

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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FEB 5 - 09

BRONX COUNTY  
CLERK'S OFFICE

-----X  
STATE OF NEW YORK,

Plaintiff,

SUMMONS

-against-

NEW YORK ORGANIC FERTILIZER COMPANY and  
SYNAGRO TECHNOLOGIES, INC.,

Defendants.  
-----X

COUNTY CLERK  
BRONX COUNTY

09 FEB - 5 AM 9:29

RECEIVED

**TO NEW YORK ORGANIC FERTILIZER COMPANY and  
SYNAGRO TECHNOLOGIES, INC:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiffs designate Bronx County as the place of trial based on the residence of the

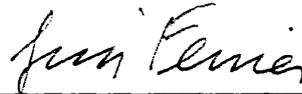
# 250182-09

Defendants and the presence within Bronx County of the facility at issue in this action.

Dated: New York, New York  
February 3 , 2009

ANDREW CUOMO  
Attorney General of the State of New York  
Attorney for Plaintiffs

By:



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SUPREME COURT OF THE STATE OF NEW YORK  
BRONX COUNTY

-----X  
THE STATE OF NEW YORK,

Plaintiff

- against -

NEW YORK ORGANIC FERTILIZER COMPANY  
and SYNAGRO TECHNOLOGIES, INC.

Defendants.  
-----X

**COMPLAINT**

Index No. 250182-09

09 FEB 15 AM 9:29  
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BRONX COUNTY

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Plaintiff the State of New York, by its attorney, Andrew M. Cuomo, Attorney General of  
the State of New York, for its complaint against Defendants alleges as follows:

**Preliminary Statement**

1. Plaintiff brings this action against Defendants New York Organic Fertilizer Company ("NYOFCo") and its parent Synagro Technologies, Inc. ("Synagro"), to enjoin NYOFCo's operation of a sewage sludge processing facility (the "Facility") located at 118 Oak Point Avenue in Bronx County, New York in a manner that creates a public nuisance and violates New York State's air pollution control laws. The facility receives up to 825 tons per day of dewatered sewage sludge from New York City's sewage treatment plants and processes it into fertilizer pellets for sale to agricultural operations out of state.

2. The operation of the Facility constitutes a public nuisance because it releases and continues to release noxious odors that permeate and adversely affect people living in adjacent residential neighborhoods, students attending schools, users of a local public library and people visiting a new public park right next to the Facility. Since shortly after 1991, when the Facility began operating, people living and working nearby have suffered adverse physical effects from the noxious odors, including severe headaches, nausea, vomiting, constriction of the throat and

chest, difficulty in breathing, and asthma attacks; residents of nearby neighborhoods have had their daily activities curtailed and interrupted by putrid odors; students, faculty and staff at the four local public schools have also suffered adverse physical effects from the Facility's odors, including nausea and headaches; the schools have been forced to keep windows closed during the hottest months of the school year to prevent the Facility's odors from entering classrooms; and odors from the Facility have disrupted the teaching process and outdoor athletic classes and events.

3. Defendants have not abated the nuisance caused by the Facility despite having actual knowledge of the odors through numerous complaints by citizens and numerous odor violations issued by the City and the State.

4. By operating the Facility in a manner constituting a public nuisance, Defendants have violated 6 NYCRR Part 211.2 by causing the emission of odors "which unreasonably interfere with the comfortable enjoyment of life or property." They have also violated a special condition of the Facility's air permit which similarly prohibits the emission of noxious odors.

5. By failing to effectively control odors "so that they do not constitute nuisances or threats to public health, safety or property," Defendants have violated 6 NYCRR Part 360-1.14(m).

6. Because the Facility provides a valuable service to New York City by recycling large amounts of the city's sewage sludge in an environmentally beneficial manner, the State is not seeking in this action to curtail or shut down its operations. However, because the manner in which the Facility has been operating constitutes a public nuisance, the State seeks to abate this public nuisance by requiring Defendants to identify the specific odor sources created during the

transport and processing of the sewage sludge, to identify operational changes or capital projects that would abate the noxious odors, and to implement those changes or capital projects.

### **Jurisdiction and Venue**

7. This Court has jurisdiction pursuant to ECL §§ 71-2103, 71-2703, and Judiciary Law § 140-b.

8. Venue is proper in Bronx County pursuant to CPLR §§ 503(a) and (c).

### **Parties**

9. Plaintiff the State of New York is a body politic and sovereign entity which brings this action on behalf of itself and, as *parens patriae*, on behalf of all residents and citizens of the State, particularly those residents and citizens residing, attending school, employed or using the park in the vicinity of the Facility.

