

# DECKER, HALLMAN, BARBER & BRIGGS

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

F. EDWIN HALLMAN, JR.  
(404) 588-2525 Direct  
e-mail: [feh@d-h.com](mailto:feh@d-h.com)

260 PEACHTREE STREET, N.W.  
SUITE 1700  
ATLANTA, GEORGIA 30303  
(404) 522-1500 MAIN  
(404) 577-9149 FACSIMILE

March 12, 2004

## **BY FEDERAL EXPRESS**

Honorable Barbara Cubin, Chairman  
Subcommittee on Energy and Mineral Resources  
United States House of Representatives  
Room 1626  
Longworth House Office Building  
Washington, DC 20515

Attention: Kathleen Benedetto

Re: The Impact of Science and Public Policy  
Supplement to Testimony of Dr. David Lewis given on February 4, 2003;  
Reply to February 27, 2004 letter from James W. Ellison; and,  
Reply to EPA's Letter Denying the Request of the Center For Food Safety

Dear Chairman Cubin:

## **I. INTRODUCTION**

As attorney for the Boyce and McElmurray dairy farms in Augusta, Georgia, I am writing to address the issues raised in (1) a letter dated February 27, 2004 and addressed to you from James Ellison, attorney for the City of Augusta, Georgia. (Exhibit 1 hereto) and (2) a letter dated December 24, 2003 from G. Tracy Mehan, former Assistant Administrator for the Office of Water at the United States Environmental Protection Agency (the "EPA"), who makes many untrue statements in his letter about my clients's two dairy farms. His statements are based on information provided to the EPA by Mr. Ellison, the attorney for Augusta, Georgia. With this letter, I am enclosing Exhibits numbered 1 through 33.

This letter, and the enclosed documents, are also intended to supplement Dr. David Lewis' testimony at the February 4, 2004 hearing before the Subcommittee. Dr. Lewis' testimony described abuse by EPA employees and others of scientific peer-review and Quality Assurance/Quality Control (QA/QC) procedures supposedly implemented within the EPA. Dr. Lewis described EPA's

documents and representations which are directly and conclusively contradicted by specific, detailed and unrefuted information in the possession of the EPA.

To assist you in your evaluation of EPA's conduct, this letter will address the distortions of the truth continually made by certain EPA employees and others in support of the land application of sewage sludge, without regard for the truth and the resulting costs in damages to natural resources, animal life, and human beings.

In particular, I provide herein additional evidence regarding numerous false statements made by EPA employee, Robert Brobst, who relied upon Mr. Ellison, Augusta's attorney, as the EPA's primary source of information regarding the impacts of sewage sludge upon the Boyce and McElmurray farms. Mr. Brobst is the second author of the peer-reviewed journal article published by Julia Gaskin and other faculty members of the University of Georgia, which, as Dr. David Lewis testified before your Subcommittee, was based upon data about sludge applications by the City of Augusta which these persons represented to be scientifically reliable and accurate. These representations by Mr. Brobst and the UGA authors that Augusta's data were accurate were made when Mr. Brobst knew that the data were found by State government officials to be completely unreliable. The Georgia Environmental Protection Division ("the EPD") found in December of 1998, previously, and subsequently, that the data used by Mr. Brobst and the UGA authors were unreliable. More importantly, sworn testimony in the *Boyce* and *McElmurray* lawsuits proved conclusively that the data were fraudulently created to hide the truth about the contents of Augusta's sewage sludge. Much of this information, which is extensive, will be detailed in this letter. Enclosed as Exhibit 12 with this letter is a copy of my letter dated February 4, 2004, to Ms. Gaskin, in which I detailed the lack of credibility of the data used by the EPA and Ms. Gaskin in her article.

I respectfully submit that you will find herein the basis for many questions which should be asked of EPA employees by your Subcommittee and EPA's Inspector General. These questions should focus upon the role which EPA employees played in working closely with representatives of the City of Augusta and others to defend EPA's policies on land application of sewage sludge at all costs, even publishing data the EPA knew to be fraudulent. The proof which is in the enclosed exhibits is conclusive that, in so doing, these EPA employees, in concert with others, have misrepresented the scientific facts relating to damages sewage sludge inflicted on the two dairy farms near Augusta. Mr. Brobst and others at the EPA have facilitated the dissemination of false statements and the City of Augusta's fraudulent data for the express purpose of covering up the EPA's complete and total mismanagement of its biosolids programs.

