*Branton v. Nicholas Meat, LLC*, 159 A.3d 540 (Pa. Super. 2017)

*CharLee Rosini*

1. **Introduction**

Farming has played a substantial role in Pennsylvania’s economy. To protect farmers from frivolous lawsuits that could potentially hinder their ability to continue operating, states have passed Right to Farm Acts (“RTFAs”) that give protections to farmers. Within RTFAs, farmers are protected from nuisance suits filed by surrounding neighbors. Pennsylvania’s RTFA, 3 P.A. Stat. §§ 951-957, was passed in 1982 with the intent to limit the circumstances under which agricultural operations may be subjected to nuisance suits and ordinances.[[1]](#footnote-1) The Acts aim is to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural resources.[[2]](#footnote-2) After the Act came into existence, it provided a defense against nuisance suits brought by private citizens if the operation at issue had been operating for more than one year prior to the date the action was brought.[[3]](#footnote-3) Additionally, the agricultural operation must not have substantially changed the condition or circumstance that constituted the alleged nuisance.[[4]](#footnote-4) However, if the condition or circumstance had been substantially altered or expanded, the farming operation needed to meet one of two standards to be protected under Pennsylvania’s Right-to-Farm Act: (1) the condition or circumstance at issue must have been in operation for more than one year; or (2) the condition or circumstance had been addressed in a nutrient management plan.[[5]](#footnote-5)

 In *Branton* *v. Nicholas Meat, LLC*, 159 A.3d 540 (2017) (“*Branton*”), the Court made a decision based on the plain meaning of the RTFA when surrounding land owners brought a nuisance action to stop the Camerer, Nicholas, and Bowes Farms (“Farmers” ) from spreading food processing waste (“FPW”) and to bar the Farmers from using a storage tank to hold the FPW. The Court’s decision provided more examples of what would constitute a normal agricultural operation under RTFA’s and solidified the protections farmers are given under the Act.

1. **Reporting**

The case *Branton v. Nicholas Meat, LLC*, provides the legal framework for determining whether the spreading and storing of FPW is outside of the scope of the RTFA.[[6]](#footnote-6) The Court reviewed the scope of two main provisions within the RTFA: (1) what constitutes a normal farming operation and (2) what constitutes a substantial change in the physical facilities of the farmers’ operations.[[7]](#footnote-7)

1. **Background on Nicholas Meat, LLC.**

Nicholas Meat, LLC (“Nicholas”) operated a slaughterhouse in Loganton, Pennsylvania,

which generated FPW.[[8]](#footnote-8) FPW was rich in nutrients essential to farming.[[9]](#footnote-9) Starting in 2011, Nicholas began transporting FPW from the Loganton slaughterhouse to Bowes and Camerer Farms.[[10]](#footnote-10) Subsequently, the FPW was spread on the farms and/or stored in a 2,400,000 gallon storage tank (“storage tank”) located on the Bowes Farm.[[11]](#footnote-11) The FPW stored in the storage tank was eventually spread on both farms.[[12]](#footnote-12)

 On March 17, 2011, the Pennsylvania Department of Environmental Protection (“DEP”) issued Camerer Farm a Notice of Violation (“NOV”) stating that it violated 35 P.S. §§ 6018.312(a) and 6018.610(1) for spreading food processing waste between February 25 and February 27 of 2011.[[13]](#footnote-13) The DEP notified Camerer Farms that it was necessary to have a nutrient management plan or a permit to spread FPW on its farm.[[14]](#footnote-14) On March 18, 2011, the DEP issued Nicholas a NOV informing it that it violated 25 Pa. Code § 291.201(a) for allowing its FPW to be spread on the Camerer Farm between February 25 and February 27.[[15]](#footnote-15) On April 15, 2013, Nicholas was issued another NOV for providing Bowes Farm with FPW during March and April 2013.[[16]](#footnote-16) The NOV stated that Nicholas violated 35 P.S. § 8.610(9) and 25 Pa. Code § 287.101(b)(2) by allowing its FPW to be spread within 150 feet of a stream and in an area not covered by a nutrient management plan.[[17]](#footnote-17)

 Subsequently, on June 14, 2013, a group of neighboring land owners (“Appellants”) commenced this action by filing a complaint against the Farmers alleging negligence and temporary private nuisance.[[18]](#footnote-18) Less than one month later, the DEP issued a NOV to Bowes Farm for spreading FPW on June 25, 2013.[[19]](#footnote-19) Appellants filed their second amended complaint on November 15, 2013.[[20]](#footnote-20) Subsequently, the Farmers moved for summary judgment on December 18, 2015, arguing that the Appellants’ claims were barred by the RTFA statute of repose.[[21]](#footnote-21) The Court of Common Pleas in Lycoming County, Civil Division granted summary judgment in favor of the Farmers and issued an opinion stating that the dismissal was mandated by Pennsylvania public policy set forth by the General Assembly and endorsed by the Pennsylvania Supreme Court in the case *Gilbert v. Synagro Cent., LLC*, No. 121 MAP 2014, 2015 Pa. LEXIS 2998, 41-42 (Dec. 21, 2015).[[22]](#footnote-22)

The Appellants appealed to the Superior Court of Pennsylvania.[[23]](#footnote-23) On appeal, the following issues were to be determined:

1. Did the [t]rial [c]ourt err as a matter of law in holding [s]ummary [j]udgment that [Appellants’] claims were barred by [RTFA] despite the evidence presented by [Appellants] that [Farmers’] practice of spreading [FPW] was unlawful and in violation of various regulations, codes, and statutes?
2. Did the trial court err as a matter of law in rejecting [Appellants’] claim that [Farmers’] practice of spreading [FPW] was not a “normal agricultural operation” under the RTFA?
3. Did the [t]rial [c]ourt err as a matter of law inholding on [s]ummary [j]udgment that [Appellants’] claims were barred by RTFA despite the evidence presented by [Appellants] that the addition of a[n FPW] waste storage tank on the Bowes Farm in 2012 was a substantial change under the RTFA?[[24]](#footnote-24)

The Superior Court found that (1) the farmers were in substantial compliance with the statutory requirements governing residual waste because after receiving the NOV from the DEP, the problems were resolved promptly and no further action was taken to prohibit the Farmers from spreading the FPW on the Camerer and Bowes Farms;[[25]](#footnote-25) (2) FPW was a normal agricultural operation;[[26]](#footnote-26) and (3) construction of the storage tank to hold the FPW constituted a substantial change in the physical facilities of the Farmers’ operation.[[27]](#footnote-27)

1. **RTFA Section 954(a) Statute of Repose**

First, the Court looked to Section 954(a) of the RTFA which provides, in relevant part, that:

No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation and are normal agricultural operations, or if the physical facilities of such agricultural operations are substantially expanded or substantially altered and the expanded or substantially altered facility has either: (1) been in operation for one year or more prior to the date of bringing such action, or (2) have been addressed in a nutrient management plan approved prior to the commencement of such expanded or altered operation pursuant to [3 Pa.CSA. § 506], and is otherwise in compliance therewith[.][[28]](#footnote-28)

The Court relied on *Gilbert v. Synagro Cent., LLC*, 131 A.3d 1, 15 (Pa. 2015), to determine that Section 954(a) of RTFA was a statute of repose, rather than a statute of limitations.[[29]](#footnote-29) To begin its analysis, the Court examined which standard governed the trial court’s consideration of the Farmers’ summary judgment motion.[[30]](#footnote-30) The Appellants argued that it was necessary for the trial court to apply the general summary judgment standard because summary judgment was only appropriate if the record demonstrated that there were no genuine issues of material fact.[[31]](#footnote-31) Appellants further argued that the trial court should view the record in a light most favorable to the Appellants.[[32]](#footnote-32) Relying on *Smith v. Workmen’s Comp. Appeal Bd. (Concept Planners & Designers)*, 670 A.2d 1146, 1148-1149 (Pa. 1996), Farmers highlight that the applicability of the statute of repose was a purely legal question which was for the trial court to decide.[[33]](#footnote-33) Additionally, the Farmers argued there was no genuine issue of material fact in regard to the applicability of the statute of repose.[[34]](#footnote-34)

 The Court agreed with the Farmers’ argument that the applicability of the statute of repose was purely a legal question that could be decided by the trial court on a summary judgment motion.[[35]](#footnote-35) The Court relied on *Gilbert*, a case where the Pennsylvania Supreme Court explained that statutes of repose are (1) jurisdictional and (2) questions of law for courts to determine.[[36]](#footnote-36) In *Gilbert*, the appellees were individuals who resided on properties next to a farm with 14 fields that had biosolids spread upon them.[[37]](#footnote-37) The appellees sued numerous individuals, including the farm, claiming private nuisance, negligence, and trespass.[[38]](#footnote-38) The appellants moved for summary judgment based on the argument that the nuisance claim was barred by the one-year statute of repose in Section 954(a) of the RTFA.[[39]](#footnote-39) The Pennsylvania Supreme Court determined that the statute of repose barred the appellees’ nuisance claim.[[40]](#footnote-40) They noted that there was no question regarding the character of the substance, rather, the singular question was whether the spreading of biosolids was a “normal agricultural operation.”[[41]](#footnote-41) Because there was no question involving the need for fact finding, the Court found that determining whether an activity, entity, or object fell within the meaning of a statutory definition was a matter of statutory interpretation.[[42]](#footnote-42) Therefore, the Court held that it was a question of law for the Court to decide.[[43]](#footnote-43) Additionally, the Court in *Gilbert* found that having a jury as the factfinder in this type of case would go against the intent of the General Assembly when passing the RTFA.[[44]](#footnote-44) This was due to the biases and differences of opinions of potential jurors on the subject of nuisance suits against farmers.[[45]](#footnote-45) Having the courts apply the definitions of the RTFA allowed for the meaningful degree of legal certainty, uniformity, and consistency that the RTFA was meant to provide.[[46]](#footnote-46)

 Here, in *Branton*, the Court was able to analogize the questions of law in *Gilbert* and find that the issues raised by the Appellants could be determined as pure questions of law.[[47]](#footnote-47) In the first issue, the Appellants argued that the Farmers’ activities were unlawful.[[48]](#footnote-48) The only dispute was whether such noncompliance resulted in the Farmers’ activities being unlawful.[[49]](#footnote-49) The Court found that determining whether a practice violated a federal, state, or local law was a question of law, which could be decided by a trial court on a summary judgment motion.[[50]](#footnote-50) For the second issue, the Appellants argued that the spreading of FPW did not constitute a normal agricultural operation.[[51]](#footnote-51) The Court looked to *Gilbert*, where there was no question regarding the character of the substance being used within the case. [[52]](#footnote-52) The question of whether the spreading of biosolid was a normal agricultural operation was a pure question of law, which was appropriate for decision on a summary judgment motion.[[53]](#footnote-53) For the third issue, Appellants argued that adding the storage tank to the Bowes Farm constituted a substantial change under the RTFA.[[54]](#footnote-54) The Court found that there was no factual dispute about the addition of the storage tank; therefore, the only question was whether the building of the storage tank was a substantial change under Section 954(a) that occurred within one year of the day that the complaint was filed. The Court held that this was a question of statutory interpretation, which was another pure question of law that could be decided by the trial court on summary judgment.[[55]](#footnote-55) Overall, the Court determined that all three of the issues raised were questions of law regarding statutory interpretation, noting that the trial court properly ruled on the summary judgment motion.[[56]](#footnote-56)