10. Defendant NYOFCo is a private company that owns and operates the Facility at 118 Oak Point Avenue in the Hunts Point section of the Bronx. There, sewage sludge is dried and processed into fertilizer pellets that are transported to farms out of state. NYOFCo is a wholly owned subsidiary of Synagro.

11. Defendant Synagro was a publicly traded corporation until 2007, when The Carlyle Group acquired it. Synagro is now a wholly owned subsidiary of a Carlyle affiliate and its common stock has ceased to be publicly traded.

12. Synagro owns and operates the Facility through NYOFCo, its wholly owned subsidiary. Synagro is a co-permittee with NYOFCo on the Facility's state air and solid waste permits, and correspondence between the Facility and the State is written on Synagro stationery. Synagro Northeast LLC in the Bronx is listed with the New York State Secretary of State as a

foreign limited liability company authorized to do business in New York State, but NYOFCo is not listed with the New York Secretary of State. Based upon the above, Synagro is the alter ego of NYOFCo and not a corporate entity independent of NYOFCo.

### **Statutory and Regulatory Framework**

#### **Solid Waste Law and Regulations**

13. The construction and operation of solid waste management facilities are subject to comprehensive and stringent regulation in New York State. “[N]o person shall commence operation, including site preparation and construction, of a new solid waste management facility until such person has obtained a [state] permit. . . .” ECL § 27-0707(1).

14. No one may operate a solid waste management facility until they demonstrate that, *inter alia*, the proposed operation will be conducted in a manner that prevents or minimizes water pollution, air pollution, noise pollution, obnoxious odors, unsightly conditions, infestation of flies and other vermin and other conditions inimical to the public health, welfare and safety. 6 NYCRR §§ 360-1.10, 360-1.14(j)(k)(l)(m); *see also* ECL § 27-0703(2). State regulations specifically direct that “[o]dors must be effectively controlled so that they do not constitute nuisances or hazards to health, safety and property.” 6 NYCRR § 360-1.14(m).

15. In addition, sewage sludge processing facilities must create an “odor management plan” to minimize the production and migration of odorous compounds. The plan must include specific operational steps and actions to address complaints that unacceptable odors are occurring in areas beyond the facility’s property line. 6 NYCRR § 360-5.4(n).

#### **Air Pollution Control Act**

16. Article 19 of the Environmental Conservation Law, entitled the “Air Pollution

Control Act” (the “Air Act”) was enacted to safeguard the air resources of the State by controlling or abating air pollution from new and existing sources. ECL § 19-0105. It authorizes state regulation of the emission of air pollution from any source. Air pollution is defined as the presence of one or more air contaminants - that is, dust, fumes, mist, gas, odor, smoke, vapor, pollen, noise or any combination thereof – in quantities or of a duration which is injurious to life or property or which unreasonably interferes with “the comfortable enjoyment of life and property.” ECL §§ 19-0107(2)(3).

17. It is a violation of state regulations to cause or allow the emission of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. 6 NYCRR § 211.2.

18. All air contamination sources must obtain a state permit which contains conditions to ensure compliance with both the federal Clean Air Act and the state Air Act.

## **FACTS**

### **A. NYOFCo’s Operations**

19. NYOFCo commenced operation of the sewage sludge processing facility in 1991, several years after Congress prohibited dumping of sewage sludge in the ocean, which had been New York City’s disposal method. NYOFCo currently has a \$32,000,000 contract with New York City, its only customer, to take approximately half of the dewatered sewage sludge from fourteen city sewage treatment plants for storage, processing and treatment. Each day the Facility receives between 510 and 825 tons of wet sewage sludge, which it processes into fertilizer pellets for export to agriculture operations out of the state.

20. The dewatered sewage sludge is delivered to NYOFCo by trucks. The trucks deposit the sewage sludge into three sludge storage containers in a tipping building. When those containers are full, the sludge is dumped on the tipping building floor.

21. The sludge is then transferred to six drying trains where it is heated and dried. Particulate matter in the emissions from this process are reduced by scrubbers and volatile organic compounds are reduced by regenerative thermal oxidizers before exhaust air is vented through six stacks. An odor scrubber in the tipping area reduces odor-causing sulfur compounds in the flue gas that is recirculated back to the dryers.

