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MIDDLE DISTRICT OF GEORGIA

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

UNITED STATES OF AMERICA,)
ex rel. DAVID L. LEWIS, PH.D.)
R. A. MCELMURRAY, III,)
and G. WILLIAM BOYCE,)
)
Qui Tam Plaintiffs,)

v.)

CIVIL ACTION
FILE NO. 3:06-CV-16

JOHN WALKER, PH.D.,)
JULIA W. GASKIN,)
ROBERT B. BROBST,)
WILLIAM P. MILLER, PH.D.,)
E. WILLIAM TOLLNER, PH.D.,)
L. MARK RISSE, PH.D.,)
THE BOARD OF REGENTS OF THE)
UNIVERSITY SYSTEM OF GEORGIA,)
THE UNIVERSITY OF GEORGIA)
RESEARCH FOUNDATION, INC.)
and JOHN DOE (S))
)
Defendants.)

FIRST AMENDMENT TO FALSE CLAIMS ACT
COMPLAINT AND DEMAND FOR JURY TRIAL

44. Defendants performed certain scientifically valid tests, which clearly disproved their speculation that metals concentrated in forage grown under drought conditions in their study. Defendants, however, knowingly concealed these data, which refuted their conclusions. Specifically, they concealed the results of their analysis of ratios of cadmium (Cd) to nitrate-nitrogen (NO₃-N) in which they concluded: "There does not appear to be any relationship between amount of Cd and NO₃-N in the hay that would indicate the drought is consistently concentrating Cd."⁴¹
45. In 1984, the McElmurray family members applied lime to their farmlands to raise the soil pH for growing alfalfa as a forage crop to feed their dairy herds. As soon as they started using the alfalfa as feed in 1985, their cattle developed a reddish tinge to their coats, which is a symptom of molybdenosis. Molybdenum is much less soluble, i.e., less available for plant uptake, when soil pH is very acidic. When this forage was fed to the dairy cattle on the McElmurray farm, milk production quickly plummeted, many

⁴¹ Lawrence M. Risse, Julia W. Gaskin, William P. Miller, Richard McDaniel, *Metals Assessment for Burke and Richmond County Hayfields Receiving Biosolids: A Report to Fulfill Grant No. 827759-01-0*, p. 12 (Gaskin 00058).

of the cattle developed AIDS-like symptoms, outbreaks of *Salmonella* infections occurred in the herd, and mortality rates soared.

46. This same scenario played out on the Boyce family dairy farm. The Boyce lands had also received applications of Augusta's sewage sludge for 10 years until being taken out of the land application program in 1995. As an incentive to rejoin the program in 1996, Augusta offered Boyceland Dairy free lime to apply to their soil, which had become increasingly acidic after years of treatment with sewage sludge. As soon as the Boyce family began feeding their dairy herd forage in 1997 with forage which was grown on their sludged land, after it was heavily limed, milk production plummeted, many of the cattle began wasting away, and infection and mortality rates among the cattle rose dramatically.
47. To assess whether sewage sludge was responsible for the high morbidity and mortality rates experienced by the dairy cattle, Augusta's Messerly WWTP paid UGA to evaluate soil samples collected from the these dairy farms.⁴² Soil samples from the dairy farms owned by the families of Relators

⁴²

- Letter from Defendant Miller to Moore, Messerly WWTP (1994) (UGA 00027-31)
- UGA analyses of soil samples from Relator McElmurray's farm
- UGA analyses of soil samples from Relator Boyce's farm

McElmurray and Boyce were analyzed under the supervision of Defendant Miller, assisted by his associates at UGA, from 1987 through 1999. The soil samples were obtained by employees of Augusta's Messerly WWTP and UGA's extension service offices in Burke and Richmond Counties. A total of 51 of these soil samples were analyzed for molybdenum.

48. Molybdenum concentrations in these soil samples ranged from undetectable levels (< 0.5 mg/kg) to 92 mg/kg and the mean concentrations in samples from the dairy farms owned by Relators McElmurray and Boyce were 19 mg/kg (S.D. ± 17) and 34 mg/kg (S.D. ± 33), respectively.
49. Federal regulations promulgated in February of 1993 (40 CFR, Part 503) set the maximum permitted molybdenum concentration in sewage sludge at 75 mg/kg and the cumulative loading limit at 18 kg/ha (9 mg/kg). These limits were designed to protect animal health from toxic levels of molybdenum in forage crops grown on sludge-treated lands. The mean concentrations of molybdenum on the Relators' dairy farms exceeded the cumulative loading limit for molybdenum by two-fold on Relator Boyce's family's farm and almost three-fold on Relator McElmurray's family's farm.

50. The implications of the Augusta cattle deaths to EPA and UGA were clear and potentially disastrous to Defendant Walker, Defendant Gaskin and others who built their careers on promoting EPA's sewage sludge regulations as being environmentally protective. Defendants knew from the existing data, including data created by UGA, that excessive morbidity and mortality rates on Relators McElmurray's and Boyce's families' farms were, more likely than not, caused by the accumulation of molybdenum in soil and its subsequent uptake by forage crops. Clearly, Defendant Walker, and others at EPA and USDA overseeing their agencies' sewage sludge programs, would be blamed for damages caused by removing the cumulative loading limits for molybdenum in 1994. In short, the Augusta cattle cases stood to prove that 40 C.F.R. Part 503 was not, and is not, adequately protective of public health and the environment. Defendants fully knew that, in order to protect the reputations of EPA and UGA and their own careers, they had to mask and coverup any evidence linking the Augusta cattle deaths to sewage sludge.
51. After discovering high levels of heavy metals and nitrates in soil samples from dairy farms owned by the families of Relators McElmurray and Boyce,

Defendant Miller received a telephone call from Defendant Walker.⁴³ From that point on, Defendant Miller refused to return telephone calls from Relators Boyce's and McElmurray's expert, Dr. Holly Ballantine, a dairy herd nutritionist. Rather, as part of the scheme to hide the truth, Defendant Miller began cooperating with other Defendants to publish false and fabricated scientific data. The purpose of this cooperation was to provide Augusta's attorneys with a peer-reviewed scientific article containing false scientific data to introduce in court as evidence that Augusta's sewage sludge did not contain hazardous wastes and, therefore, did not damage dairy farms owned by the families of Relators McElmurray and Boyce.

52. Defendant Gaskin and her co-authors intentionally and knowingly concealed all of the results of UGA's analysis of 51 soil samples⁴⁴ collected from dairy farms owned by Relators McElmurray and Boyce, most of which were collected when forages were most toxic, prior to 1999. These samples

⁴³ Defendant Walker's written notes of his telephone calls to Defendants Risse, Gaskin, Brobst, Miller and others (November, 1998) (SC 00005-00010)

⁴⁴ Samples collected from Relator McElmurray's farm were single (grab) samples; each sample collected from Relator Boyce's farm was a composite of 10 sub-samples. For soil samples from non-dairy farms reported in the Gaskin paper, a composite sample was collected from each of 20 fields treated with Augusta's sewage sludge (10 fields treated for >6 years, 10 fields for <6 years) and each composite was a mixture of 12 sub-samples

showed that levels of heavy metals in soils from the affected dairy farms, for example, exceeded EPA's cumulative loading limit for molybdenum. In the Gaskin paper, Defendants only revealed results from 20 soil samples collected *in 1999* from farms *other than the Relators McElmurray's and Boyce's families' farms*. Even if Defendant Gaskin and her co-authors had a legitimate basis for excluding all of the samples UGA analyzed (which they did not), it was gross scientific misconduct on their part not to inform readers of the Gaskin paper that UGA had analyzed soil samples collected from farms where cattle deaths were attributed to hazardous wastes taken up by forages from Augusta's sewage sludge, that the samples were collected during the time when the forages became toxic, and that UGA found toxic levels of molybdenum and other heavy metals in the samples.