1. **Plain Language of the RTFA**

The Court then turned to a de novo review of the trial court’s determinations.[[57]](#footnote-57) It was necessary for the Court to determine the intent of the General Assembly when enacting and reviewing the RTFA.[[58]](#footnote-58) Relying on *Watts v. Manheim Twp. Sch. Dist.*, 121 A.3d 964, 979 (Pa. 2015), the Court determined that in order to find the intent of the General Assembly, it needed to look at the plain language of the RTFA.[[59]](#footnote-59) In interpreting the plain language of the RTFA, the Court looked to common and approved grammar and usage rules along with dictionary meanings.[[60]](#footnote-60) The Court stated that if it found that the plain language of the RTFA was ambiguous, then it would follow the presumption that the General Assembly did not intend a result that was absurd, impossible to execute, unreasonable, or was favorable to private over public interests.[[61]](#footnote-61)

 For the first issue, Appellants argued that the trial court erred when it determined that the Farmers’ agricultural operations were lawfully in operation since one year prior to the filing of the lawsuit, specifically June 14, 2012.[[62]](#footnote-62) Relying on the NOVs issued to the farmers, the Appellants stated that the Farmers’ operations were not lawful prior to April 14, 2013.[[63]](#footnote-63) Appellants further argued that the Farmers’ failed to comply with various state regulations by failing to control the odors being released from the farms.[[64]](#footnote-64) The Farmers countered that their spreading of FPW had been lawful since 2011, which was more than one year prior to the filing of the lawsuit.[[65]](#footnote-65) The Court looked to Section 954(a), which states that a nuisance action cannot be brought against an agricultural operation that has been *lawfully* in operation for one year or more before the filing of the action.[[66]](#footnote-66) Here, the meaning of the word “lawfully” was in dispute.[[67]](#footnote-67) The Appellants understood the word “lawfully” to mean requiring the agricultural operation to not have received any violations of federal, state, or local laws during the one-year time period.[[68]](#footnote-68) On the opposing side, the Farmers argued that “lawfully” required that the operation be in substantial compliance with the relevant federal, state, and local laws.[[69]](#footnote-69)

Because the RTFA failed to define the term “lawfully,” the Court looked to the Black’s Law Dictionary definition, which stated that the term lawful meant “legal; warranted or authorized by the law; having the qualifications prescribed by law; not contrary to nor forbidden by the law.”[[70]](#footnote-70) The Court made the distinction between the meaning of lawful and legal by relying on *McCandless v. Allegheny Bessemer Steel Co*., 152 Pa. 139 (1893).[[71]](#footnote-71) The Court in *McCandless* found that an action may still be lawful even if it is not legal.[[72]](#footnote-72) Therefore, the Court found that under the plain language of Section 954(a), an agricultural operation was required to be in *substantial compliance* with relevant federal, state, and local laws at least one year before the filing of the complaint to satisfy Section 954(a)’s first requirement.[[73]](#footnote-73) The Court’s decision was consistent with its decision in *Horne v. Haladay*, 728 A.2d 954 (Pa. Super. 1999), where it found that technical violations of federal, state, or local laws did not take away an agricultural operation’s RTFA protection.[[74]](#footnote-74)

The Court also noted that if the language of RTFA was determined to be ambiguous, it would have reached the same conclusion because it would have considered the intent of the General Assembly.[[75]](#footnote-75) The Court looked to the Supreme Court’s reasoning in *Gilbert* to determine that the purpose of RTFA was to reduce the Commonwealth’s loss of agricultural resources by limiting the amount of nuisance suits that could be brought against farmers.[[76]](#footnote-76) If allowing the one-year time period of Section 954(a) to be reset after every technical violation, it would allow and potentially encourage individuals or companies to report minor violations to try and reset the period.[[77]](#footnote-77) According to the Court, allowing the time period to be reset after every technical violation would be considered absurd, unreasonable, and against the public interest, conflicting with the General Assembly’s intent when enacting the RTFA.[[78]](#footnote-78) Ultimately, the Court determined that “lawfully” meant that the agricultural operations were only required to be substantially compliant with the relevant laws for at least one year before the filing of the suit in order to satisfy Section 954(a)’s first requirement.[[79]](#footnote-79)

After determining the meaning of “lawfully,” the Court turned to whether the Farmers were in substantial compliance with the relevant federal, state, and local laws for at least one year before the suit was filed.[[80]](#footnote-80)The Appellants argued that the Farmers were not lawfully spreading FPW and were violating various state statutes by failing to control odors resulting from the spreading.[[81]](#footnote-81) Here, the DEP confirmed that the Farmers were lawfully spreading FPW and that there was no strong odor from spreading the FPW that would constitute a violation. Therefore, the Court found that the Farmers were in substantial compliance with the relevant laws at least one year prior to the filing of the complaint.[[82]](#footnote-82)