22. The fertilizer pellets are stored in silos until they are loaded into trucks or rail cars for transport out of state.

23. Foul odors are disseminated to the surrounding community under a number of circumstances, including but not limited to the following: when doors to the tipping or processing buildings are left open, when negative air pressure in the buildings is not properly maintained, when vehicles track sewage sludge out of the tipping building and onto the surrounding streets, when tarpaulin-covered vehicles carrying sewage sludge drive through the community, when the Facility's pollution controls and odor scrubber are not properly working, when pellets are not properly stored in the silos and when pellets spill onto the ground during loading into trucks and rail cars.

**B. NYOFCo's Failure to Control Emissions of Noxious Odors from the Facility**

24. Noxious odors emitted by the Facility began within several years after it commenced operation in 1991, and continue to date. NYOFCo has been aware of the nuisance condition its operations have created because people who live, work, and attend school in the neighborhood

have repeatedly complained about the odors. Moreover, inspectors from both the New York City Department of Environmental Protection (“DEP”) and from the New York State Department of Environmental Conservation (“DEC”) have repeatedly cited NYOFCo for the release of noxious odors beyond the boundaries of the Facility. On information and belief, the acrid odors from the Facility are easily recognizable and distinguishable from other odors in the Hunts Point neighborhood.

#### Odors Complaints Recorded by NYOFCo

25. As a condition of its state air permit, NYOFCo has been required to record odor complaints about the Facility. From 1996 to 2007, NYOFCo recorded 122 odor complaints - almost one per month. Because the odors from NYOFCo are not constant, by the time NYOFCo investigated many of them, they were no longer manifest. However, NYOFCo confirmed that at least 29 reported odors were related to its operation.

26. Twenty-two odor complaints came from P.S. 48 on Spofford Avenue, which is only half a mile from the facility. Four of these complaints resulted in Notices of Violation issued by inspectors from DEP. The odors at PS 48 were described as “foul,” “acrid,” “terrible” and “manure-like.”

27. The odors have also generated complaints from patrons of a public library on Southern Boulevard, and NYOFCo determined that emissions from its stack were responsible.

28. People working in the area have also been adversely affected by the odors. At least two workers at a Transit Authority facility on Oak Point Avenue complained about strong, smoky manure smells coming from the Facility. NYOFCo confirmed on one occasion that the unloading of hot fertilizer pellets from the silo was responsible.

29. One resident who lives several blocks from the facility complained to NYOFCo eight times about odors. NYOFCo confirmed that its facility was responsible on five of those occasions. On two occasions NYOFCo confirmed the odors originated in the sewer line, into which sludge contaminated water was drained.

#### Odor Violations Discovered by the City

30. From 1993 to 2000, the City of New York Environmental Control Board (“ECB”) sustained 19 odor violations issued to NYOFCo by DEP inspectors. For example, the ECB sustained four odor violations issued by DEP inspectors over a one month period in 1995. To resolve these violations, NYOFCo entered into a stipulation in 1996 requiring it to implement corrective measures at the Facility, to inform the community of odor abatement measures and to submit status reports to DEP.

31. The 1996 stipulation also required NYOFCo to pay DEP \$880 for each odor complaint after January 1, 1996 which DEP verified as having merit. DEP verified five more odor complaints beginning three weeks after the stipulation was entered.

32. DEP issued nine additional odor violations to NYOFCo in 1998, 2000 and 2001.

#### Operational and Odor Violations Issued by DEC

33. Inspectors from DEC have also repeatedly cited NYOFCo for odor releases and for violations of its solid waste and air permits which require NYOFCo to operate the Facility in a manner that controls the generation of odors and prevents the migration of odors beyond the Facility’s boundaries. In a 2004 Consent Order, DEC resolved 46 violations by NYOFCo of its permits and of state solid waste and air regulations committed between February 14, 2003 and May 18, 2004.

34. Many of these violations establish that NYOFCo has consistently operated its Facility in a careless and slovenly manner, causing putrid odors to permeate the neighboring community and disrupt the lives of people living and working there. For example, NYOFCo has left doors open at its sludge receiving area, allowing foul odors from sewage sludge to escape. Raw sludge and sludge pellets have been left on the driveway outside the tipping building and were tracked to and from that building. The tipping building, where raw sludge is dumped in containers or on the floor when those containers are full, was often not under sufficient negative air pressure to prevent the uncontrolled release of odorous air from the building. On one occasion cited by DEC, the tipping room was filled with so much unprocessed sludge that it pressed up against the rolling doors, causing one of them to bulge outward.

