IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

SYNAGRO-WWT, INC., a Maryland corporation,	)	CIVIL ACTION NO. 3:01CV00060
Plaintiff,	)	
v.	)	ORDER
LOUISA COUNTY, VIRGINIA, et al.,	)	
Defendants.	)	JUDGE JAMES H. MICHAEL, JR.

On June 7, 2001, the plaintiff moved for a preliminary injunction in the above-styled case. A hearing was held on the motion on June 19, 2001. For the reasons stated in the accompanying memorandum opinion, it is this day

ADJUDGED ORDERED AND DECREED

that:

1. The plaintiff's Motion for Preliminary Injunction, filed June 7, 2001, shall be, and it hereby is, GRANTED.

2. Pending the outcome of this litigation, or further order of this court, the defendants shall be, and hereby are, enjoined and prohibited from enforcing the ordinance at issue with regard to the plaintiff, Synagro-WWT, Inc.

The Clerk of Court hereby is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

ENTERED: _____
Senior United States District Judge

_____
Date

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SYNAGRO-WWT, INC., a Maryland corporation,	)	CIVIL ACTION NO. 3:01CV00060
Plaintiff,	)	
v.	)	MEMORA2NDUM OPINION
LOUISA COUNTY, VIRGINIA, et al.,	)	
Defendants.	)	JUDGE JAMES H. MICHAEL, JR.

The plaintiff, Synagro-WWT, Inc. ("Synagro"), is incorporated under the laws of, and has its principal place of business in, the state of Maryland. The defendant Louisa County is a political subdivision of the Commonwealth of Virginia. The defendant Board of Supervisors of Louisa County is the governing body of Louisa County and the defendant C. Lee Lintecum is the County Administrator of Louisa County. Synagro seeks declaratory judgement and injunctive relief in this case pursuant to 28 U.S.C. §§ 1132 and 2201 and the common and statutory law of the Commonwealth of Virginia alleging: Resolution 01.058 of the Board of Supervisors of Louisa County (Louisa County Code §§ 38-61 through 38-66) (the "ordinance") violates Va. Code § 1-13.17, which provides that local ordinances must not be inconsistent with the Constitution and laws of the United States or the Commonwealth of Virginia. In addition, Synagro claims that provisions of the ordinance are *ultra vires* and void, as local governments in Virginia have only those powers expressly granted to them by the legislature, together with those powers clearly inferred from, or essential to the exercise of, such express grant of authority.

The matter is now before the court on a motion for a preliminary injunction under Fed.R.Civ.P. 65(a) that would enjoin the defendants from enforcing the ordinance with regard to Synagro until the rights of the parties can be fully investigated at trial. A hearing was held on the motion on June 19, 2001. Pursuant to Fed.R.Civ.P. 52, the court will now undertake to set forth its findings of fact and conclusions of law based on the evidence and argument adduced from the parties on Synagro's motion.

I. Findings of Fact

Syngaro's business includes the application of biosolids as fertilizer and soil amendment on farm and forest land in Virginia. Biosolids are defined by the Virginia Biosolids Use Regulations, 12 VAC 5-585 *et. seq*. ("Regulations"), as "sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing or distribution in accordance with this Chapter." 12 VAC 5-585-10.A. Syngaro has applied, and is currently applying, biosolids to farmland in Louisa County pursuant to a Virginia Department of Health ("VDH") permit sanctioning such activity.

However, on April 2, 2001, the Board of Supervisors of Louisa County adopted an ordinance (the "ordinance"), effective June 1, 2001, providing, in part, that, before the application of biosolids may take place in Louisa County, the applicator must deliver to the County Coordinator a nutrient management plan developed by an "independent vendor." Louisa County Code § 38-62. In addition, the ordinance gives the County Coordinator authority "to establish setback lines and site buffers in accordance with state regulations and the County zoning ordinances." *Id.* § 38-63. The ordinance also provides for the avoidance or delay of biosolid

application in the county when doing so would conflict with planned community events, and any anticipated application must be preceded by the posting of a thirty day (30) notice/sign. *Id.* §§ 38-64.A and 38-64.A. Finally, the ordinance requires that, prior to applying biosolids on any site in Louisa County, applicators shall provide the County Coordinator with a performance bond or other legal arrangement to allow the county, at the expense of the applicator, to clean up any biosolid material, "spilled or dropped off of the site of application or on a public or private street providing access to the site of application, that the applicator fails to clean up, after being notified of the spill and the need for clean up." *Id.* § 38-65.