1. **Spreading FPW as a Normal Agricultural Operation**

The second question the Court determined was whether the trial court erred in finding that the spreading of FPW was a normal agricultural operation.[[83]](#footnote-83) When making its determination, the Court relied on RTFA’s definition of “normal agricultural operation,” which included new activities, practices, equipment, and procedures that were consistent with technological advances within the agricultural industry.[[84]](#footnote-84) The Farmers argued that this case was controlled by the Supreme Court’s decision in *Gilbert*, which addressed whether the application of biosolids constituted a normal agricultural operation.[[85]](#footnote-85) The Court disagreed with the Farmers’ argument because biosolids and FPW were distinct from each other and, therefore, found that just because one activity was a normal agricultural operation did not mean that the other was as well.[[86]](#footnote-86) Although the Court did not look specifically to the part of *Gilbert* that the Farmers argued, it did look to how the Supreme Court made its determination to determine whether the application of biosolids constituted a normal agricultural operation.[[87]](#footnote-87) The Supreme Court had looked to the history, related statutes and regulations, case law, and executive agency views on biosolids.[[88]](#footnote-88)

 First, the Court examined the history of FPW in Pennsylvania.[[89]](#footnote-89) According to the expert reports submitted to the trial court, FPW is considered a normal agricultural operation in Pennsylvania.[[90]](#footnote-90) In fact, it found that FPW has been spread on farms throughout Pennsylvania for over 15 years.[[91]](#footnote-91) Moreover, the DEP had issued FPW spreading permits to over three dozen locations across Pennsylvania, not including farms permitted to spread FPW pursuant to a nutrient management plan.[[92]](#footnote-92) The Court determined that Pennsylvania’s history showed that spreading FPW was considered a normal agricultural operation.[[93]](#footnote-93)

Second, the Court looked to the relevant statutes and regulations in which the General Assembly had strongly implied that FPW spreading was a normal agricultural operation.[[94]](#footnote-94) The definition of “normal farming operations” included the use or disposal of FPW.[[95]](#footnote-95) The Court determined that it would be unlikely that the General Assembly meant to include the spreading of FPW as a “normal farming operation” but not as a “normal agricultural operation,” especially when “normal farming operation” was a narrower term.[[96]](#footnote-96) The Court noted that the term “normal farming operation” was consistent with the pre-1998 version of RTFA’s definition of “normal agriculture operation,” even prior to its broadening.[[97]](#footnote-97) Moreover, the DEP recognized spreading of FPW as a soil conditioner and fertilizer and promulgated rules in relation to the spreading of FPW.[[98]](#footnote-98) The Court relied on the Supreme Court’s decision in *Ins. Fed’n of Pennsylvania, Inc. v. Commonwealth of Pennsylvania Ins. Dep’t*, 970 A.2d 1108, 1114 (Pa. 2009), where it determined that the interpretation of a statute by those who were responsible for its administration and enforcement were entitled to deference.[[99]](#footnote-99) As a result, the Court concluded that the DEP’s experience and expertise regarding FPW regulation and use and the enforcement of RTFA supported a finding that FPW spreading was an accepted and well-regulated farming practice. The Court’s holding conflicted with the Commonwealth Court’s decision in *Walck v. Lower Towamensing Twp. Zoning Hearing Bd.*, 942 A.2d 200 (Pa. Cmwlth. 2008), where the Commonwealth Court upheld a zoning board’s determination that FPW storage was not a normal farming activity.[[100]](#footnote-100) The Court noted that the Commonwealth Court’s finding was not persuasive for failing to rely upon or consider the RTFA or section 6018.103 of the RFTA.[[101]](#footnote-101)

After determining that the spreading of FPW constituted a normal agricultural operation, the Court still had to determine whether the spreading and storage of the FPW was lawful and could still be considered a normal agriculture operation.[[102]](#footnote-102) Appellants argued that the spreading of FPW could not be considered a normal agricultural operation if it was unlawful.[[103]](#footnote-103) The Court found that the spreading was lawful, even if there were instances of noncompliance with applicable law.[[104]](#footnote-104)

 Lastly, Appellants argued that the storage of FPW was not considered a normal agricultural operation.[[105]](#footnote-105) The Court determined that this argument was without merit because the General Assembly specifically provided in Section 6018.103 of the statute that the storage of FPW constituted a normal agricultural operation.[[106]](#footnote-106) In conclusion, the Court held that both the spreading and storage of FPW were considered to be normal agricultural operations and that the specific acts of the Farmers were lawful.[[107]](#footnote-107) Therefore, the third requirement of RTFA’s statute of repose was fulfilled.[[108]](#footnote-108)

1. **Substantial Change in the Physical Facilities**

For the final issue, the Court was asked to determine whether the construction of the storage tank on the Bowes Farm constituted a substantial change in the physical facilities of the agricultural operation.[[109]](#footnote-109) Appellants argued that the Farmers failed to satisfy the second RTFA statute of repose requirement because the construction of the storage tank was a substantial change in the physical facilities of the agricultural operation.[[110]](#footnote-110) The Farmers’ responded with three reasons as to why the Appellants argument was without merit.[[111]](#footnote-111)

First, the Farmers argued that the statute of repose barred the action because the storage tank was constructed in April 2012, which was more than one year prior to the filing on the complaint.[[112]](#footnote-112) After a deposition was taken of Brett Bowes, the proprietor of Bowes Farm, Appellants asserted that the tank was not operational until at least July 13, 2012, which would be less than one year prior to the complaint being filed.[[113]](#footnote-113) The Farmers argued that the deposition testimony was barred from being offered to disprove the averments made within the Appellants’ second amended complaint because they would serve as judicial admissions.[[114]](#footnote-114) The Court completed an analysis on whether the deposition testimony averment was a judicial admission and determined that the Appellants’ averment that the storage tank became operational in April 2012 was not a judicial admission.[[115]](#footnote-115) Using the evidence that the storage tank was not operational until at least July 13, 2012, the Court concluded that the storage tank was not operational for at least one year prior to the commencement of this suit; therefore, the Farmers failed to satisfy the second requirement of Section 954(a) of RTFA.[[116]](#footnote-116)