53. Defendant Gaskin and her co-authors were *intentionally and completely* deceptive from the beginning, when they chose not to disclose the true purpose of the Risse project. Specifically, the Risse project was funded, designed and conducted to assess whether Augusta's sewage sludge contained hazardous wastes that contaminated forages grown on dairy farms owned by the families of Relators McElmurray and Boyce and caused death

and injury to dairy herds as alleged in the McElmurray and Boyce lawsuits. Defendant Gaskin and the other authors also chose not to disclose that one of their co-authors, Defendant Brobst, headed EPA's BIRT, which was responsible for investigating the allegations in the lawsuits filed by the families of Relators McElmurray and Boyce. Defendants also chose not to disclose the fact that their co-author, Defendant Brobst, worked closely with attorneys for Augusta to prepare Augusta's defense in the lawsuits, which was based it upon the fraudulent Gaskin paper.

54. Based upon their "investigation" of cattle farms other than the McElmurray and Boyce farms, Defendant Gaskin and her co-authors falsely stated, contrary to Defendant Miller's own data, that the mean molybdenum concentration in soils historically treated with Augusta's sewage sludge was 0.089 mg/kg (S.D. ± 0.041).⁴⁵ This level of molybdenum is only one-hundredth of EPA's 1993-94 cumulative loading limit. Defendant Gaskin and co-authors also

⁴⁵ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage, *J. Environ. Qual.* 32:146-152 (2003), Table 3, p. 149.

falsely stated in their conclusions: "Recoverable metal concentrations ... were low compared with the USEPA Part 503 cumulative loading limits."⁴⁶

55. Defendants provided these false and misleading soil data to EPA Assistant Administrator G. Tracy Mehan III as a basis for dismissing allegations in the lawsuit filed by the family of Relator Boyce. These allegations were cited in a public petition calling for a moratorium on land application of sewage sludge which was filed with the EPA on October 7, 2003.⁴⁷

56. Mr. Mehan stated in his response to the October 2003 Petition:

EPA's BIRT also reviewed scientifically credible soil information from samples taken from the site and found that fields were within the range of national, uncontaminated background soil heavy metals for the metals in question (e.g., arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, selenium, and zinc).

57. This statement by Mr. Mehan, which was written by EPA employee Robert Bastian and Defendant Brobst, falsely states that BIRT reviewed "scientifically credible data" from soil samples collected from the dairy farm

⁴⁶ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, *Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage*, *J. Environ. Qual.* 32:146-152 (2003), *Soil Metals Concentration*, p. 149.

⁴⁷ Letter from G. Tracy Mehan, III, Assistant Administrator, EPA Office of Water to J. Mendelson, III (December 24, 2003) [<http://www.centerforfoodsafety.org/pubs/SewageSludgePetitionResponse12-22-03.pdf>]. Last accessed January 14, 2006

owned by the family of Relator Boyce. Mr. Mehan further states that these data proved that levels of molybdenum and other heavy metals in the soil were within background soil concentrations found in uncontaminated soils.

58. The “scientifically credible” data to which Mr. Mehan referenced were analyses of heavy metals in soil samples collected in 1999 by Augusta from the dairy farm owned by the family of Relator Boyce. These data were produced by Savannah Laboratories & Environmental Services, Inc. Data spreadsheets show that most analytical results were marked with “J” or “UJ,” meaning that the heavy metal concentration was an estimated quantity and that, when the metal was undetected, the detection limit was also estimated.
59. The degree of scientific certainty and validity of the analytical results associated with Augusta’s estimates of metal concentrations reviewed by Defendant Brobst was unknown; therefore, these data can by no means be legitimately characterized as “scientifically credible.” Certainly, Defendant Brobst had no scientific basis whatsoever for concluding that soils on the dairy farms owned by the families of Relators McElmurray and Boyce were not contaminated with toxic levels of heavy metals prior to 1999 based on estimates of their concentrations in samples collected in 1999. This is

especially true considering that UGA concealed *precise* analytical results of soil samples collected prior to 1999 from the dairy farms owned by the families of Relators McElmurray and Boyce, and the fact that these samples showed that toxic levels of molybdenum and other metals were present.

60. In addition to concealing even their own analyses showing the presence of illegally high levels of heavy metals in soil samples collected from the dairy farms owned by Relators McElmurray and Boyce, Defendants also chose not to acknowledge any of the analyses performed by Relators McElmurray's and Boyce's experts. These samples also proved that Augusta's sewage sludge contaminated the Relators' dairy farms with hazardous wastes.⁴⁸
61. Relators' data proved that Augusta's sewage sludge contaminated the Relators McElmurray's and Boyce's families' dairy farms with high levels of a wide variety of highly toxic heavy metals and other hazardous wastes, which local industries were illegally dumping into Augusta's wastewater

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- UGA soil samples from Relator Boyce's farm
- Opinion *McElmurray v. Augusta, Georgia*, Georgia Court of Appeals, Case No. A05A0262 (July 27, 2005)

treatment system, including cadmium, molybdenum, selenium, thallium, vanadium, and antimony.⁴⁹

62. The “can of worms” that Defendant Miller and his associates at UGA opened by analyzing soil samples from the dairy farms owned by the families of Relators McElmurray and Boyce for molybdenum from 1990 through 1999 did more than just prove that the soil data in the Gaskin paper were fraudulent. It revealed why Defendant Walker and others needed to cover up the Augusta cattle deaths, at any cost, and by any means necessary. The extent to which they were willing to commit scientific fraud is clearly evident from the fact that all three scientific pillars upon which Defendant Gaskin and her co-authors rested their conclusions, including Augusta’s historical data, the forage data, and the soil data, were equally and completely fraudulent.

Other Grants Based on False and Fabricated Data and Information: 2002-2005

63. The Gaskin paper, which Defendants knew was based entirely on false, fabricated, and misleading scientific information, was cited by the *National Academy of Sciences* in 2002 as its basis for dismissing allegations that

⁴⁹ A&L Laboratories soil sample data from Relator McElmurray’s farm.

Augusta's sewage sludge harmed dairy cattle.⁵⁰ Also, in 2003, the Assistant Administrator for EPA's Office of Water cited the Gaskin paper as his basis for rejecting conclusions derived from the Augusta lawsuit involving the Boyce family which was contained in a public Petition for a Moratorium on land application of sewage sludges.⁵¹ In these and numerous other cases and situations, the Gaskin paper published in 2003 brought national attention to Defendants' research programs, from which Defendants benefitted. Defendant Gaskin, for example, was elected Chair of the Residuals Recycling Committee for 2003-2004 and Co-Coordinator of the USDA/EPA funded Georgia Sustainable Agriculture Research and Education ("SARE") Advisory Committee. Defendants gained national attention and status by publishing the Gaskin paper with false and fabricated data. The false information in the Gaskin paper served as a springboard for

⁵⁰ National Research Council of the National Academy of Sciences *Biosolids Applied to Land: Advancing Standards and Practices*, National Academy Press (2002), fn., p. 52

⁵¹ Letter from G. Tracy Mehan, III, Assistant Administrator, EPA Office of Water to J. Mendelson, III (December 24, 2003) [<http://www.centerforfoodsafety.org/pubs/SewageSludgePetitionResponse12-22-03.pdf>]. Last accessed January 14, 2006

applying for additional funding under the SARE program and other sources of federal assistance.

