they were "acting as the [City]'s agent" when making biosolids available for beneficial reuse. Doc. No. 43 at 19–22 (citation omitted); Doc. No. 45 at 14–18 (citation omitted). The premise of this argument is that "Fort Worth has immunity for any harm caused by its biosolids," and that contractors such as Defendants therefore have derivative immunity. Doc. No. 43 at 19; Doc. No. 45 at 14. Plaintiffs opposed, arguing in relevant part that Fort Worth lacks governmental immunity for biosolids management. Doc. No. 49 at 13–16; Doc. No. 50 at 13–16. Plaintiffs also argued that derivative immunity did not apply for other reasons. Doc. No. 49 at 16–22 (arguing Fort Worth did not control

Synagro); Doc. No. 50 at 16–21 (arguing same as to Renda). Subsequently, Defendants each filed replies addressing Fort Worth's governmental immunity as to biosolids. Doc. No. 51 at 2–5; Doc. No. 52 at 2–5.

Amici write to support the governmental immunity of political subdivisions in Texas with respect to biosolids operations. Governmental immunity for these activities matters from practical and public policy standpoints because governmental entities charged with performing these operations are passive receivers with limited control over the contents of sewage discharged to wastewater treatment plants, yet are required by state and local laws to manage that sewage. Moreover, case law not addressed by the parties demonstrates that biosolids operations are enumerated governmental functions protected by governmental immunity.

ARGUMENT

I. Governmental immunity is critical to biosolids management.

Governmental immunity for political subdivisions is an "extension of sovereign immunity." *Rosenberg Dev. Corp. v. Imperial Performing Arts, Inc.*, 571 S.W.3d 738, 741 (Tex. 2019). The justifications for immunity are "political, pecuniary, and pragmatic." *Id.* at 740. "Among other benefits, sovereign immunity maintains equilibrium among the branches of government by honoring the allocation of responsibility for resolving disputes with the state." *Id.* (internal quotation marks omitted). "The immunity doctrine also protects the public coffers by deferring to the Legislature's policy decisions about when to allow tax resources to be shifted away from their intended purposes toward defending lawsuits and paying judgments." *Id.* at 740–41 (internal quotation marks omitted). The Texas Legislature has defined certain governmental functions as protected by governmental immunity in a non-exclusive list, including numerous functions that encompass biosolids operations. *See infra* Part II.

A. Political subdivisions are required to manage biosolids as a core governmental function.

Governmental immunity for government subdivisions related to biosolids operations is critically important for a number of reasons. Without it, a core governmental function would be subject to liability, contrary to Amici's understanding of the Texas Legislature's intent, and governmental entities' ability to serve their residents would be impeded by "requiring tax resources to be used for defending lawsuits and paying judgments rather than using those resources for their intended purposes." *Reata Const. Corp. v. City of Dallas*, 197 S.W.3d 371, 375 (Tex. 2006) (citation omitted). Wastewater plants necessarily generate sludge as a byproduct. According to EPA, about "3.76 million dry metric tons . . . of sewage sludge is generated each year." EPA, *Draft Sewage Sludge Risk Assessment for Perfluorooctanoic Acid (PFOA) CASRN 335-67-1 and Perfluorooctane Sulfonic Acid (PFOS), CASRN 1763-23-1* at iii (Jan. 14, 2025). As a practical matter, municipalities and other entities that operate wastewater treatment plants must remove this sludge from their plants in some fashion. *Id.* Indeed, publicly owned treatment works ("POTWs") are required by the State of Texas to remove sewage sludge from their plants, whether through land application, incineration, landfilling, or surface disposal.[2]

Nationwide, as of 2022, "approximately 56% of sewage sludge generated by . . . POTWs was land applied, 24% was landfilled, 3% was disposed of in a sewage sludge monofill, 16% was incinerated, and 1% was disposed of using another method." *Id.* Land-applied biosolids have become an important substitute for increasingly expensive chemical fertilizers. EPA, *Biosolids*

[2] 30 Texas Admin Code § 312.11(a) (requiring a permit for land application, processing, storage, disposal, or incineration of biosolids); *see also* Texas Commission on Environmental Quality ("TCEQ"), *Biosolids from Sludge: What Are They and How Are They Used?* (last visited June 24, 2025), https://www.tceq.texas.gov/permitting/wastewater/sludge/sludge-explained (stating that "[d]omestic wastewater treatment plants…must dispose of the sewage sludge generated by the treatment process" and describing various options); *see also* EPA, *Draft Sewage Sludge Risk Assessment*, *supra* at vii.