Synagro filed a complaint with this court on May 30, 2001 arguing that the ordinance is unlawful and its enforcement should be enjoined. Specifically, Synagro argues that the ordinance violates Va. Code § 1-13.17, which provides that local ordinances must not be inconsistent with the Constitution and laws of the United States or the Commonwealth. Synagro asserts that the ordinance's requirement that application of biosolids be preceded by an independently developed nutrient management plan conflicts with Section 32.1-164.5.C.8 of the Code of Virginia, which directs the Board of Health, not local governments, to determine the conditions under which nutrient management plans may be required in connection with the application of biosolids. Synagro claims that many other provisions of the ordinance also vary, either specifically or implicitly, with the Code of Virginia. In addition, Synagro asserts that requirements in the ordinance are *ultra vires* and void, because, under Dillon's Rule, local governments in Virginia only have those powers expressly granted to them by the Legislature, together with those powers clearly inferred from, or essential to the exercise of, such express grant.

II. Conclusions of Law

C. *Standard for Awarding Preliminary Injunctions*

A preliminary injunction "is an extraordinary remedy, to be granted only if the moving party clearly establishes entitlement to the relief sought." *Hughes Network Systems v. Interdigital Communications Corp.*, 17 F.3d 691, 693 (4th Cir. 1994) (quoting *Federal Leasing, Inc. v. Underwriters at Lloyd's*, 650 F.2d 495, 499 (4th Cir. 1981)). The purpose of an injunctive order is to "preserve the status quo during the course of a litigation, in order to prevent irreparable injury to the moving party and in order to preserve the ability of the court to render complete relief." *Federal Leasing*, 650 F.2d at 499. A preliminary injunction should only be granted where necessary to accomplish such goals. "Indeed, granting a preliminary injunction requires that a district court, acting on an incomplete record, order a party to act, or refrain from acting, in a certain way. '[T]he danger of a mistake' in this setting 'is substantial.'" *Hughes*, 17 F.3d at 693 (quoting *American Hosp. Supply Corp. v. Hospital Prods., Ltd.*, 780 F.2d 589, 593 (7th Cir. 1986)). For this and other problems associated with the issuance of a preliminary injunction, the Supreme Court requires that the harm to the plaintiff be irreparable in order to obtain a preliminary injunction. *See Sampson v. Murray*, 415 U.S. 61, 90 (1974), *cited in Hughes*, 17 F.3d at 694. The Court explained, "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm."

Sampson, 415 U.S. at 90 (quoting *Virginia Petroleum Jobbers Assoc. v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C.Cir.1958)), *cited in Hughes*, 17 F.3d at 694.

B. *Four Factors and Balancing Test*

The determination of whether to grant a preliminary injunction must be made after consideration of four factors articulated in *Blackwelder Furniture Co. v. Seilig Manufacturing Co.*, 550 F.2d 189, 196 (4th Cir. 1977): (1) the likelihood of irreparable harm to the plaintiff if the preliminary injunction is not granted; (2) the likelihood of harm to the defendant if the preliminary injunction is granted; (3) the likelihood that plaintiff will succeed on the merits; and (4) the public interest. Not all of these factors are to be accorded equal weight. The Fourth Circuit counsels that the most important consideration under the standard is the "balance of hardships" to the plaintiff and the defendant. *See Hughes*, 17 F.3d at 693 (citing *Blackwelder*, 550 F.2d at 196). Comparing the relevant harms to the plaintiff and the defendant is the most important determination, which dictates how strong a likelihood of success showing the plaintiff must make. *See id.* If the plaintiff fails to establish that the balance of hardships tips in its favor, an injunction should only be granted if the plaintiff establishes a "substantial likelihood of success" on the merits. *See Direx Israel, Ltd. v. Breakthrough Medical Corp.*, 952 F.2d 802, 818 (4th Cir. 1991). This court weighs the factors bearing in mind Judge Wilkinson's caution that issuance of a preliminary injunction should be the exception, not the rule and that the ultimate decision of whether to grant or deny preliminary injunctive relief lies with the district court's sound discretion. *See Hennon v. Kirklands, Inc*., 870 F. Supp. 118, 120 (W.D. Va 1994) (citing *Hughes*, 17 F.3d at 693-94).