64. Altogether, Defendants have submitted approximately nine additional applications for federal assistance, using false or fabricated data from the Risse project and Gaskin paper.⁵² Six of these applications, from which federal funds were awarded, have resulted in approximately \$1.6 million in damages to the United States. The remaining four, if funded, will result in approximately \$12.5 million in additional damages.
65. Similar violations to those that the Realtors discovered at UGA were recently prosecuted under the False Claims Act by the United States Attorney in Vermont. In that case, Dr. Eric T. Poehlman at the University of Vermont knowingly used false and fabricated scientific data to obtain federal research funds.⁵³ Dr. Poehlman resigned after an internal investigation by the University of Vermont determined that he was guilty of scientific

⁵² Defendant Gaskin, J. C. McKissick, \$15,000; Defendants Risse and Gaskin, \$60,000; Defendant Gaskin, M. Cabrera, M. Poore, D. Franklin, \$349,768; Defendant Gaskin, M. Latimore, \$20,000. Potentially funded: Defendant Gaskin, \$10,000; Defendant Gaskin, \$142,000; Defendant Tollner, *et al.* \$750,000 + \$2.7 million for pilot plant; K. Xia, Defendant Gaskin, *et al.* \$495,672; Defendant Miller, \$78,870 (Modification of previous grant).

⁵³ *United States v. Poehlman*, United States District Court of Vermont (Burlington), Case 2:05-cr-00038-wks-ALL (March 17, 2005); Complaint, Plea Agreement

misconduct. In the present case, multiple Defendants were involved at UGA, and their violations were far more egregious than the Vermont case.

66. In stark contrast to the actions taken by the University of Vermont, Defendants in the present case were actually encouraged and supported by UGA administrators, who placed a greater importance on increasing UGA's research funding than on maintaining scientific integrity and complying with the law. Here, Defendants, fully supported by UGA administrators at the highest levels, knowingly refuse to acknowledge and/or correct any of the false scientific data and continue to use the false information to obtain federal assistance.⁵⁴ These actions reveal a complete and callous disregard for scientific integrity and the public welfare at every level.

67. In addition to establishing the Risse project to discredit lawsuits filed by the families of Relators McElmurray and Boyce, Defendant Walker needed a base of operations at UGA from which he could work with the other Defendants

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- Letter from F. Edwin Hallman, Jr., Decker, Hallman, Barber & Briggs, to Defendant Gaskin (February 5, 2004)
- Memorandum from Dr. Regina Smith, UGA, to Arnett Mace, Gordhan Patel (April 19, 2004)
- Letter from Defendant Gaskin to F. Edwin Hallman, Jr. (April 21, 2004)

and the companies involved with Augusta's land application program to discredit Relator Lewis.⁵⁵

68. Relator Lewis was a GS-15 research microbiologist working for EPA's Office of Research and Development. He was assigned to UGA from December 1998 to November 2002. His previous research at UGA on HIV-transmission in dentistry, which was published in *Lancet* and *Nature Medicine* and widely covered by the international news media, led to the current heat-sterilization standard for dentistry adopted worldwide. Similarly, his groundbreaking environmental research was published in *Nature* and other leading science journals.
69. Beginning on December 1, 1998, and as part of his official EPA duties at UGA, Relator Lewis investigated adverse health effects linked to the land disposal of sewage sludge. His official EPA duties included investigating adverse health complaints reported by individuals exposed to sewage sludge produced by the City of Augusta, Georgia.
70. Defendant Gaskin and her co-workers became vocal opponents of Relator Lewis and his research while they were working on the Risse project. They

⁵⁵ OMI, Augusta, Georgia Sludge Management Program, Dewatered Sludge Amendment (November 16, 2000) (EPD 19203-31)

argued to UGA administrators that EPA had not approved Relator Lewis' research on sludge and that it was improper for UGA to allow him to do the work.⁵⁶

71. Defendant Gaskin's allegation that Relator Lewis' research at UGA was improper was the foundation for numerous allegations of scientific misconduct filed against Relator Lewis beginning in September 2000.⁵⁷ The goal of these concerted efforts between Defendant Gaskin and the other Defendants was to prevent Relator Lewis and his research at UGA, from uncovering the falsity of the Risse project and Gaskin paper. Relator Lewis had to be silenced by any means.

72. Defendant Walker also attacked Relator Lewis to discredit his research concerning health problems associated with land application of sewage sludge in general. EPA's Office of Inspector General, which published a report supportive of Relator Lewis' conclusion that 40 C.F.R. Part 503 lacked

⁵⁶ Lewis v. United States Environmental Protection Agency U.S. Department of Labor, Administrative Review Board, ARB Case No. 04-117

- Deposition testimony of Prof. Robert E. Hodson, Ph.D. (January 31, 2003)
- Deposition testimony of Prof. David K. Gattie, Ph.D., (January 2003)

⁵⁷

- Letter to UGA President, Michael Adams (September 28, 2000)
- Petition to Investigate Scientific Misconduct against David L. Lewis, Ph.D. (March 8, 2003)

an adequate scientific basis,⁵⁸ investigated Defendant Walker's actions in attacking Relator Lewis and his research.

73. The Office of Inspector General recommended, specifically, that disciplinary action be taken against Defendant Walker for distributing allegations of scientific misconduct against Relator Lewis under official EPA letterhead to Atlanta attorney Carol Geiger.⁵⁹ Ms. Geiger was an attorney representing Augusta in the lawsuits filed by the families of Relators McElmurray and Boyce. On December 11, 2001, Defendant Walker, as part of EPA's disciplinary action, informed Ms. Geiger that the allegations against Relator Lewis did not represent the EPA's views.
74. Also, on March 4, 2003, Assistant General Counsel, David Guerrero, informed the United States Department of Labor that, to EPA's knowledge, the allegations of scientific misconduct against Relator Lewis had no basis in any facts.⁶⁰

⁵⁸ EPA Office of Inspector General, Land Application of Biosolids Status Report (2002) 2002-S-000004

⁵⁹ Lewis v. United States Environmental Protection Agency U.S. Department of Labor, Administrative Review Board, ARB Case No. 04-117, ALJ Recommended Decision (March 4, 2003)

⁶⁰ Lewis v. United States Environmental Protection Agency U.S. Department of Labor, Administrative Review Board, ARB Case No. 04-117, Joint Stipulation (March 4, 2003)

75. On March 8, 2003, the same allegations that Relator Lewis had engaged in scientific misconduct, which EPA had dismissed, were filed with UGA as a formal Petition to Investigate Scientific Misconduct.⁶¹ The Petition was sent to Defendant Gaskin and one of her co-workers on Apr. 22, 2003.⁶² Defendant Gaskin and other Defendants used the allegations to attack Relator Lewis' credibility and his research concerning adverse health effects of sewage sludge. In particular, Defendants Gaskin and Walker hoped to neutralize Relator Lewis' ability to uncover and disclose the fraudulent nature of the science advanced by the Defendants in the Gaskin paper.
76. UGA forwarded the Petition about scientific misconduct to EPA on April 8, 2003.⁶³ After reviewing EPA policies concerning scientific misconduct, EPA determined on April 22, 2003 that "there is no basis to warrant investigation of Dr. Lewis for research misconduct."⁶⁴