Technology Fact Sheet Land Application of Biosolids at 1 (Sept. 2000); Department of Agriculture, *Access to Fertilizer: Competition and Supply Chain Concerns*, 87 Fed. Reg. 15191, 15192 (Mar. 17, 2022) (discussing rising chemical fertilizer costs). In Texas, as of 2018, approximately forty-four percent of biosolids were land-applied, forty-six percent were landfilled, and ten percent were surface-disposed. National Biosolids Data Project, *Texas Biosolids*, https://www.biosolidsdata.org/texas (last accessed June 27, 2025). A permit from TCEQ is required before processing, land-applying, or disposing of biosolids or sewage sludge in any other way. 30 Texas Admin Code § 312.11(a); *see also* TCEQ, *Sewage Sludge and Biosolids: Permits for Land Application, Processing, or Disposal*, https://www.tceq.texas.gov/permitting/wastewater/sludge/WQ_sludge_ClassB_forms.html (last visited June 27, 2025).

B. The underlying science, regulatory requirements, and best practices for managing contaminants in biosolids are still being developed.

Recently, regulatory attention has turned to the presence of chemicals such as PFAS in biosolids. EPA is evaluating "the potential human health and environmental risks associated with land application, surface disposal, and incineration of sewage sludge that contains" PFAS. EPA, *Draft Sewage Sludge Risk Assessment*, *supra* at iii; *see also* EPA, Standards for the Use or Disposal of Sewage Sludge, 58 Fed. Reg. 9248 (Feb. 19, 1993) (codified at 40 C.F.R. pt. 503) (existing standards for biosolids, setting limits only for certain metals). This evaluation is ongoing. EPA recently included on its PFAS agenda: "Finish public comment period for biosolids risk assessment and determine path forward based on comments." EPA, *Administrator Zeldin Announces Major EPA Actions to Combat PFAS Contamination* (Apr. 28, 2025), https://www.epa.gov/newsreleases/administrator-zeldin-announces-major-epa-actions-combat-pfas-contamination. The Texas Legislature also recently considered bills that would have imposed

limits on PFAS in biosolid fertilizers but ultimately let these expire without action. H.B. 1674, 89th Legislature, Reg. Sess. (Tex. 2025); S.B. 886, 89th Legislature, Reg. Sess. (Tex. 2025).

Putting aside whether regulatory limits for PFAS or other contaminants in biosolids are necessary or will ultimately be established, the best ways to destroy or sequester PFAS in impacted materials are also still being studied. EPA has acknowledged that more research is needed to evaluate the optimal ways to destroy or dispose of PFAS-contaminated materials. EPA, *Interim Guidance on the Destruction and Disposal of PFAS and Materials Containing PFAS—Version 2* at 2 (Apr. 8, 2024) ("[I]t is important to note that real-world performance and testing data are generally limited. Additional performance and testing data . . . may change EPA's understanding of each technology's ability to control PFAS."). EPA recently committed to "[p]rovide more frequent updates to the PFAS Destruction and Disposal Guidance—changing from every three years to annually—as EPA continues to assess the effectiveness of available treatment technologies." EPA, *Administrator Zeldin Announces Major EPA Actions*, *supra*. As to biosolids specifically, it is still up for debate what methods POTWs should use to manage biosolids. On one side of the spectrum, Maine elected to ban land-application of biosolids in 2022. An Act To Prevent the Further Contamination of the Soils and Waters of the State with So-called Forever Chemicals, Maine P.L. 2021, ch. 641, § 2 (codified as amended at Me. Rev. Stat. Ann. tit. 38, § 1304(20)). Consultants retained by Maine to evaluate the impacts of that ban and best practices for biosolids management considered in a broader context explained that, post-ban, "[v]irtually overnight, biosolids management costs for many POTWs doubled, which caused severe and unexpected strains on public utility budgets" and on in-state landfill capacity, which "is estimated to be fully used by 2028." Brown and Caldwell, *An Evaluation of Biosolids Management in Maine and Recommendations for the Future - Prepared for the Maine Department of Environmental*

Protection at 1–3 (Dec. 15, 2023) (recommending, as a result, "that the State Legislature consider reevaluating the ban on land application").

C. Publicly owned treatment works are passive receivers of PFAS contamination and should not be held liable for the conduct of industry.