Second, the Farmers argued that the storage tank was covered under a nutrient management plan.[[117]](#footnote-117) The Court relied on Section 954(a), which required an expanded or altered physical facility to be addressed in a nutrient management plan that must be approved prior to the expanded or altered physical facilities become operational.[[118]](#footnote-118) After reviewing the record and Section 954(a), the Court concluded that the 2,400,000 gallon storage tank on Bowes Farm was not addressed in the nutrient management plan.[[119]](#footnote-119) Rather, the plan addressed two storage tanks with significantly lower capacities located on Nicholas’ farm.[[120]](#footnote-120) Therefore, the Farmers failed to satisfy the second requirement of Section 954(a).[[121]](#footnote-121)

Lastly, the Farmers argued that the storage tank did not constitute a substantial change in the agricultural operation.[[122]](#footnote-122) To make this determination, the Court was required to address two issues of statutory interpretation.[[123]](#footnote-123) The Farmers argues that the basis for the complaint was the spreading of the FPW and that the spreading had existed and been substantially unchanged since the beginning of 2011.[[124]](#footnote-124) Therefore, they ultimately argued that it was immaterial to determining whether there was a substantial change in the physical facilities.[[125]](#footnote-125) The Court rejected the Farmers’ arguments because, in theory, if their argument was accepted, it would allow farmers to substantially expand their physical facilities and still be protected by the RTFA so long as the underlying operation did not substantially change.[[126]](#footnote-126) The Court determined that if the storage tank was found to constitute a substantial change in the physical facilities, the Appellants’ action would not be barred by RTFA’s statute of repose.[[127]](#footnote-127)

It was noteworthy that no appellate court in the Commonwealth of Pennsylvania had ever decided whether the expansion or alteration of a facility was considered substantial under RTFA.[[128]](#footnote-128) Therefore, in making this determination, the Court interpreted Section 954(a)’s requirement’s purpose as preventing agricultural operations from going from a small operation with a small impact on the neighboring land owners to a massive operation that greatly affected the lives of the neighbors who had no opportunity to file a nuisance action.[[129]](#footnote-129) Ultimately, the Court determined that the RTFA was meant to protect the status quo of an agricultural operations while encouraging technological advancements.[[130]](#footnote-130)

When looking at the storage tank at issue, the Court determined that the storage tank constituted a substantial change in the physical facilities for numerous reasons including: (1) size; (2) increased storage; (3) cost of construction; and (4) length of construction.[[131]](#footnote-131) First, the court found that the size of the storage tank was substantial because it was the size of an entire football field.[[132]](#footnote-132) Second, the court found that there was a substantial change because the Bowes Farm went from storing zero FPW to storing 2,400,000 gallons of FPW.[[133]](#footnote-133) Third, the Court decided that the $300,000 paid and the time it took to construct the storage tank weighed in favor of finding a substantial change.[[134]](#footnote-134) Therefore, Farmers failed to satisfy the second requirement of Section 954(a) relating to the storage of the FPW in the 2,400,000 gallon storage tank.[[135]](#footnote-135)

1. **Separation of the Claims**

After considering all issues and making a determination on all of them, the Court noted that

to stay consistent with Section 954(a) and the overall purpose of RTFA, the Appellants’ claims would need to be separated.[[136]](#footnote-136) The Court permitted the Appellants to proceed with their claims related to the storage tank, but the Court noted that allowing the Appellants to proceed with their claims about spreading FPW would have a chilling effect on Pennsylvanian farmers, discouraging them from expanding operations if they would lose their legal protection.[[137]](#footnote-137) The Court concluded that by separating the claims, the Appellants would be able to pursue their viable claims and uphold the plain language and spirit of the RTFA.[[138]](#footnote-138)

1. **History**

RTFAs were established to provide farmers and ranchers immunity from nuisance actions resulting from conditions created by their agricultural operations or activities.[[139]](#footnote-139) This immunity applies as long as certain statutory conditions are satisfied.[[140]](#footnote-140) The purpose of these Acts is to protect farmers and ranchers from nuisance actions that result from the encroachment of residential developments onto traditionally agricultural land.[[141]](#footnote-141)

* 1. **Right-to-Farm Acts**

Normal agricultural operations and practices can lead to a variety of inescapable and unpleasant conditions.[[142]](#footnote-142) Some common problems from farming include odors, insects, noises, pesticide drift, dust, and glaring lights, which are normal for agricultural operations.[[143]](#footnote-143) Historically, the effect of those conditions was of little concern to neighboring land owners because they were usually involved in some type of agricultural production as well.[[144]](#footnote-144) Over time, commercial and residential developments increased throughout areas which were previously predominantly agricultural.[[145]](#footnote-145) The increase in nonagricultural uses of agricultural lands has had a significant impact on the farmers who continued their agricultural operations in largely urbanized areas.[[146]](#footnote-146) As a result of this urbanization, residents who object to the normal, but irritating, conditions caused by farming operations have initiated nuisance actions against the farmers and helped spur local governments to enact ordinances that disadvantaged agricultural production.[[147]](#footnote-147) For example, a successful nuisance action could prevent a farmer from continuing normal agricultural operations or a local ordinance could prohibit a certain agricultural operation, putting the farm out of business altogether.[[148]](#footnote-148) These actions pose significant threats to agricultural production operations and threaten communities and states that economically rely on agriculture.[[149]](#footnote-149) Additionally, these threats deter farmers from striving to improve their operations and incentivize them to sell their farmlands for nonagricultural purposes.[[150]](#footnote-150) As a result of these consequences, states enacted RTFAs throughout the 1970s and 1980s.[[151]](#footnote-151)