⁶¹ Petition to Investigate Scientific Misconduct against David L. Lewis, Ph.D. (March 8, 2003)

⁶² Email to Dr. Bill Segars, copied to Defendant Gaskin (April 22, 2003)

⁶³ Letter from Dr. Judy Curry, UGA, to Dr. Rosemarie Russo (April 8, 2003)

⁶⁴ Memorandum from Frank Stancil, EPA, to Dr. Rosemarie Russo (April 22, 2003)

77. Despite knowing that EPA had dismissed the allegations as having no basis in any facts, UGA administrators renewed their efforts to use the allegations to create a cloud of alleged scientific misconduct over Relator Lewis and his research on sewage sludge. On or about November 2, 2004, Arthur Leed in UGA's Office of Legal Affairs requested that Dr. Garnett Stokes, Dean of the College of Arts and Sciences, initiate additional, new investigations into Relator Lewis' research on sewage sludge.⁶⁵
78. The purpose of these latest investigations, as was the case with other ongoing investigations, was to prevent Relator Lewis from further investigating the impacts of Augusta's sewage sludge applications to Relators McElmurray's and Boyce's families' farms.
79. Relator Lewis, completely independent of experts in the McElmurray and Boyce cases, concluded that hazardous wastes in sewage sludge impair the immune system and render chronically exposed humans and animals susceptible to infection. Thus, Relator Lewis, a UGA insider scientist, was on the verge of discovering that Defendants based the Gaskin paper upon false data and reached fraudulent conclusions. Defendants could not allow that

⁶⁵ Memorandum from Dean Garnett Stokes, UGA, to Prof. James. T. Hollibaugh (November 2, 2004)

possibility to develop any further; hence, Defendants undertook an all-out effort to neutralize Relator Lewis and his research at UGA.

80. Relator Lewis notified UGA on December 1, 2004 that he had ended all of his research on sewage sludge.⁶⁶ On or about December 10, 2004, the Petition against Relator Lewis was withdrawn.⁶⁷
81. On June 28, 2005, Relator Lewis requested that Dr. Judy Curry at UGA inform him of the status of its various scientific misconduct investigations into his research on sewage sludge. Dr. Regina Smith responded to Relator Lewis' request to Dr. Curry, stating that no conclusions/findings were reached regarding the Petition and allegations of scientific misconduct and that UGA's Legal Affairs Office was handing the latest investigation involving the request made of Dean Garnett Stokes.
82. By contrast, Dr. Smith purportedly assembled a panel to investigate the Gaskin paper, and without disclosing the identities of the purported "panel" members, determined that Defendants Gaskin, Miller, and Tollner did not knowingly publish false data. Dr. Smith informed UGA administrators that

⁶⁶ Memorandum from Relator Lewis to Prof. J. T. Hollibaugh (December 1, 2004)

⁶⁷ Letter to Prof. J. T. Hollibaugh (December 10, 2004)

no scientific misconduct had occurred. No action has ever been taken by Dr. Smith or any of the Defendants, or anyone else on behalf of UGA, to inform the publisher or any recipients of the Gaskin paper that it is based upon false data.

83. Based upon the facts herein, it is clear that Defendants, with the full support of UGA administrators, knowingly used false statements to prevent Relator Lewis from exposing problems with sewage sludge and Augusta's illegal activities, with which Defendants and others at UGA have become deeply involved. The reputations and financial interests of the Defendants and UGA were substantially tied to promoting land application of sewage sludge and preventing the publication of any information that would uncover the true state of affairs. The true state of affairs is that sewage sludge contains hazardous chemical and biological wastes that are causing widespread adverse effects on human health and the environment, and the Defendants and others at UGA and elsewhere are using false statements to illegally obtain federal funding to cover up these effects.

84. The record establishes and proves that Defendants were highly motivated to discredit Relator Lewis and Relators McElmurray's and Boyce's families'

lawsuits at any cost. To this end, Defendants knowingly used numerous false statements to illegally obtain federal funding and, with these illegally obtained funds, knowingly published false, fabricated, and intentionally misleading scientific data. When, for example, Defendant Walker first initiated communications with the Defendants on November 24, 1998 to discuss apparent problems created by Augusta's sewage sludge at the dairy farms owned by the families of Relators McElmurray and Boyce, he created a written record stating that Defendant Gaskin told him: "The University of Georgia is very concerned about the situation because they have been promoting the use of biosolids."^{68,69} Also, Relator Lewis' former department head at UGA, Professor Robert Hodson, testified under oath that UGA

⁶⁸ • Defendant Walker's written notes of his telephone calls to Defendants Risse, Gaskin, Brobst, Miller and others (November, 1998) (SC 00005-00010)

⁶⁹ *See also*, for example, an application for federal assistance by Defendants Risse and Gaskin, which states: "[UGA's] land application program will continue to work with various groups to promote the beneficial reuse of by-products in agriculture ... Specific goals are ... Develop educational programs to improve public perception and understanding of the benefits of land application programs ..."

administrators told him, explicitly, that the University did not wish to support Relator Lewis because it would hurt UGA's funding from EPA.⁷⁰

CAUSE OF ACTION
FALSE CLAIMS ACT

85. The Relators repeat and re-allege the allegations in paragraphs 1 through 84.
86. Between 1999 and the date of this Complaint, Defendants Risse, Gaskin, Miller, and Tollner, knowingly caused to be submitted approximately 10 grant applications, whereby they would obtain federal funds, by the use of false or fabricated data. Six of these applications have been funded, resulting in approximately \$1.6 million in damages to the United States. The remaining four, if funded, will result in approximately \$12.5 million in damages. Defendants caused these applications to be submitted, knowing that these applications contained false and fabricated information and/or with reckless disregard of their falsity, all in violation of the False Claims Act, 31 U.S.C. § 3729(a)(2).

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Lewis v. United States Environmental Protection Agency U.S. Department of Labor, Administrative Review Board, ARB Case No. 04-117; Administrative Law Judges, Case Nos. 2003-CAA-6, 2003-CAA-5; Deposition testimony of Prof. Robert E. Hodson (January 31, 2003)

RELIEF REQUESTED

WHEREFORE, the Relators request that the Court award judgment on their Complaint and award relief as follows:

- (a) that Defendants be ordered to pay treble damages calculated based upon the total amounts of the assistance agreements obtained from the United States Government, which contain false claims;
- (b) that Defendants be assessed the full amount of allowable civil penalties between \$5,000 to \$10,000 for each application containing false claims submitted prior to September 29, 1999 and between \$5,500 to \$11,000 for each application containing false claims submitted after September 29, 1999. 31 U.S.C. § 3729(a); 28 C.F.R. § 85.3(a)(9);
- (c) that Defendants be required to pay all costs of this action and attorneys' fees and expenses incurred by Relators;
- (d) that Relators, on behalf of the United States, receive a trial by jury on all issues so triable in this matter; and
- (e) that Relators, on behalf of the United States, be awarded all other such relief as this Court determines to be appropriate.

Respectfully submitted March 20th, 2006.