In addition to the still-developing science on potential health and environmental impacts of PFAS in biosolids and best practices for destroying or disposing of PFAS-impacted materials, it bears emphasis that POTWs are passive receivers. They are not responsible for and cannot feasibly prevent the use of PFAS or other contaminants that make their way into POTWs, even though they have an obligation to accept sewage from domestic sources and treat and manage that sewage. It would be inequitable to nevertheless hold POTWs liable for harms they cannot control—particularly when they are complying with all state and federal laws governing biosolids management. For this reason, EPA recently reaffirmed the "polluter pays" principle underlying major federal environmental hazardous waste laws, and committed to working with Congress and industry to protect "passive receivers" like POTWs from PFAS liability. EPA, *Administrator Zeldin Announces Major EPA Actions*, *supra* (stating EPA's intent to "engage with Congress and industry to establish a clear liability framework that ensures the polluter pays and passive receivers are protected"); *see also* Water Systems PFAS Liability Protection Act, H.R. 1267, 119th Congress (2025) (bill pending before House Transportation and Infrastructure Committee that would exempt public water systems, POTWs, municipalities operating stormwater systems, political subdivisions and special districts acting as wholesale water agencies, and associated contractors from liability under the Comprehensive Environmental Response, Compensation, and Liability Act for releases of PFAS); Water Systems PFAS Liability Protection Act, H.R. 7944, 118th Congress (2024) (same, in prior Congress).

The legislative history of the Texas Tort Claims Act ("TTCA") evinces that the Texas Legislature views governmental operations such as those at issue here as purveying a public good. At common law, "the construction and operation of a sewer system, or systems of storm sewers" was not thought to be "a strictly governmental function." *Dilley v. City of Houston*, 222 S.W.2d 992, 993 (Tex. 1949) (internal quotation marks omitted), *superseded by statute as noted in, City of Tyler v. Likes*, 962 S.W.2d 489, 503 (Tex. 1997). But a 1987 amendment of the Texas Constitution, Tex. Const. art. XI, § 13, "empower[ed] the Legislature to abrogate common law rights of action against municipalities," *City of Tyler*, 962 S.W.2d at 503, and the Texas Legislature exercised that power in amending the TTCA that year to specifically enumerate "sanitary and storm sewers," "waterworks," and "water and sewer service" as governmental functions entitled to immunity. Tex. Civ. Prac. & Rem. Code § 101.0215(a)(9), (11), (32); *see also infra* Part II. Accepting Plaintiffs' argument that political subdivisions lack immunity as to biosolids management, a necessary component of operating a wastewater treatment plant, would contravene the Texas Legislature's intent in its 1987 amendments to the TTCA and unjustifiably increase costs for ratepayers. Amici respectfully submit that the Court should decline to do so, and instead reaffirm longstanding principles of government immunity under Texas law. *City of Galveston v. State*, 217 S.W.3d 466, 469 (Tex. 2007) ("Th[e] heavy presumption in favor of immunity arises not just from separation-of-powers principles but from practical concerns. In a world with increasingly complex webs of government units, the Legislature is better suited to make the distinctions, exceptions, and limitations that different situations require.").

II. Political subdivisions have enumerated immunity for biosolids operations.

The Texas Legislature has deemed "sanitary and storm sewers," "waterworks," and "water and sewer service" as governmental functions entitled to immunity. As a result, biosolids

operations are entitled to governmental immunity. *Rogers v. City of Houston*, 627 S.W.3d 777, 795 (Tex. App.—Houston [14th Dist.] 2021, no pet.) (citations omitted).

A. The Texas Legislature has defined governmental immunity and limited its waiver.

Under Texas law, governmental immunity provides protection from suit and liability for political subdivisions of the state, such as cities, river authorities, and water districts. *Travis Cent. Appraisal Dist. v. Norman*, 342 S.W.3d 54, 57–58 (Tex. 2011); *Hidalgo Cnty. Water Improvement Dist. No. 3 v. Hidalgo Cnty. Irrigation Dist. No. 1*, 669 S.W.3d 178, 182 (Tex. 2023); Tex. Water Code § 51.149(e). Governmental immunity only applies to functions that are considered "governmental," as opposed to "proprietary." *Tooke v. City of Mexia*, 197 S.W.3d 325, 343 (Tex. 2006). "Proprietary functions are those conducted 'in its private capacity, for the benefit only of those within its corporate limits, and not as an arm of the government,' while . . . governmental functions are [those] 'in the performance of purely governmental matters solely for the public benefit.'" *Id*. (citations omitted). The Texas Legislature has defined governmental functions to include: (1) "sanitary and storm sewers"; (2) "waterworks"; and (3) "water and sewer service." Tex. Civ. Prac. & Rem. Code § 101.0215(a)(9), (11), (32). "If a function is included in the nonexclusive list of governmental functions, it has been deemed governmental in nature by the legislature and [courts] have no discretion or authority to hold otherwise." *Rogers*, 627 S.W.3d at 795 (citations omitted).