All 50 states have enacted their version of RTFAs to limit private and public nuisance liability against farming operations.[[152]](#footnote-152) Originally, the Acts were intended to provide nuisance immunity to established operations to limit nuisance actions to situations where there are changes in the land use.[[153]](#footnote-153) Right-to-Farm Acts state that agricultural operations shall not constitute a nuisance. However, a nuisance can arise if there have been changed conditions in the area surrounding the operation. If the operation was established first and operated for a defined period of time, typically one year, before the change in conditions occurred, there is no nuisance.[[154]](#footnote-154)

Although there are variations within the specific provisions of each state’s RTFA, the common denominator among states is that they all seek to protect farmers and their operations from nuisance actions.[[155]](#footnote-155) Many Acts only protect farming operations that reasonably operate in a non-negligent manner and comply with the agricultural practices defined by the state’s commission or panel. However, others only provide protection to farmers that follow methods or practices that are common or associated with agricultural operation.[[156]](#footnote-156)

Over time, RTFAs have been amended to have broader implications and to explicitly preempt local ordinances governing nuisance actions and zoning ordinances.[[157]](#footnote-157) For example, the Idaho RTFA was amended to void any local ordinance that declared an agricultural facility, which had been acting in accordance with recognized agricultural practices, to be a nuisance.[[158]](#footnote-158) It further voided any zoning ordinances that would force the closure of an agricultural operation, facility, or expansion if it had been acting in accordance with recognized agricultural practices.[[159]](#footnote-159) Michigan’s Right-to-Farm Act was amended to preempt local ordinances that conflicted with the state Act or with the accepted agricultural practices.[[160]](#footnote-160) Only a small number of states explicitly permit local control of agriculture in their Right-to-Farm Acts.[[161]](#footnote-161) For example, Vermont’s Right-to-Farm Act provides that nothing within it can limit the authority of the state or local boards of health to abate nuisances affecting the public health.[[162]](#footnote-162)

Because RTFAs react to zoning regulations possibly affecting agriculture, they have been challenged by litigating parties and examined, interpreted, and applied by courts in numerous legal and factual contexts over the past few decades.[[163]](#footnote-163)

* 1. **Pennsylvania’s Right-to-Farm Act**

In 1982, the Pennsylvania legislature enacted the Pennsylvania Right-to-Farm Act, which stated as a purpose that it was to limit the circumstances under which agricultural operations may be subjected to nuisance suits and ordinances.[[164]](#footnote-164) Pennsylvania’s RTFA aims to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural resources.[[165]](#footnote-165)

Under the Pennsylvania RTFA, farmers are provided a defense against nuisance suits brought by private citizens.[[166]](#footnote-166) Pennsylvania law provides that a nuisance suit may not be brought against an agricultural farming operation that has been operating for more than one year prior to the date the nuisance action was brought.[[167]](#footnote-167) Additionally, the agricultural operation must not have substantially changed the condition or circumstance that constitutes the alleged nuisance.[[168]](#footnote-168) However, if the condition or circumstance has been substantially altered or expanded, the farming operation needs to meet one of two standards to be protected under Pennsylvania’s Right-to-Farm Act: (1) the condition or circumstance at issue must have been in operation for more than one year; or (2) the condition or circumstance has been addressed in a nutrient management plan.[[169]](#footnote-169)

“Normal agricultural operation” is defined as "the activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities."[[170]](#footnote-170) Moreover, the Act prohibits local ordinances on odor management and nutrient management unless they are consistent with and not stricter than the regulations and guidelines of the Act.[[171]](#footnote-171)

There are few cases concerning Pennsylvania’s RTFA, but Pennsylvania courts have consistently applied the Act in common law nuisance actions against Farmers and have upheld its constitutionality.[[172]](#footnote-172) The Pennsylvania Superior Court in *Horne* held that a plaintiff must bring a nuisance action within one year from the onset of the agricultural operation that the plaintiff considers a nuisance.[[173]](#footnote-173) Furthermore, in *Boundary Drive Associates v. Shrewsbury Township Board of Supervisors*, 491 A.2d 481 (Pa. 1985), the Pennsylvania Supreme Court interpreted the constitutionality of zoning regulations of agricultural lands in connection with the constitutionality of the Pennsylvania RTFA.[[174]](#footnote-174)