1. *Risk of Irreparable Harm to Synagro*

"Irreparability" does not refer to some requisite minimum threshold of probable injury, but rather, "the relative quantum and quality of plaintiff's likely harm." *Blackwelder*, 550 F.2d at 196. Synagro has provided ample support for its contention that, if required to comply with the

ordinance, it will suffer injuries that, both in terms of number and nature, can only be described as "irreparable." Specifically, Synagro argues that, due to the ordinance's requirement that a thirty day notice precede any biosolid application in the county, it is effectively barred from applying biosolid in Louisa County for the thirty days following the ordinance's effective date of June 1, 2001. This implicit bar, Synagro claims, will force it to use biosolid, that it would otherwise apply in Louisa County, in Dinwiddie County, resulting in over $12,000 of unanticipated transportation costs. Furthermore, retaining an "independent vendor" to comply with the heightened nutrient management plan requirements of Section 38-65 of the ordinance will increase the expenses associated with performing biosolid projects in Louisa County. Efforts to comply with the ordinance's setback line standards and guidelines regarding the avoidance of planned community events will also not be without cost.

While there can be no doubt that enforcement of the ordinance will result in increased costs of compliance for companies like Synagro, calculable monetary damages generally are insufficient grounds for the grant of a preliminary injunction. *See Hughes*, 17 F.3d at 694. If a plaintiff's loss can be fully compensated by an award of money damages after trial, the extraordinary remedy of a preliminary injunction should be avoided. *Id.* However, it is unlikely in this case that Synagro will be able to recover its loss, despite the fact that these damages are for the most part ascertainable. Because Louisa County is a political subdivision of the state, it can only be sued when and in a manner prescribed by law. *See Botetourt County v. Burger*, 86 Va. 530, 531 (1889). That is, "[t]he sovereign can be sued only by its own consent, and a state granting the right to its citizens to bring a suit against it can be sued only in the mode prescribed. The same principles apply to a county...." *Id.* When such an extraordinary circumstance exists,

all but eliminating the opportunity for recovery, the requisite "irreparable harm" may be deemed present despite the otherwise ascertainable nature of the injuries. *See Hughes*, 17 F.3d at 694. In this case, it does not appear that the Commonwealth of Virginia has enacted any law that would permit a suit for money damages against Louisa County. Therefore, calculable losses that would otherwise preclude Synagro's preliminary injunction request are appropriately considered "irreparable" and fortify its plea. *See Rum Creek Coal Sales, Inc., v. Caperton*, 926 F.2d 353, 361 (4th Cir. 1991) (stating that, "...the showing necessary to meet the irreparable harm requirement for a preliminary injunction should be less strict [when sovereign immunity limits the remedies available to the plaintiff]."); *see also Joseph v. House*, 353 F.Supp. 367, 375 (E.D. Va 1973), aff'd. 482 F.2d 575 (4th Cir. 1973) (observing that if plaintiffs choose to comply with ordinance at issue, they will suffer loss that, while measurable in monetary terms, is most likely irretrievable due to defendant's status).

In addition, Synagro's alleged injuries are not limited to those that can be readily stated in monetary terms. Synagro also claims that restrictions placed on it by the ordinance will result in its failure to meet certain obligations to third parties, thus reducing the goodwill it has established within the industry. Similar declines in goodwill have been deemed incalculable, and thus "irreparable" by the Fourth Circuit. *See Hughes*, 17 F.3d at 694; *see also Blackwelder*, 550 F.2d at 197 (stating that, "[w]ord-of-mouth grumbling of customers can convert to [the plaintiff's] inability to honor...orders into a reputation for general unreliability...."). Thus, if no injunction issues, Synagro may well suffer injuries, both in terms of monetary damages and a loss of goodwill, for which it has no possibility of recovery, even if this court later finds the ordinance invalid.