The Texas Legislature may waive immunity by statute or legislative resolution. *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 853–54 (Tex. 2002). The TTCA creates a limited waiver of governmental immunity for narrowly defined tort claims. Tex. Civ. Prac. & Rem. Code § 101.021. However, the TTCA waiver of immunity is not relevant to the biosolids operations described in the Second Amended Complaint, and the waiver has also been significantly limited in scope by Texas courts. *Ethio Exp. Shuttle Serv., Inc. v. City of Houston*, 164 S.W.3d 751, 757

(Tex. App.—Houston [14th Dist.] 2005, no pet.) ("Sovereign immunity is waived under the [TTCA] for only two types of claims: . . . those involving [(1)] property damage, personal injury or death arising from the operation or use of a motor-driven vehicle or motor-driven equipment; and (2) . . . personal injury or death caused by a condition or use of tangible personal property or real property."); *see also Ryder Integrated Logistics, Inc. v. Fayette County*, 53 S.W.3d 922, 927 (Tex. 2015) (describing "Legislature's preference for a limited immunity waiver" and "strictly construe[ing] section 101.021's vehicle-use requirement"); *Wilson v. Tex. Parks and Wildlife Dep't*, 8 S.W.3d 634, 635 (Tex. 1999) ("[A] plaintiff must prove that the [governmental entity] possessed—that is owned, occupied, or controlled—the premises where injury occurred.").

B. Biosolids operations are governmental functions within the scope of "sanitary and storm sewers," "waterworks," and "water and sewer service."

Defendants have pointed the Court to several helpful decisions demonstrating that biosolids operations are governmental functions within the scope of certain items on the Texas Legislature's list of defined governmental functions. *See generally* Doc. No. 43 at 20; Doc. No. 45 at 15. However, additional cases meriting examination demonstrate that biosolids operations are governmental functions. *See, e.g.*, *McDonald v. City of the Colony*, No. 2-08-263-CV, 2009 WL 1815648, at *5 (Tex. App.—Fort Worth June 25, 2009, no pet.) (tort claims for city's raw sewage lift station that harmed plaintiff lessor's property involved "water and sewer services" enumerated governmental function and city was therefore immune absent waiver); *City of Houston v. Downstream Env't, L.L.C.*, 444 S.W.3d 24, 35 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) ("[The] City's actions in plugging the discharge line between [industrial] facility and the City's sewer system involved a governmental function for which the City has immunity.").

In particular, in *Triple BB, LLC v. Village of Briarcliff*, the plaintiff argued that "a contract for upgrading the capabilities of a water treatment plant is not one for providing water and sewer

service but rather concerns the maintenance of a public utility." 566 S.W.3d 385, 393 (Tex. App.—Austin 2018, pet. denied). In rejecting the argument, the Austin Court of Appeals found that "the water treatment facility and the raw water lines that supply it are essential parts of the [municipality's] provision of water and sewer service." *Id.* at 393–94. The plaintiff "'may not split various aspects of [the municipality's] operation into discrete functions and recharacterize certain of those functions as proprietary.'" *Id.* at 394 (citing *City of Plano v. Homoky*, 294 S.W.3d 809, 815 (Tex. App.—Dallas 2009, no pet.) (quoting *City of San Antonio v. Butler*, 131 S.W.3d 170, 178 (Tex. App.—San Antonio 2004, pet. denied)). Here, Plaintiffs attempt to do the very thing the *Triple BB* court proscribed, by mischaracterizing the land application of biosolids as proprietary because "other Texas cities do not choose to hire contractors to turn their sewage sludge in [*sic*] biosolids fertilizers and market them." Doc. No. 49 at 15; Doc. No. 50 at 15.