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COMPLAINT

David L. Lewis, Ph.D., R. A. McElmurray, III , and G. William Boyce (the "Relators") bring this action on behalf of the United States of America against the Defendants, John Walker, Ph.D., Julia W. Gaskin, Robert B. Brobst, William P. Miller, Ph.D., E. William Tollner, Ph.D., L. Mark Risse, Ph.D., Board of Regents of the University of Georgia System, University of Georgia Research Foundation, Inc., and John Doe(s), and allege as follows:

JURISDICTION AND VENUE

1. This action arises under the False Claims Act, 31 U.S.C. § 3729 *et seq.* This Court has jurisdiction in this case pursuant to 31 U.S.C. §§ 3732(a) and 3730(b), as well as pursuant to 28 U.S.C. § 1345 and 28 U.S.C. § 1331.
2. Venue is proper in this Court pursuant to 31 U.S.C. § 3732(a) because the acts proscribed by 31 U.S.C. § 3729 *et seq.*, and complained of herein, took place in this District.
3. Venue is also proper pursuant to 28 U.S.C. §§ 1331(b) and (c) because, at all times material and relevant hereto, Defendants have transacted business in this District.

PARTIES

4. Relator David L. Lewis, Ph.D. ("Relator Lewis") is a citizen of the United States and a resident of the State of Georgia. Relator Lewis was a senior-level (GS-15) Research Microbiologist in the Office of Research and Development for the United States Environmental Protection Agency (the "EPA") in Athens, Georgia. Relator Lewis is currently a Visiting Scientist at the University of Georgia ("UGA") Department of Marine Sciences and Adjunct Faculty member at UGA's Institute of Ecology.
5. Relator R. A. McElmurray, III ("Relator McElmurray") is a citizen of the United States and a resident of the State of Georgia. Relator McElmurray has been, at all times hereto and is now, an employee of R. A. McElmurray and Sons, Inc., the owner of a dairy farm in Richmond and Burke Counties, Georgia since 1946.
6. Relator G. William Boyce ("Relator Boyce") is a citizen of the United States and a resident of the State of Georgia. The Boyce family owned and operated Boyceland Dairy in Burke County, Georgia, from 1946.
7. Relators are the original source of the information provided herein to the United States. They have direct and independent knowledge of the

information upon which the allegations are based and have voluntarily provided this information to the Government, concurrent with the filing of this action under seal, as required by 31 U.S.C.A. § 3730(b)(2), before publicly proceeding with this action pursuant the False Claims Act.

8. Defendant Dr. John Walker (“Defendant Walker”), at all times relevant to this Complaint, was an employee of EPA and was the Biosolids Program Implementation Team Leader in the Office of Wastewater Management. Defendant Walker initiated and choreographed an EPA grant, which is the subject of this Complaint.¹ Defendant Walker assembled a group of researchers to carry out an EPA-funded, UGA project (the “Risse project”). The purpose of the grant, which funded the “Risse project” at UGA, was to investigate allegations in lawsuits filed against the City of Augusta by the families of Relators McElmurray and Boyce.² Defendant Walker can be served at 11356 Empire Lane, North Bethesda, Maryland 20852.

¹ Lawrence M. Risse, Julia W. Gaskin, William P. Miller, Richard McDaniel, *Metals Assessment for Burke and Richmond County Hayfields Receiving Biosolids*. EPA Assistance Agreement/ Amendment CX 827759-01-0 (August 5, 1999)

²

- Defendant Walker’s written notes of his telephone calls to Defendants Risse, Gaskin, Brobst, Miller and others (November, 1998) (SC 00005-00010)
- Memorandum from Defendant Gaskin to Tyson (December, 1998) (UGA 00062-63)

9. Defendant Dr. L. Mark Risse ("Defendant Risse"), at all times relevant to this Complaint, was an Associate Professor of Engineering in the Department of Biological and Agricultural Engineering at UGA and was an academic researcher conducting federally-funded research concerning agricultural pollution prevention, water quality, and animal waste management. Defendant Risse served as the Principal Investigator of the Risse project. Defendant Risse can be served at 4990 Colham Ferry Road, Watkinsville, Georgia 30677.
10. Defendant Julia W. Gaskin ("Defendant Gaskin") is a Land Application Specialist in the Department of Biological and Agricultural Engineering. At all times relevant to this Complaint, Defendant Gaskin was an academic researcher conducting federally-funded research concerning land application of sewage sludge, soil quality, and sustainable agriculture. Defendant Gaskin served as the Co- Principal Investigator of the Risse project and the Principal Author of Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage³ published in the Journal of

³ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage, J. Environ. Qual. **32**:146-152 (2003)

Environmental Quality (the "Gaskin paper"), which summarizes the results of the Risse project and is the subject of this Complaint. Defendant Gaskin can be served at 126 Brookview Drive, Hull, Georgia 30646.

11. Defendant William P. Miller ("Defendant Miller") is a Professor in the Department of Crop and Soil Sciences. At all times relevant to this Complaint, Defendant Miller was an academic researcher conducting federally-funded research concerning the chemistry of nutrients, trace metals and organic contaminants in waste products, including sewage sludge, and preventing contamination of soil, crops, and water from land application of such waste products. Defendant Miller served as the Co- Principal Investigator of the Risse project and co-authored the Gaskin paper. Defendant Miller can be served at 8112 Highway 334, Nicholson, Georgia 30565.
12. Defendant E. William Tollner ("Defendant Tollner") is a Professor in the Department of Biological and Agricultural Engineering. At all times relevant to this Complaint, Defendant Tollner was an academic researcher conducting federally-funded research under the Risse project and co-authored the

Gaskin paper. Defendant Tollner can be served at 1010 Rogers Road, Bogart, Georgia 30622.

13. Defendants Risse, Gaskin, Miller, and Tollner are employees of UGA in Athens, Georgia, and are subject to the jurisdiction of this Court.
14. Defendant Robert B. Brobst ("Defendant Brobst") at all times relevant to this Complaint, was an employee of the EPA and a member of a group known as the Biosolids Incident Response Team ("BIRT") at EPA, Region 8, Denver, Colorado. Defendant Brobst, at all times relevant to this Complaint, assisted Defendant Walker with the establishment, funding, and oversight of the Risse project and co-authored the Gaskin paper. Defendant Brobst can be served at 24583 Chris Drive, Evergreen, Colorado 80439.
15. Defendant Board of Regents of the University System of Georgia ("Defendant Board of Regents") is a corporation created by the Constitution of the State of Georgia and the Official Code of Georgia and is a "person" for the purposes of the False Claims Act. At all times relevant to this Complaint, Defendant Board of Regents was responsible for administering EPA Assistance Agreement CX 827759-01-0, and other assistance agreements,

which are the subject of this Complaint.⁴ Defendant Board of Regents can be served at 270 Washington Street, S.W., Atlanta, Georgia 30334.

16. Defendant University of Georgia Research Foundation, Inc. ("UGA Research Foundation") is a domestic non-profit corporation registered with the Georgia Secretary of State. Defendant UGA Research Foundation was responsible for administering EPA Assistance Agreement CX 827759-01-0, and other assistance agreements, which are the subject of this Complaint.⁵ Defendant UGA Research Foundation is a "person" and is, therefore covered by the False Claims Act. Defendant UGA Research Foundation may be served through its registered agent Patsy M. Orr, 604 Graduate Studies Building, Athens, Georgia, 30602.
17. John Doe Defendants are other parties who participated in, and/or facilitated, federally funded grants, contracts and cooperative agreements under the direction of Defendants and are liable for violations of the False Claims Act. These Defendants will be properly served and joined as parties as they are identified through discovery.