However, the defendants argue that Synagro should be denied an injunction because it failed to take measures that would have allowed it to avoid many of the costs that are the subject of its current complaint. Specifically, the defendants claim that, given its considerable advance warning regarding imposition of the ordinance, Synagro could have complied with the ordinance's notice requirement and been allowed to apply biosolids in Louisa County as planned, thus avoiding the increased transportation costs it now maintains constitute "irreparable harm." While this argument is superficially attractive, it is without merit. For, it is exactly this kind of false mitigation, with little hope of subsequent recovery, that preliminary injunctions are designed to address. Synagro should not be forced into the position of choosing to either violate an allegedly invalid ordinance and suffer the inherent consequences of doing so or comply with the same and suffer a loss with little hope of recovery.

Nevertheless, the defendants are correct in their more general assertion that Rule 65(a) injunctions are governed by the same equitable principals that guide the application of permanent injunctions. *See* 11A WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 2948 at 129 (1995). Thus, the fact that a plaintiff unnecessarily delays seeking a preliminary injunction may be construed as inconsistent with the sense of necessity ordinarily associated with the need for such a remedy. *Id.* at 113-116; *See also Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985) (stating that, "[p]reliminary injunctions are generally granted under the theory that there is an urgent need for speedy action to protect the plaintiff's rights. Delay in seeking enforcement of those rights, however, tends to indicate at least a reduced need for such a drastic, speedy action."). The court notes that, despite the urgent manner in which Synagro couched its arguments at the hearing on this matter, its motion for a preliminary injunction was not filed until

approximately one week after the ordinance in question went into effect. That is, notwithstanding its contention that compliance with the ordinance during the month of June would cause it great loss, Synagro did not begin taking steps to address this concern until June 7, 2001 when it filed the motion currently before the court. While Synagro's apparent reliance on the court's willingness to expedite a hearing on the matter was accommodated, the court finds it somewhat difficult to believe that Synagro expected resolution before the end of June. This delay suggests that Synagro's characterization regarding its need for a preliminary injunction is somewhat exaggerated.

However, while Synagro's delay in seeking a preliminary injunction weighs against it, this procrastination does not merit the rejection of Synagro's motion. It is generally held that delay, by itself, is insufficient to block relief under Rule 65. *See Rubbermaid Commercial Prod., Inc., v. Contico Int'l., Inc.*, 836 F.Supp. 1247, 1257 (W.D. Va. 1993). Rather, in order for such delay to be determinative, it must prejudice the defendant is some way. *Id.* In this case, it does not appear that the defendants were prejudiced by Synagro's procrastination. Because Synagro's delay was not a substantial one, and in the absence of prejudice to the defendants occasioned by the delay, it is insufficient in itself to defeat a finding of irreparable harm in Synagro's favor.

2. *Risk of Harm to the Defendants*

While the grant of a preliminary injunction is only temporary, "any prohibition against the enforcement of a duly enacted law or ordinance is always a grave matter...." *Hogge v. Hedrick*, 391 F.Supp. 91, 97 (E.D. Va 1974); *See also Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975). However, when, as in this case, the law or ordinance has been recently enacted, courts have held that, "a preliminary injunction would not work a serious deprivation to the people of the

county...for whose benefit all ordinances of the county are presumably enacted." *Hogge*, 391 F.Supp. at 97. In this case, the recent enactment of the ordinance and the existence of state regulations addressing biosolid application suggest that the harm posed by granting a preliminary injunction is not of the magnitude the defendants suggest.

The defendants claim that, prior to enacting the ordinance, they had received numerous public complaints concerning the careless application of biosolid material. To bolster this claim, the defendants have submitted photographs apparently depicting the incautious manner in which Synagro and other companies applied biosolid in Louisa County. (Defs.' Mem. in Opp'n Ex. 3 at 12.) The defendants argue that enjoining the enforcement of the ordinance may have an adverse impact on the health and welfare of county citizens, specifically with regard to water quality.