1. **PA Right-to-Farm as a Defense**

Pennsylvania’s Right-to-Farm Act provides farmers with a defense to nuisance actions but only after a nuisance suit has been brought against the farmer.[[175]](#footnote-175) In *Horne,* the plaintiff brought an action against his neighbor because his home suffered a substantial depreciation in value as a result of insects, odors, excessive noise, and waste.[[176]](#footnote-176) The basis for the plaintiff’s November 1995 action began in November of 1993 when the farming operation stocked their farm with 122,000 laying hens.[[177]](#footnote-177) The Plaintiff said the operation substantially changed in August of 1994 when there was a decomposition house put into operation.[[178]](#footnote-178) The Pennsylvania Superior court found that the RTFA did not prevent nuisance actions but rather provided farmers with a defense to those actions.[[179]](#footnote-179) Additionally, the Court determined that the condition for the nuisance was in operation for longer than one year; therefore, the farmer was able to use the RTFA as a defense.[[180]](#footnote-180) The decision in *Horne* presented challenges for farmers because it was determined that people are not prevented from filing common law nuisance actions against them.[[181]](#footnote-181) As a result of this decision: (1) people could bring separate nuisance actions so long as there was a different basis for each claim; (2) people could bring separate nuisance actions even though the farmer had defended an action on the same basis; and (3) people could bring claims even though they knew the Right-to-Farm Act would be used as a defense.[[182]](#footnote-182) The consequence of the *Horne* decision is that farmers would have to defend against numerous actions at a considerable cost, which could lead to the tragic consequence of farmers having to sell their farms.[[183]](#footnote-183)

1. **Analysis**

When I was a child, I would go downtown on a Saturday morning and walk the main

street filled with copious farmers at their stands selling fresh produce. As time progressed and housing developments and commercial areas became more prevalent in my area, the farmers on the main street have dwindled. So as I step out onto the main street of the small, run-down downtown area of my town, there are maybe two farmers that are still out to sell their fresh produce.

The increase in agricultural land being used for non-agricultural purposes has not only

been a modern development in my own small rural community but is also a development throughout the entire state of Pennsylvania. This development has proven to cause significant problems for farmers and their operations because the increase in the use of agricultural land for non-agricultural purposes has allowed farmers to become more vulnerable to nuisance actions by surrounding landowners.[[184]](#footnote-184) Prior to the increasing urbanization of agricultural land for non-agricultural uses, farmers’ operations were not exposed to neighbors that would be affected by normal agricultural operations.[[185]](#footnote-185) Thus, the recent changes in the areas surrounding farms have presented issues for farmers including surrounding landowners who are unaware of farmers’ rights bringing nuisance actions for agricultural operations that are simply an inconvenience to the landowners. As a result, farmers are subjected to having to pay for frivolous nuisance suits, even when they cannot afford them.[[186]](#footnote-186) The burdens farmers face as a result of urbanization are exactly the reason why it is integral that farmers are given the rights and protections they need to continue their lawful operations. The first-hand experience of growing up in a predominately rural farming area allows me to understand the importance of farming in any community. Cases like *Branton* are important to the development of farmers’ rightful protections under State RTFAs in the changing agricultural atmosphere. *Branton* is a thorough opinion that creates a brighter line in an RTFA analysis. It relies on various sources to form a full and detailed opinion on what instances can trigger the allowance of private nuisance actions against farmers. *Branton* can be considered a victory for farmers because it solidifies their right to generate and use FPW but also extends these rights to account for newer and more modern practices not currently within the list of RTFA protected operations.[[187]](#footnote-187)

The method of analysis the Superior Court took accurately reflects the precedent set forth

by the Supreme Court in similar issues. The spreading of FPW has historically been used throughout Pennsylvania and that it is accepted in the relevant statutes and regulations. By taking this approach, the Superior Court tried to keep their analysis simple and fair by considering the plain meaning of the statute and regulations. Considering surrounding neighbors of farms are most likely unaware that RTFAs even exist, it is rational for the Court to use the plain meaning to make their decision easier to understand for not only those who filed the suit, but also those who are interested in bringing suit against other farmers. For example, when making the decision as to whether the storage tank placed on the farm was a substantial change, the Court basically stated that the 2,400,000 gallon storage tank was not there and now it is and it has not been there for more than a year.[[188]](#footnote-188) Therefore, the problem stemmed from the fact that not only had this tank not been on the premises for more than a year, but no tank was ever on the farm at issue.[[189]](#footnote-189) In addition, the Court noted that this storage tank could cover the size of a football field, which is easily considered a substantial change.[[190]](#footnote-190) A few other obvious factors came into play when the Court made this decision, such as the length of time in construction and the costs the farmers incurred to build it.[[191]](#footnote-191) All of these factors weighed into the finding that this was a massive change in operation and facilities. In the end, the Court easily made the decision that the addition of this tank, and everything contained within it, constituted a substantial change of the premises.[[192]](#footnote-192) Although the Court found this one change to be substantial, the other operations being challenged were all found to be normal agricultural operations listed in the RTFA. A simple resolution of the remaining claims based on the rights explicitly listed in the RTFA and a simple decision made based on an obvious change on the premises. By using the plain meaning of the statute, the Court made it clear that the RTFA was meant to protect farmers rather than limit them.[[193]](#footnote-193) Allowing private nuisance actions for farming operations that have been permitted throughout Pennsylvania would contradict the purpose of RTFAs.