⁴ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112)

⁵ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112)

LEGAL BACKGROUND

18. The False Claims Act, a civil statute, imposes liability for treble the government's damages and civil penalties on anyone who "knowingly presents, or causes to be presented [to the United States] a false ... claim for payment or approval." 31 U.S.C. § 3729(a)(1). The definition of "knowingly" includes acting in "deliberate ignorance" or "reckless disregard" of the truth or falsity of the information. *Id.* § 3729(b). In addition, the United States may seek up to \$10,000 in penalties for each false claim submitted before September 29, 1999, and up to \$11,000 for each false claim submitted on or after September 29, 1999. *Id.* § 3729(a); 28 C.F.R. § 85.3(a)(9).

FACTUAL ALLEGATIONS

The Risse Project: 1998-2003

19. In 1998 and 2001, the families of Relators McElmurray and Boyce sued the City of Augusta, Georgia.⁶ The lawsuits alleged that sewage sludge processed by Augusta's Messerly Wastewater Treatment Plant, which was distributed as fertilizer and applied to Relator McElmurray's family's farm

⁶ *McElmurray, v. Augusta, Georgia*, Richmond County Superior Court, Civil Action File No. 2001-RCCV-126; *Boyce v. Augusta, Georgia*, Richmond County Superior Court, Civil Action File No. 2001-RCCV-111

from 1979 through 1990, and to Relator Boyce's family's farm from 1986 through 1997, with the exception of 1995, contained hazardous chemical wastes. Their lawsuits further alleged that heavy metals and other components in these hazardous wastes were taken up by forage crops and poisoned their dairy cows, killing hundreds of head of cattle.

20. Between November 20 and 24, 1998, Defendant Walker contacted Defendants Gaskin, Brobst, Miller, and Risse to begin assembling a group of researchers to carry out the Risse project to address the allegations in the lawsuits filed by the families of Relators McElmurray and Boyce.⁷ Defendant Walker, who worked in EPA's Office of Water in Washington, DC, was EPA's national spokesperson for promoting land application of sewage sludge as safe and beneficial to the environment.⁸ Defendant Brobst headed EPA's BIRT in Boulder, Colorado, which was touted as being in charge of investigating, on

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- Defendant Walker's written notes of his telephone calls to Defendants Risse, Gaskin, Brobst, Miller and others (November, 1998) (SC 00005-00010)
- Memorandum from Defendant Gaskin to Tyson (December, 1998) (UGA 00062-63)

⁸ Lewis v. United States Environmental Protection Agency U.S. Department of Labor, Administrative Review Board, ARB Case No. 04-117; Administrative Law Judges, Case Nos. 2003-CAA-6, 2003-CAA-5; Complainant's reply briefs

behalf of the EPA, the allegations in the lawsuits filed by the families of Relators McElmurray and Boyce.⁹

21. The primary purpose of the Risse project was to provide EPA with technical information that the Defendants could use to discredit the lawsuits filed by the families of Relators McElmurray and Boyce, which alleged that Augusta's land-applied sewage sludge caused death and injury to dairy cattle.¹⁰
22. On December 16-17, 1998, Defendant Brobst and officials with the Georgia Environmental Protection Division ("EPD") met with other Defendants to discuss the proposed study of the allegations in the lawsuits filed by the families of Relators McElmurray and Boyce.¹¹ The attendees of the

⁹ Letter from G. Tracy Mehan, III, Assistant Administrator, EPA Office of Water to J. Mendelson, III (December 24, 2003) [<http://www.centerforfoodsafety.org/pubs/SewageSludgePetitionResponse12-22-03.pdf>]. Last accessed January 14, 2006

¹⁰

- Memorandum from Defendant Gaskin to Tyson (December 1998) (UGA 00062-63)
- Letter from G. Tracy Mehan, III, Assistant Administrator, EPA Office of Water to J. Mendelson, III (December 24, 2003) [<http://www.centerforfoodsafety.org/pubs/SewageSludgePetitionResponse12-22-03.pdf>]. Last accessed January 14, 2006

¹¹

- Memorandum from Defendant Gaskin to Tyson (December 1998) (UGA 00062-63)
- Letter from G. Tracy Mehan, III, Assistant Administrator, EPA Office of Water to J. Mendelson, III (December 24, 2003) [<http://www.centerforfoodsafety.org/pubs/SewageSludgePetitionResponse12-22-03.pdf>]. Last accessed January 14, 2006

December, 1998 meeting decided that Defendant Brobst and the other Defendants would work closely together to:

- a. analyze historical data on application rates and chemical characteristics of Augusta's sewage sludge reported to the EPD;
- b. measure uptake rates of selected heavy metals by forage grown on land treated with Augusta's sewage sludge; and
- c. analyze heavy metal concentrations in soil samples collected from land historically treated with Augusta's sewage sludge.

23. Mr. Charles Gross in EPA's Office of Water provided Defendants with a Small Grant Application Kit containing the necessary forms to apply for federal assistance.¹²

24. On or about June 15, 1999, Defendants Risse, Gaskin, and Miller submitted their grant application to EPA for funding the Risse project.¹³ Mr. Gross was identified as the EPA Project Officer and selected Defendant Brobst to be the

¹² EPA Grant Application Kit including cover letter and training document (UGA 00066; 00035-60, 00162-185; 00216)

¹³ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112), Application Review Sheet - I.D. Number: X827759-01-0.

Technical Expert who would advise him as to whether the Risse project should be funded from the standpoint of being scientifically sound.¹⁴

False Statements in the Risse Project Grant Application: 1999

25. The Federal Grants and Cooperative Agreement Act of 1977 (the "FGCA Act") sets forth the legal requirements governing the use of federal funds by employees of state and local governments and by the private sector.
26. Defendants prepared and signed each application for a grant, contract, or cooperative agreement that is the subject of this Complaint, certifying that the statements in each application were true, complete and accurate.
27. Based upon statements and information provided by UGA, EPA employees certified that the Risse project "Meets Requirements of Federal Grant & Cooperative Agreement Act."¹⁵
28. The Small Grant Application Kit, which Mr. Gross provided to Defendants, warned against violating the FGCA Act when applying for federal assistance, including possible criminal penalties for violation of the FGCA Act. The first page in the Kit, which was provided to Defendants, stated:

¹⁴ Memorandum from C. Gross to F. Roth (July 12, 1999) (UGA 00085)

¹⁵ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112), Application Review Sheet - I.D. Number: X827759-01-0.

Please consider whether your proposal is for acquisition or assistance. The Federal Grant and Cooperative Agreement Act requires Federal agencies to use a **contract** to acquire property or services that directly benefit the Federal government. A **grant or cooperative agreement** must be used to transfer money, property, services, or anything else of value, that supports or stimulates an activity to accomplish a public purpose of assistance authorized by Federal statute. **The SF-424 is only used for submitting proposals for Federal assistance.**

The direct beneficiary is the determining factor as to whether a proposal is for acquisition or assistance. If the direct beneficiary is a state or local government or other recipient, and the purpose of the support or stimulation is authorized by Federal statute, then a grant or cooperative agreement is the proper legal instrument to use. If the direct beneficiary is EPA, then a contract is the appropriate legal instrument to use, and an SF-424 is not appropriate.

[Emphasis in original].