While this court is aware that health concerns regarding biosolid application are the subject of much debate, it would appear that enforcement of relevant state regulations, while allegedly imperfect, would alleviate much of the potential harm generally associated with temporarily enjoining the enforcement of an ordinance. Furthermore, the fact that the defendants and citizens of Louisa County have tolerated biosolid application under the state regulatory system until now implies that such tolerance can continue for the relatively short time until this litigation concludes. In addition, the fact that the injunction Synagro has requested is prohibitory rather than mandatory weighs against a finding of substantial burden on the defendants. *See* 11A WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 2948 at 180 (1995) (stating that, "[a]rguably, the fact that defendant would be ordered to act in a particular way, rather than be enjoined from engaging in certain conduct may make a mandatory preliminary injunction more burdensome than a prohibitory one in some cases."). The court therefore finds that the possible

harm to the defendants, in light of state regulatory support and the ordinance's recent enactment, is negligible.

3. *Balancing the Harm*

For the reasons set forth above, the balance of harms decisively favors Synagro. Despite the general presumption that enjoining enforcement of an ordinance is a grave matter, circumstances unique to this case make the potential harm faced by Synagro much greater than that confronting the defendants. If a preliminary injunction is issued, the defendants will have been denied the convenience that the ordinance apparently provides- the ability to ensure at a local level, rather than relying on the auspices of the allegedly understaffed state regulatory body, the safe, nuisance-free application of biosolid material in Louisa County[1]. This temporary deprivation, while potentially inconvenient, is unlikely to pose a serious threat of loss to the defendants, particularly because any grant of injunctive relief will apply only to Synagro, and thus, the defendants are free to enforce the ordinance against other parties. *See Doran*, 422 U.S. at 931. In contrast, Synagro faces substantial losses, both in terms of money and goodwill, for which it has little hope of recovery, even if it is later determined that the ordinance violates Virginia law.

4. *Likelihood of Success on the Merits*

If a large disparity in hardship exists in the plaintiff's favor, then "it will ordinarily be

[1]The defendants do not allege that they will suffer monetary damage if unable to enforce the ordinance. However, even if the potential for monetary loss exists, "much of the harm to [the defendant] from an injunction could be addressed by the security required by Fed.R.Civ.P.65(c), should [the defendant] prevail on the merits." *Rubbermaid*, 836 F.Supp. at 1257.

enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus more deliberate investigation." *Blackwelder* 550 F.2d at 194 (quoting *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953)). Because the balance of hardships tips decisively in Synagro's favor, it need only show that there are enough serious questions at issue in this case to say that "the plaintiff has not embarked on frivolous litigation," rather than establish a likelihood of success on the merits. *Blackwelder*, 550 F.2d at 195-196.

Under section 1-13.17 of the Virginia Code, "local governments are prohibited from adopting ordinances that are inconsistent with the Constitution and laws of the United States or the Commonwealth." Synagro argues that provisions of the ordinance are inconsistent with Virginia law, and thus, violate section 1-13.17. For example, it is claimed that ordinance section 38-62, which requires the submission of a nutrient management plan developed by an "independent vendor," conflicts with Virginia Code section 32.1-164.5.C.8, which directs the Virginia Board of Health to determine the conditions under which nutrient management plans may be required. Synagro argues that, because this section specifically directs the Virginia Board of Health to make determinations regarding nutrient management plans, localities are implicitly excluded from regulating the same. Synagro also claims that section 38-63 of the ordinance, which establishes setback lines, conflicts with specific buffer requirements set forth in 12 VAC 5-585-510.A.3.(c)(2). Similar arguments are made with regard to sections 38-64.A[2] and 38-64.B[3] of the ordinance.

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[2] Requiring the avoidance of planned community social events.

[3] Requiring any application to be preceded by a 30-day notice.