Sludge is an unavoidable byproduct of the wastewater treatment process, and governmental entities are required by the State to manage it in some way. *See supra* Part I. Governmental entities do not lose the immunity afforded to them by the Legislature because they choose one method over another. *See Del Rio v. City of Austin*, 706 S.W.3d 698, 707 (Tex. App.—Austin 2025, pet. filed) ("[A] municipality has discretion as to how it exercises a governmental function, and neither that discretion nor the municipality's motive for engaging in an activity can convert a governmental function into a proprietary function."); *City of Houston v. Petroleum Traders Corp.*, 261 S.W.3d 350, 356 (Tex. App.—Houston [14th Dist.] 2008, no pet.) ("Courts repeatedly have recognized that governmental functions encompass activities that are closely related to or necessary for performance of the governmental activities designated by statute."); *City of Galveston*, 217 S.W.3d at 469 (discussing the "heavy presumption in favor of immunity").

Accordingly, biosolids operations (like Fort Worth's at issue here) are governmental in nature and entitled to governmental immunity. *See Rogers*, 627 S.W.3d at 795.

III. The *Wasson* factors do not apply in tort cases or where the Texas Legislature has enumerated a function as governmental in Tex. Civ. Prac. & Rem. Code § 101.0215.

Plaintiffs rely heavily on the Texas Supreme Court case *Wasson Interests, Ltd. v. City of Jacksonville*, 559 S.W.3d 142 (Tex. 2018) to argue biosolids operations are not entitled to governmental immunity. Doc. No. 49 at 13–15; Doc No. 50 at 13–15. That reliance is misplaced.

Wasson was a breach-of-contract case centering on a city's leasing of lakefront property. 559 S.W.3d at 150. There, "[b]ecause the Tort Claims Act does not enumerate leasing property as a governmental or a proprietary function," the Texas Supreme Court determined that it needed to "apply the general definitions" for governmental and proprietary functions, with reference to a four-factor test. *Id.* The Court has since indicated that its opinion in *Wasson* is limited to breach-of-contract cases: "Our recent opinions in *Wasson Interests, Ltd. v. City of Jacksonville* . . . govern the analysis of whether municipal action challenged in a *breach-of-contract* case is proprietary or governmental." *Hays St. Bridge Restoration Grp. v. City of San Antonio*, 570 S.W.3d 697, 704 (Tex. 2019) (emphasis added). Plaintiffs' action sounds in tort, not contract. *Wasson* therefore does not govern the question of concern to Amici at issue in Defendants' motions seeking dismissal: whether political subdivisions' biosolids operations, including Fort Worth's, are protected by governmental immunity.

To the extent *Hays Street Bridge* leaves any ambiguity about where *Wasson* applies, Texas appellate courts have recently questioned its applicability outside of the breach-of-contract context or when the Texas Legislature has already enumerated a function as governmental in Tex. Civ. Prac. & Rem. Code § 101.0215. *See Doe v. City of Fort Worth*, 646 S.W.3d 889, 899 (Tex. App.—Fort Worth 2022, no pet.) ("*Wasson* was a breach of contract case. This is not."); *Del Rio*, 706

S.W.3d at 711 (concluding *Wasson* is not "applicable in tort cases" or where governmental function in question is enumerated); *Town of Highland Park v. McCullers*, 646 S.W.3d 578, 593 n.21 (Tex. App.—Dallas 2025, no pet.) (finding that consideration of *Wasson* factors was foreclosed by conclusion that town was engaged in police protection, an enumerated governmental function). These decisions are "the strongest indicator of what the [Texas Supreme Court] would do," and thus whether this Court should apply *Wasson*. *Hux v. S. Methodist Univ.*, 819 F.3d 776, 780–81 (5th Cir. 2016) ("Typically, we treat state intermediate courts' decisions as the strongest indicator of what a state supreme court would do, absent a compelling reason to believe that the state supreme court would reject the lower courts' reasoning.").

Because this is a tort case and biosolids operations are within the scope of enumerated governmental functions (*see supra* Part II), Amici submit that biosolids operations such as Fort Worth's are not subject to the four-factor test in *Wasson* and are entitled to governmental immunity.

CONCLUSION

For the foregoing reasons, Amici respectfully request that, in evaluating Defendants' Motions to Dismiss, this Court hold that political subdivisions' biosolids operations are entitled to governmental immunity, in accordance with the intent of the Texas Legislature. Amici take no position on Defendants' or Plaintiffs' remaining arguments.

Dated: July 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed with this Court's CM/ECF system and was thus served electronically upon all registered counsel of record.

Dated: July 10, 2025

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