35. Pursuant to the 2004 Consent Order, NYOFCo was required to develop and implement detailed operating procedures to ensure that site driveways and sludge delivery trucks were free of sewage sludge, to ensure that proper negative air pressure is maintained in buildings storing or processing sewage sludge, and to ensure that all building doors are completely closed when sewage sludge is unloaded from the trucks.

#### Continuing Odor Problems

36. NYOFCo's releases of noxious and life-disrupting odors have continued despite the plethora of community complaints, violations from the City and the State and the 1994 DEC consent order. The continuing problem is evidenced in DEC inspection reports and complaints from people in the community. And many of the problems result from NYOFCo's failure to follow its own odor control protocols. As one example, in 2006, a DEC inspector detected an odor from the NYOFCo facility on Oak Point Avenue. At the same time, a sludge delivery truck

was unloading in the tipping area, and the rolling doors were kept open for several minutes for no apparent reason.

37. In 2005, students at the Saint Athanasius school on Southern Boulevard, one block from the Facility, distributed 400 "Smelly Calendars" to residents of the area for them to record days with noxious odors.

38. Students and teachers at P.S. 130 on Prospect Avenue continue to be plagued by the foul odors from the Facility. The school is not air conditioned; in the spring and summer, students complain about the Facility's odors coming through the open windows but closing them make it difficult to learn in stifling and hot classrooms.

39. People working and living in the adjacent community continue to suffer from odors that they describe as smelling like raw sewage, manure, burning bodies, feces or rotten eggs.

40. The odors cause people to gasp for air, heave, cough, breathe harder and suffer from headaches. They also aggravate asthmatic symptoms in a community with one of the highest asthma rates in the city.

41. According to people in the community, the odors are "awful" from June to late September, with July and August being the worst. Therefore, precisely at the time when people want to enjoy the outdoors, or open their windows for fresh air, or garden, barbecue or simply sit in their back yards, they must close their windows and stay inside.

#### NYOFCo's Effect on Barretto Point Park

42. Barretto Point Park opened in October 3, 2006. It is located on the waterfront directly adjacent to the Facility and provides five acres of green open space with plantings, recreational facilities, and vistas of the Manhattan skyline.

43. When the \$7.5 million dollar park opened on October 3, 2006, Mayor Bloomberg announced in an October 3, 2006 press release, that the park “will provide much needed recreational space and waterfront access to the Hunts Point community for years to come.”<sup>1</sup> Adrian Benepe, the Commissioner of the Parks Department, described Barretto Point as a “new jewel in the crown of waterfront parks.”

44. Despite high hopes, NYOFCo’s odor emissions have rendered the park essentially unuseable on many days during the spring, summer and fall.

45. Hunts Point residents who had hoped to enjoy the park during the spring and summer find that they are often driven away from the park by the foul odors emanating from the Facility.

46. Mothers who looked forward to their children playing in a nearby park have escaped the odors and traveled to Central Park in Manhattan so their children could safely play outdoors.

47. On June 10, 2006, an 82 foot long barge, containing a seven lane floating pool, known as The Floating Pool Lady, was moored along the shore at Barretto Point Park. It opened to the public on June 27th and became the first pool in Community Board Two in the Bronx.

48. Although the pool attracted many more people to Barretto Point Park with its breathtaking views, it also exposed many more people to what the New York Times described as the “breath holding smells” from the NYOFCo Facility.

49. The opening of the pool and its subsequent season was marred by odors from the Facility. Although many people in the neighborhood eagerly anticipated the pool’s arrival, many times the odors were so intense in Barretto Point Park that people would leave before swimming

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<sup>1</sup>[http://home.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor\\_press\\_release&catID=1194&doc\\_name=http%3A%2F%2Fhome.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2006b%2Fpr346-06.html&cc=unused1978&rc=1194&ndi=](http://home.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fhome.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2006b%2Fpr346-06.html&cc=unused1978&rc=1194&ndi=)

in the pool. Reportedly, odors in the park remained a consistent problem in the summer of 2008, including on the Labor Day weekend.