However, it has long been recognized that, while an ordinance may not conflict with state law, "the fact that an ordinance enlarges upon statutory provisions does not necessarily create an inconsistency therewith, since some state statutes are not sufficiently comprehensive to cover local exigencies." *Allen v. City of Norfolk*, 96 Va. 177 (1954). This principle was emphasized by the Virginia Supreme Court most recently in *Blanton v. Amelia County*, 550 S.E.2d 869 (2001), a case addressing the legality of local ordinances restricting biosolid application. In *Blanton*, the Court cited its holding in *King v. County of Arlington*, 195 Va.1084 (1954), stating the following:

> The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two, and the requirements of the municipal bylaw not in themselves pernicious, as being unreasonable or discriminatory, both will stand. *King*, 195 Va. at 1090.

Thus, while it would appear that Louisa County has some authority to enact ordinances addressing biosolid application[4], even when the restrictions contained therein exceed those present in parallel state regulations, the extent of this authority is by no means clear, establishing firm grounds for Synagro's current suit.

Not only does Synagro assert that the ordinance conflicts with state regulation on the matter, but it also claims that Louisa County lacks any express or implied authority to adopt and enforce the ordinance, and thus, it is alleged to be *ultra vires*. Furthermore, Synagro states that, under Dillon's Rule, any ambiguity with regard to the county's power to enact such an ordinance must be resolved against it. While the defendants cite authority for enacting the ordinance under the general police power articulated in Virginia Code section 15.2-1200, as this court noted at the

[4] Furthermore, no precedent exists suggesting that the state regulatory system was intended to pre-empt the field of biosolid application regulation.

hearing on this matter, local police power is not unlimited. The indefinite nature of the police power, the exacting nature of the ordinance's requirements, and the existence of a state regulatory scheme addressing the same subject matter indicate that Syangro has more than adequately met its diminished burden, in light of the decisive balance of harms, of establishing the existence of issues ripe for litigation before this court.

5. *The Public Interest*

Regardless of the extent to which the balance of hardships weighs in favor of Synagro, the public interest must be taken into consideration when determining whether to grant a preliminary injunction. While the defendants seem to suggest that the potential harm to Louisa County and the public interest are one in the same, *Blackwelder* requires that the two factors be examined independently. *See Rum Creek*, 926 F.2d at 362. In assessing the public interest, the court must account for a number of concerns not readily quantifiable. On the one hand, the public has an interest in ensuring the well-being of the environment on which it depends, particularly the quality of its drinking water. The defendant's claim that, "the [potential] damage to the county's water quality alone is of such a magnitude as to tip the balance of harm in favor of the defendants." (Defs.' Mem. in Opp'n. at 4) However, while this court does not deny the importance of healthy drinking water, the defendants' concern is not supported. No evidence has been presented to suggest that the Louisa County water supply will be endangered unless the state biosolid regulatory system is immediately supplemented by the ordinance's restrictions. Thus, although the court acknowledges concerns regarding the safety of biosolid application, it would appear that many of the defendants' concerns are either unproven or overstated.

On the other hand, it is generally held that, "where serious issues are before the court, it is a sound idea to maintain the *status quo ante litem*, provided that it can be done without imposing too excessive an interim burden upon the defendant." *Blackwelder*, 550 F.2d at 194-195.

Furthermore, while it is arguably in the public interest to impose prudent restrictions upon the operation of biosolid applicators like Synagro, such interest is not served by permitting an ordinance which may conflict with the Virginia constitution. *See Hogge*, 391 F.Supp. at 101. Because the state regulatory system can at the very least act as a interim safeguard during the term of a preliminary injunction, the public's interest in ensuring the compatibility of local ordinances with the state constitution outweighs any health concerns regarding the application of biosolids. Furthermore, there is some evidence that the use of biosolids serves the public interest by recycling otherwise useless waste product into an effective fertilizer. Thus, the public interest would appear to weigh in Synagro's favor.

C. *Conclusion*

The court concludes that because the balance of harms and the public interest weigh in Synagro's favor, and because Synagro has demonstrated that grave and serious questions are presented in this case, an appropriate preliminary injunction should issue against the defendants. An order in accordance with this conclusion shall issue.

ENTERED:_____
Senior United States District Court

_____
Date