29. Because Defendants Walker and Brobst solicited the Risse project to directly benefit EPA's (specifically, BIRT's) investigations concerning allegations made in the lawsuits filed by the families of Relators McElmurray and Boyce, the only available proper legal instrument for obtaining federal funds was a contract and not a grant or cooperative agreement. Defendants, however, completed and submitted Form SF-424 for a federally funded assistance agreement (specifically, a Small Grant) in violation of the FGCA Act.¹⁶ To

¹⁶ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112)

circumvent the requirements of the FGCA Act, Defendants falsely claimed that the Risse project would not directly benefit EPA, and that EPA did not solicit the work, when, as the documents conclusively show, the exact opposite was true as to both issues, proving conclusively that Defendants' representations were false.¹⁷

30. Defendants also submitted false statements to circumvent portions of the FGCA Act requiring that the Risse project be openly competed. In doing so, Defendants failed to allow minority persons an opportunity to bid for the project which certain EPA employees, including Defendant Brobst, solicited. Specifically, the Defendants claimed, falsely, that Defendant Risse was the Principal Investigator and (in collaboration with Defendant Brobst) claimed that Defendant Risse was uniquely qualified to do the work.¹⁸ To the contrary, Defendant Risse had little, if anything, to do with the actual work, and the project involved routine environmental sampling and chemical analyses that could be performed by any of a number of research institutions

¹⁷ Memorandum from C. Gross to F. Roth (July 12, 1999) (UGA 00085)

¹⁸ Defendant Brobst's review of the Risse project proposal obtained through Freedom of Information Act request to EPA

in the area, including colleges, companies and other persons that are historically African-American.

31. Defendants also submitted false statements to circumvent portions of the FGCA Act requiring that the project include a formal Quality Assurance/Quality Control ("QA/QC") Plan containing rigorous QA/QC measures for all environmental data. Defendants, in collaboration with Defendant Brobst and Mr. Gross, falsely claimed that the duration of the project was too short for QA/QC measures to be necessary.¹⁹ Also, Defendants represented in the QA/QC section of their application for federal assistance that no forage samples would be collected under drought conditions, because the drought would cause the uptake rates of heavy metals to appear misleadingly low.²⁰ Defendants submitted their application with this representation in mid-June, 1999, several weeks after they were already collecting samples that were obtained during the severe drought, as Defendants were well aware. Defendants, in fact, collected all of their forage samples during severe

¹⁹ EPA Assistance Agreement/Amendment CX 827759-01-0, Completed Decision and Approval Recommendation, p. 3.

²⁰ EPA Assistance Agreement/Amendment CX 827759-01-0, SF-424, Application for Federal Assistance, QA/QC section (UGA 00194).

drought conditions,²¹ while never amending and gaining approval of their QA/QC commitments and/or requirements.

32. Defendants also submitted false statements to circumvent portions of the FGCA Act requiring that Principal Investigators and all other key personnel regarding the Risse project disclose all financial conflicts of interest and anything that may give the appearance of a conflict of interest. Specifically, Defendant Miller failed to disclose that the Messerly Wastewater Treatment Plant had previously paid UGA for him to analyze soil samples from the Relator McElmurray's family's dairy farm in 1994.²² Defendant Gaskin also failed to identify her previous sources of funding in her curriculum vitae, which was included in her grant application, such that any conflicts could be properly determined.²³ Also, Defendant Gaskin was closely associated with the UGA's programs that promoted land application of sewage sludge as safe and beneficial. Defendant Gaskin failed to disclose that she had initiated

²¹ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage, *J. Environ. Qual.* 32:146-152 (2003), *Materials and Methods*, p. 147

²² Letter from Defendant Miller to Moore, Messerly WWTP (1994) (UGA 00027-31)

²³ Curriculum Vitae of Defendant Gaskin included with EPA grant application (UGA 00159-60)

the proposed project at the request of Defendant Walker of EPA, the chief advocate of the safety of sewage sludge within the EPA. Defendant Walker, who was EPA's national spokesperson for promoting land application of sewage sludge as safe and beneficial, contacted the other Defendants about assisting with EPA's investigations of the allegations in the lawsuits filed by the families of Relators McElmurray and Boyce. Defendant Walker obtained in-house EPA funds for Defendant Brobst to investigate cattle deaths.²⁴

33. Defendants have been, and continue to be, well aware of their violations of the FGCA Act because an EPA Office of Inspector General audit of the manner in which UGA faculty use federal assistance agreements had previously uncovered many of these same violations of the FGCA Act in 1993 relating to federal assistance provided at that time.²⁵ In 1993, UGA's misuse of federal assistance agreements became the subject of high-profile

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- Defendant Walker's written notes of his telephone calls to Defendants Risse, Gaskin, Brobst, Miller and others (November, 1998) (SC 00005-00010)
- Memorandum from Defendant Gaskin to Tyson (December, 1998) (UGA 00062-63)
- Draft letter from Defendant Walker's to Assistant Administrator Perciasepe requesting internal EPA funds to support Brobst's investigations into cattle deaths (January 28, 1998)

²⁵ EPA Office of Inspector General Audit No. E1JBF2-04-0300-3100156 (Revised) (Mar. 31, 1993)

oversight hearings in both Houses of the United States Congress. These illegal agreements, which were the subject of the 1993 Audit by EPA's Office of Inspector General, were authorized by the same UGA official (Dr. Joe Key, Vice President of Research) who authorized the Risse project.²⁶

34. Thus, Defendants knowingly and illegally²⁷ obtained and used a federal assistance agreement to provide technical assistance in direct support of 40 C.F.R. Part 503, various related regulatory and policy decisions, and BIRT.

False and Fabricated Data and Information in the Gaskin Paper: 2003

35. On December 19, 2001, Defendant Gaskin, as the Principal Author, submitted the final version of the Gaskin paper to the *Journal of Environmental Quality*. It was accepted and published in the January-February 2003 issue.²⁸
36. In the Gaskin paper, Defendants represented, as being accurate, historical data regarding the characteristics and contents of Augusta's sewage sludge, uptake rates of heavy metals by forage plants grown on land historically

²⁶ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112), Application Review Sheet - I.D. Number: X827759-01-0

²⁷ In violation of the Federal Grants and Cooperative Agreement Act of 1977 and other federal and state laws

²⁸ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, *Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage*, *J. Environ. Qual.* **32**:146-152 (2003)

treated with Augusta's sewage sludge, and chemical analyses of soil samples collected from land historically treated with Augusta's sewage sludge. Based upon these purportedly accurate data, Defendants concluded in the Gaskin paper that Augusta's sewage sludge program complied with federal and state environmental laws and that its sewage sludge did not pose any significant risk to cattle. Defendants knew that these data and, in fact, all of their data, including sludge quality data, documentation of application rates, soil sample analyses, and analyses of forage samples, were unreliable, false, or fabricated.²⁹ Defendants, therefore, also knew that all of the conclusions

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- Letter from Defendant Miller to Moore, Messerly WWTP (1994) (UGA 00027-31)
 - Defendant Walker's written notes of his telephone calls to Defendants Risse, Gaskin, Brobst, Miller and others (November, 1998) (SC 00005-00010)
 - Memorandum from Laura L. Liggett to Jeffrey H. Larson regarding molybdenum levels in Augusta's sewage sludge (October 25, 1999)
 - Email from Glen Harris to Defendant Gaskin regarding molybdenum levels found on Relators' McElmurray's and Boyce's dairy farms (UGA 00061) (1998)
 - 1998 EPD Audit of Messerly WWTP (2000) (UGA 00221-29)
 - Defendant Miller's comments on draft version of the Gaskin paper (2001) (UGA 00435, 00442)
 - Email from Defendant Brobst to S. Shepherd, EPD, in which Defendant Brobst refers to Augusta's "sloppy" data (March 3, 2004) (UGA 03519-20)
 - Defendant Brobst's admission in that he excluded all data collected by Relators McElmurray's and Boyce's experts from the Gaskin paper (2003) (UGA 00274-75)
 - Deposition testimony of Augusta representative Allen Saxon that chemical analyses of Augusta's sludge were fabricated

in the Gaskin paper, which were based on these knowingly false, fabricated and misleading scientific data, were also false and/or misleading.