50. Inspections by DEC in the summer of 2008 confirmed the complaints of residents in the neighborhood. On June 24, 2008, DEC inspectors detected odors originating from the Facility's smokestack which permeated most areas of Barretto Point Park, including atop the floating swimming pool. The odors became intense enough to create a nuisance condition.

51. DEC detected odors beyond the Facility's boundaries on five additional occasions in July 2008.

#### NYOFCo's DEC Permits

52. After NYOFCo's previous solid waste management permit expired, DEC conducted a thorough permit renewal process, with community input, in order to determine the conditions necessary to minimize the Facility's emission of noxious odors.

53. On October 8, 2008, DEC issued NYOFCo a renewal solid waste management permit containing substantially more stringent odor control conditions than its previous permit. However, NYOFCO has refused to accept several odor-control conditions that DEC sought to impose in its renewal permit – the hiring of a 24 hour per day, seven day per week odor control monitor and the cleaning up of spills of raw sewage sludge and pelletized sewage sludge as soon as it becomes aware of them.

54. On February 3, 2009, DEC announced that it is issuing a proposed amended air pollution control permit for the Facility and is soliciting comments from the public. The proposed permit would impose additional conditions on the Facility to control the emission of odors.

55. Notwithstanding the increasingly stringent conditions imposed by DEC, its regulatory jurisdiction may not reach all the possible odor sources related to the Facility.

56. Despite DEC's substantial efforts, the odors from the Facility that have so disrupted life in the Hunts Point Community have not yet been fully abated.

**FIRST CAUSE OF ACTION:**

**CREATION AND MAINTENANCE OF A PUBLIC NUISANCE: NOXIOUS ODORS**

57. Plaintiff realleges the allegations set forth in paragraphs 1 through 56.

58. Defendants have operated and continue to operate the NYOFCo Facility in a manner that offends, interferes with, and causes damage to the public in the exercise of rights common to all and that injures the property, comfort, health, safety, and environment of a considerable number of persons through the emission of noxious odors, creating a public nuisance.

59. Defendants' acts and omissions at the NYOFCo Facility have caused and/or contributed to the creation and maintenance of the public nuisance.

60. Defendants have failed to abate the public nuisance caused by the operation of the NYOFCo Facility, despite having actual knowledge of the conditions creating the nuisance.

61. Plaintiff has no adequate remedy at law for the public nuisance created and maintained by Defendants.

**SECOND CAUSE OF ACTION**

**VIOLATION OF ECL ARTICLE 19 AND 6 NYCRR PART 211.2**

62. Plaintiff realleges the allegations set forth in paragraphs 1 through 56.

63. Defendants are each "persons" within the meaning of 6 NYCRR Part 200.1(bi).

64. Defendants have operated and continue to operate the NYOFCo Facility in a manner

that causes or allows emissions of air contaminants [including odors] to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property in violation of 6 NYCRR Part 211.2.

### **THIRD CAUSE OF ACTION**

#### **VIOLATIONS OF ECL ARTICLE 27 AND 6 NYCRR PART 360**

65. Plaintiff realleges the allegations set forth in paragraphs 1 through 56.

66. Defendants have failed to effectively control odors from the NYOFCo Facility so that they do not constitute a public nuisance or a hazard to health, safety or property in violation of 6 NYCRR § Part 360-1.14(m).

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment:

(1) Declaring that the offensive and noxious odors generated by the Facility are a public nuisance;

(2) Ordering Defendants to undertake a comprehensive study to:

(a) Characterize the extent, nature, and source of offensive and noxious odors generated by the Facility;

(b) Investigate ways in which the Facility can abate or fully eliminate the generation of offensive and noxious odors by and at the Facility;

(c) Investigate ways in which the Facility can abate or fully eliminate the generation of offensive and noxious odors from the transport and handling of sewage sludge to and from the Facility;

(3) Ordering Defendants to abate or fully eliminate the noxious and offensive odors by

and at the Facility;

(4) Ordering Defendants to abate or fully eliminate the noxious and offensive odors from the transport and handling of sewage sludge to and from the Facility;

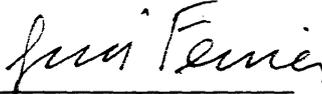
(5) Ordering Defendants to cease operating the Facility in a manner that creates a public nuisance; and

(6) Granting such other relief as the Court deems just and proper.

Dated: New York, New York  
February 4, 2009

Respectfully submitted,

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