Due to the disconnect between people and agricultural farming and food production, it is

easy to take farmers for granted and not appreciate their value and importance within a community.[[194]](#footnote-194) Therefore, it is necessary for the courts, like in *Branton*, to make sure the rights of farmers are not taken from them due to mere inconveniences. Pennsylvania’s RTFA ranks in the middle in terms of strictness compared to other states.[[195]](#footnote-195) The protections given by RTFAs depend on the importance of agriculture within the state’s economy.[[196]](#footnote-196) Pennsylvania agriculture has a strong history and has been a huge force in the state’s economy.[[197]](#footnote-197) Although farming has decreased throughout the state, its impact on the economy has remained steady, accounting for a $135.7 billion annual economic impact.[[198]](#footnote-198) Not only does agriculture account for a significant portion of our state’s economy, it also provides jobs on over 59,000 farms.[[199]](#footnote-199) Therefore, the RTFAs are considered a necessary tradeoff to prevent (1) pushing agricultural industry out of the state and being forced to import food products, and (2) loss of numerous jobs throughout the state.[[200]](#footnote-200)

After the *Branton* decision, Courts should continue to make decisions based on what the

statutes and regulations explicitly state, but they should also keep in mind the purpose of the Act. There are certain operations that inherently will not be accounted for because of recent advancements or specialized types of farming. The future of the RTFA decisions should involve the expansion of rights to farmers as a result of the changing demographics of typical agricultural areas. Because agricultural areas are increasingly being converted for non-agricultural uses, such as housing developments and commercial land, the necessity for heightened protections is even more integral. To make sure the farmers continue to hold the protections they have been afforded for generations prior to the modern urbanization of agricultural land, it is requisite for RTFAs to be enforced and expanded for the vitality of the farms that have played an important role in our state’s economy.

1. **Conclusion**

In conclusion, the Superior Court in *Branton* decided to keep the application of the RFTA

statute broad to ensure that the purpose of the act was not lost in the developing use of agricultural lands for non-agricultural uses. This decisions allows for the protection of farmers to continue using the operations they have been using for numerous years; rather than forcing them to create new operations based on the changing demographic of the property owners surrounding their farms. Due to the significant impact agriculture has on Pennsylvania’s economy, it would certainly be detrimental to allows for farmers’ rights to be even more limited than they are now. Thus, the decision in *Branton* was almost necessary for both farmer and state interests.

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3. Thomas B. McNulty, *The Pennsylvania Farmer Receives No Real Protection From the Pennsylvania Right to Farm Act*, 10 Penn St. Envtl. L. Rev. 81, 87 (May 3, 2017), https://pennstatelaw.libguides.com/parighttofarm. [↑](#footnote-ref-3)
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5. *Id.* at 87-88. [↑](#footnote-ref-5)
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7. *Id.*  [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *Id.*  [↑](#footnote-ref-10)
11. *Id.* [↑](#footnote-ref-11)
12. *Branton*, 159 A.3d at 543. [↑](#footnote-ref-12)
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15. *Id.* [↑](#footnote-ref-15)
16. *Id.* [↑](#footnote-ref-16)
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19. *Id.* [↑](#footnote-ref-19)
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21. *Id.* [↑](#footnote-ref-21)
22. *Branton*, 159 A.3d at 544. [↑](#footnote-ref-22)
23. *Id.* [↑](#footnote-ref-23)
24. *Id.* at 545. [↑](#footnote-ref-24)
25. *Id.* at 552. [↑](#footnote-ref-25)
26. *Id.* at 555. [↑](#footnote-ref-26)
27. *Branton*, 159 A.3d at 561. [↑](#footnote-ref-27)
28. *Id.* at 545. [↑](#footnote-ref-28)
29. *Id.* [↑](#footnote-ref-29)
30. *Id.* at 546. [↑](#footnote-ref-30)
31. *Id.* [↑](#footnote-ref-31)
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33. *Id.* [↑](#footnote-ref-33)
34. *Id.* [↑](#footnote-ref-34)
35. *Id.* [↑](#footnote-ref-35)
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38. *Id.* [↑](#footnote-ref-38)
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40. *Id.* [↑](#footnote-ref-40)
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44. *Id.* [↑](#footnote-ref-44)
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49. *Id.* [↑](#footnote-ref-49)
50. *Id.* [↑](#footnote-ref-50)
51. *Id.* [↑](#footnote-ref-51)
52. *Branton*, 159 A.3d at 548. [↑](#footnote-ref-52)
53. *Id.* [↑](#footnote-ref-53)
54. *Id.* [↑](#footnote-ref-54)
55. *Id.* [↑](#footnote-ref-55)
56. *Id.* [↑](#footnote-ref-56)
57. *Branton*, 159 A.3d at 548. [↑](#footnote-ref-57)
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59. *Id*. [↑](#footnote-ref-59)
60. *Id.* [↑](#footnote-ref-60)
61. *Id.* [↑](#footnote-ref-61)
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63. *Id.* [↑](#footnote-ref-63)
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65. *Id.* [↑](#footnote-ref-65)
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75. *Id.* [↑](#footnote-ref-75)
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83. *Id.*. [↑](#footnote-ref-83)
84. *Id.*  [↑](#footnote-ref-84)
85. *Id.* at 552-553 (citing *Gilbert*, 131 A.3d at 19-23). [↑](#footnote-ref-85)
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106. *Branton*, 159 A.3d at 555. [↑](#footnote-ref-106)
107. *Id.* [↑](#footnote-ref-107)
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113. *Id. at 556.* [↑](#footnote-ref-113)
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131. *Id.* at 561-562. [↑](#footnote-ref-131)
132. *Branton*, 159 A.3d at 561. [↑](#footnote-ref-132)
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154. Pittman, *supra* n. 132 at § 2. [↑](#footnote-ref-154)
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156. *Id.* [↑](#footnote-ref-156)
157. *Id.* [↑](#footnote-ref-157)
158. *Id.*  [↑](#footnote-ref-158)
159. *Id.* [↑](#footnote-ref-159)
160. Adawi, *supra* n. 144 at 10514. [↑](#footnote-ref-160)
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171. *Id.* [↑](#footnote-ref-171)
172. McNulty, *supra* n. 3 at 90. [↑](#footnote-ref-172)
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