

Appeals court reverses sludge suit ruling

By Rob Pavey | Staff Writer
Wednesday, July 13, 2005

Georgia's Court of Appeals has reversed portions of a Superior Court judge's 2004 ruling that dismissed a Richmond County family's claim that dairy cattle and land were poisoned by sewage sludge. R.A. McElmurray & Sons sued the city of Augusta in February 2001, claiming that sludge from the Messerly Wastewater Plant spread on pastures as free fertilizer from 1979 to 1990 contained heavy metals that poisoned the cattle.

The city denied those claims on several grounds, including contentions that Georgia's statute on sovereign immunity prevented the McElmurrays from proceeding with the complaints.

In a 4-3 decision, the appeals court concluded that the trial judge, Carlisle Overstreet, erred in granting summary judgment in the city's favor on grounds of sovereign immunity - a legal concept that shields governments from certain claims.

Justices affirmed other portions of Judge Overstreet's ruling, which dismissed the McElmurrays' claims of inverse condemnation, breach of contract and violations of Georgia's Hazardous Sites Response Act. The ruling, which is subject to further appeal by the city, could clear the way for the case to go to trial in Augusta, said Ed Hallman, one of the McElmurrays' lawyers.

Bill Ellison, one of Augusta's lawyers in the case, said it is likely the city will ask for reconsideration or seek review of the matter before the Georgia Supreme Court.

A similar sludge case, tried in June 2003, yielded a \$550,000 judgment for the Boyce family and Boyceland Dairy of Keysville, Ga., over similar claims. The Boyces had sought \$12.5 million.

Sludge is a byproduct of sewage treatment. Millions of gallons of material from the Messerly Plant were applied to the McElmurray and Boyce farms until the families withdrew from the city's land application program. According to city records, legal fees and other costs associated with the two lawsuits totaled \$3,395,666, including the \$550,000 jury award in the Boyce case.

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From the Thursday, July 14, 2005 printed edition of the Augusta Chronicle