37. For example, Defendants included extensive amounts of unverified historical data concerning the alleged rates at which Augusta applied its sewage sludge to area farms.³⁰ Defendant Walker made a written record of his telephone conversation with Defendant Miller on November 25, 1998, stating that Defendant Miller “does not think there is good documentation of application rates of biosolids [by Augusta]. Data is often in gallons per field without the solids content.” In response, Defendant Walker suggested to Defendant Miller that he should just “estimate” the historical application rates from “gallonage” records and soil concentrations. This record proves that Defendant Walker was not only responsible for setting up the Risse project, but was directly involved from the very beginning in representing Augusta’s unreliable and false historical data as scientifically credible. This

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- Deposition testimony of Augusta land application supervisor Hugh Avery that land application rates were fabricated
 - UGA analyses of soil samples from Relator McElmurray’s dairy farm
 - UGA analyses of soil samples from Relator Boyce’s dairy farm
 - A&L Laboratories’ soil sample data from Relator McElmurray’s dairy farm

³⁰ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, *Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage*, *J. Environ. Qual.* 32:146-152 (2003), Tables 1, 2, p. 148.

representation was made in the Gaskin paper and various EPA-published reports, including one baseline opinion report issued by EPA Assistant Administrator G. Tracy Mehan, III.³¹ Defendant Walker assisted other Defendants in covering up fraud perpetrated by Augusta by helping Defendants craft and publish false, fabricated, and misleading scientific data in the Gaskin paper.

38. An audit of the Messerly Wastewater Treatment Plant (“WWTP”) in December of 1998, and extensive sworn testimony in Court proceedings prior to the Gaskin paper, disclosed conclusively that Augusta’s records concerning its land application program were unreliable and fraudulent.³² Employees of the WWTP admitted under oath that these data, which were later relied upon in the Gaskin paper, had been falsified by employees of Augusta. For example, actual concentrations of constituents in Augusta’s sewage sludge data were four orders of magnitude higher than the data

³¹ Letter from G. Tracy Mehan, III, Assistant Administrator, EPA Office of Water to J. Mendelson, III (December 24, 2003) [<http://www.centerforfoodsafety.org/pubs/SewageSludgePetitionResponse12-22-03.pdf>]. Last accessed January 14, 2006

³² 1998 EPD Audit of Messerly WWTP (2000) (UGA 00221-29)

showed which was reported to the EPD.³³ Defendants, including Defendants Gaskin and Miller, knew that the data reported by Augusta were unreliable when they submitted the Gaskin paper to the scientific journal for publication. Defendant Miller, for example, wrote the following note on the final version of the manuscript when he reviewed the final version and forwarded it to Defendant Gaskin:³⁴ “We should fess up here that we DON’T Know exact rates of application, or specific characteristics of sludge applied ...??”

39. While the Gaskin paper was being prepared, EPD employees assisted in covering up Augusta’s illegal dumping of hazardous wastes through its land application program. For example, one EPD employee stated:³⁵ “...Jeff [Larson] told [EPD employees] that due to the scrutiny that the Augusta case

³³ *McElmurray, v. Augusta, Georgia*, Richmond County Superior Court, Civil Action File No. 2001-RCCV-126; *Boyce v. Augusta, Georgia*, Richmond County Superior Court, Civil Action File No. 2001-RCCV-111

- Deposition testimony of Augusta representative Allen Saxon
- Deposition testimony of Augusta land application supervisor Hugh Avery

³⁴ Defendant Miller’s comments on draft version of Gaskin paper (2001) (UGA 00442).

³⁵ Record of Communication: Westby Slade, NewFields, telephone call to Laura Liggett, EPD (May 19, 2000)

was generating, if they had [any] embarrassing material in their files, they should get rid of the document.”

40. To collect soil data on farms historically treated with Augusta’s sewage sludge, Defendants selected only non-dairy farms for sampling to use in the preparation of the Gaskin paper. Moreover, Defendants did not acknowledge in their paper that they had disregarded all results from all samples collected by experts for the dairy farms owned by families of Relators McElmurray and Boyce, which revealed toxic levels of many of the heavy metals addressed in the Gaskin paper.³⁶ Worse yet, the Defendants did not acknowledge that one of the co-authors of the Gaskin paper, Defendant Miller, assisted by his associates at UGA, had analyzed soil samples from Relators McElmurray’s and Boyce’s dairy farms and found high levels of nitrates and heavy metals.³⁷

³⁶

- Defendant Brobst’s admission in that he excluded all data collected by Relators McElmurray’s and Boyce’s experts from the Gaskin paper (2003) (UGA 00274-75)
- A&L Laboratories’ soil sample data from Relator McElmurray’s dairy farm

³⁷ Letter from Defendant Miller to Moore, Messerly WWTP (1994) (UGA 00027-31)

41. Contrary to assurances by Defendants in their application for federal assistance that no forage samples would be collected under drought conditions,³⁸ all of the forage samples used in the Gaskin paper were, in fact, collected during a time of severe drought.³⁹ Defendants truthfully explained in their application for federal assistance that natural processes responsible for transporting metals from soil into forage require water and that analyses of samples taken during a drought will not yield results accurately reflecting the presence of contaminants in sewage sludge applied to soil. As Defendants stated, because there is no water to transport metals from the soil and into the plants during drought conditions, the levels of metals found in forage samples collected during a drought would be misleadingly low.
42. When Defendants published the information they obtained from analyses of forage samples collected during the drought, they stated that these data may actually be higher than what would be the case had the samples been

³⁸ SF-424 and C&G Subcontract Agreement, signed by Joe L. Key, Vice President of Research, UGA (June 28, 1999) (UGA 01112)

³⁹ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage, J. Environ. Qual. 32:146-152 (2003), Materials and Methods, p. 147.

collected under normal rainfall conditions.⁴⁰ There is no scientific basis for Defendants' speculation that plants, under drought conditions, may take up larger amounts of metals from soil treated with sewage sludge. Defendants did not cite any supportive references or present any rationale for such a clearly spurious statement. Moreover, Defendants never amended their QA/QC plan submitted to EPA with their application, and never gained approval of their radical, scientifically unsupported speculation that valid forage samples could be obtained during a period of severe drought.

43. Defendants fabricated their speculation that concentrations of cadmium and other heavy metals in forage samples could be *higher* compared with samples of forage grown under normal (non-drought) conditions, so that Defendants could argue that concentrations of heavy metals in forage grown on land treated with Augusta's sewage sludge prior to 1999 (during non-drought conditions) would have been even lower than the low values that they reported in the Gaskin paper.

⁴⁰ Julia W. Gaskin, Robert B. Brobst, William P. Miller, E. William Tollner, *Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage*, *J. Environ. Qual.* **32**:146-152 (2003), *Conclusions*, p. 150-151.