

For Immediate Release
Wednesday, November 20, 2002

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**Federal Court Upholds Farmers Rights to Pursue Damages in Appomattox Biosolids Suit
Judge Denies County Motion to Overturn Preliminary Injunction Ruling**

LYNCHBURG – Federal Judge Norman K. Moon handed Appomattox farmers several new legal victories recently, including a ruling that upholds their right to pursue a claim for \$820,000 in damages, and another denying a motion by the County to stay an existing preliminary injunction. The injunction, approved on August 2nd in U.S. District Court, overturned the biosolids ban in Appomattox County and allowed the eleven plaintiffs to combat the drought with biosolids applications on their fields. Biosolids are treated sewage sludge that is authorized by the USEPA and state authorities for use as fertilizer on farm fields.

The U.S. District Court in Lynchburg issued the opinions by Judge Moon on November 15th in response to several legal motions filed by Appomattox County, the defendant in the case.

In denying the County's request to dismiss the farmers' suit, the Court upheld the farmers' right to pursue claims that the County restrictions on biosolids violate the Constitution's interstate commerce provisions and that the County is liable for money damages. "This Court will not dismiss Count 1 at this stage, because Plaintiffs have stated a claim upon which relief can be granted," Moon wrote.

The Appomattox farmers filed their initial Complaint against the County on June 28th and claimed \$820,000 in damages, saying: "The Appomattox County Board of Supervisors adopted two Ordinances earlier this year that effectively ban the land application of biosolids in Appomattox County. The Ordinances are an intended and effective ban by the County . . . This ban is in direct conflict with comprehensive federal and state laws regulating biosolids, has no rational basis, deprives farmers of their property rights, discriminates against a valuable fertilizer, and impermissibly bans an article in interstate commerce."

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James B. Slaughter, counsel for the Appomattox farmers, said “The farmers are pleased that they can move forward with their claims to hold the County government accountable. The ordinances deprive the farmers of a valuable organic fertilizer, reduce their crop yields, and burden the farmers with extra costs for chemical fertilizers. We look forward to upholding and strengthening the farmers’ rights to use biosolids pursuant to their state permits as this case continues.” Trial is scheduled for July 2003.

The new Federal Court rulings also allow to go forward the farmers’ claims that federal and Virginia state law preempt local officials from adopting biosolids ordinances that go beyond a county’s authority to test and monitor land applications of this organic fertilizer.

In denying another motion by Appomattox County, the Judge said: “The Plaintiffs assert that state law, including the Virginia Department of Health (VDH) Biosolids Use Regulations, preempt local authorities from adopting the Ordinances in question. The County Board of Supervisors has the general authority to promulgate ordinances related to zoning and police powers. However, any county ordinance ‘must not be inconsistent with the Constitution and laws of the United States or this Commonwealth.’ Va. Code Ann. 1-13.7. The Plaintiffs (farmers) have therefore stated a state law preemption claim upon which relief can be granted, and this Court will deny Defendants (Appomattox County) motion to dismiss,” Judge Moon wrote.

The farmers also argue that the County Ordinances should be invalidated because they are preempted by federal law, the Clean Water Act, which regulates biosolids. Judge Moon upheld this claim and denied the County motion to dismiss, saying: “The Plaintiffs have presented sufficient evidence of the federal policy concerning biosolids to support their claim; it would be improper to dismiss this claim without allowing further factual development. Thus, Defendants’ motion to dismiss the preemption claim is denied.”

In rejecting the County’s request for a stay of the preliminary injunction, pending the County’s appeal, the Court said the farmers were likely to succeed on the merits of their case: “In awarding the preliminary injunction, this Court found that the Plaintiffs were likely to succeed on their claim that the Ordinance was preempted by state law. This finding was based on the County’s limited authority to regulate only testing and monitoring of sewage sludge The Defendants have not produced any new evidence which would support a likelihood of their success on the merits with respect to the state law claims.”

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Appomattox County attorneys had argued that when Judge Moon approved the preliminary injunction he had “effectively stripped the County of its power to protect the health, safety and general welfare of the community.” The Federal Court replied last week to this argument saying, “The Virginia General Assembly and the U.S. EPA have addressed the question of biosolids safety, permitting the ground application of sewage sludge after determining that biosolids can be safely used on farmland.”

Hundreds of Virginia farmers use biosolids because they recognize the benefits and reap the economic rewards of land application of this organic fertilizer. According to the Virginia Department of Health, farmers in 38 counties in the state fertilized their fields and conditioned their soils with biosolids during 2001 and 2002. Appomattox farmers received biosolids applications for the first time on their fields following the approval of the preliminary injunction on August 2nd.

Biosolids result from the treatment of sewage sludge that renders it fit for recycling as a useful, safe and environmentally beneficial product. The practice is approved, regulated and monitored by the U.S. Environmental Protection Agency (EPA), the U.S. Department of Agriculture (USDA), the Virginia Department of Health (VDH), and the Virginia Department of Agriculture and Consumer Services.

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