After your review of this submission and its enclosures, we request that you forward it to the Office of Inspector General of the EPA and request a formal investigation into these matters.

**II. LETTER DATED FEBRUARY 27, 2004 FROM  
AUGUSTA, GEORGIA'S ATTORNEY**

After Augusta's attorney defended the City of Augusta's and The United States Environmental Protection Agency's ("EPA") sewage sludge programs to the Subcommittee in the February 27, 2004 letter (Exhibit 1 hereto), his client, the City of Augusta, on March 9, 2003 decided to let the jury's verdict in favor of our clients, the Boyce family, stand.

Contrary to Mr. Ellison's false assertions in his February 27 letter, in June of 2003, the jury in Richmond County, Georgia, found that sewage sludge spread by the City of Augusta on the Boyce dairy farm damaged the land and caused illness and death in the dairy cattle. The City of Augusta has paid the Boyce family \$596,000.00 in damages, which is the amount of the June 2003 jury verdict of \$550,000, plus interest. The verdict, judgment, and payment of the judgment establish a factual record that sewage sludge can pose severe harm to the human food chain, the environment, and our natural resources. See Exhibit 4 enclosed herewith.

Augusta's attorney, Mr. Ellison, is a master at making untrue and misleading statements. He simply "testifies" as if he is an expert, without any factual support for his statements. The latest examples are found his February 27 letter. (Exhibit 1). In this letter, Mr. Ellison seemingly tried to create the illusion that it makes a scientific difference that the cows on the McElmurray and Boyce farms that became sick from eating forages fertilized with the City of Augusta's sewage sludge were already dead when liver samples were taken. Therefore, the samples that Dr. Lewis referenced in a draft version of his testimony as "biopsies" should have been called "necropsy" samples. Mr. Ellison, who argued semantics, then proceeded to falsely claim that the Boyce and McElmurray farmers' veterinarian, Dr. Chip Pritchard, did not agree that heavy metals were present in the liver samples at sufficient levels to cause toxicity and result in the death of the cows. A reading of Dr. Pritchard's lengthy sworn statements about both farms directly refutes this untrue claim. We will be pleased to provide the expert sworn testimony of Dr. Pritchard as desired.

In liver and kidney tissue samples from the Boyce and McElmurray cattle, experts for the dairy farms found elevated levels of a wide variety of the same heavy metals which were present in excessive, illegal concentrations in the Augusta sewage sludge samples. These constituents included cadmium, molybdenum, zinc, and copper. Some of these metals (e.g., copper and zinc) were present at levels that were toxic, even in the absence of any other heavy metals. For the majority of the time, molybdenum was ignored and, when analyzed, exceeded regulatory limits. For example, in 1995 and 1996, the molybdenum levels were sufficiently elevated in liver samples to affect the molybdenum-to-copper ratios, which determine the toxicity of levels of molybdenum. Even the City of Augusta's own witnesses during the Boyce trial admitted that the molybdenum-to-copper ratios in the forage exceeded the minimum toxic level. The City of Augusta, without ever telling the dairy

farmers, spread sludge on their lands which contained PCBs, mercury, cobalt, chlordane and many other dangerous constituents at high levels. See Exhibit 23 enclosed herewith.

Apparently, Augusta's attorney, Mr. Ellison, asserts that molybdenum was not present at toxic levels in liver samples, if one considers the level of the metal which, by itself, would not be toxic. This logic suggests that a person could get away with murder simply by feeding someone a lethal mixture of arsenic and lead in which neither substance alone is present at sufficient levels to cause death. The history of Augusta's sludge applications shows that not a single application of sewage sludge made by Augusta was correctly analyzed or recorded, and the information that was provided showed unacceptable levels of heavy metals and other constituents with respect to the loadings on the farm lands. See, for example, Exhibits 2, 3, 8, 9, 14 and 23 enclosed herewith.

The many experts for the Boyce and McElmurray farms concluded that elevated levels of each of the heavy metals and other constituents, in combination, damaged the dairy cows' immune systems. This, in turn, led to a variety of illnesses, including various infections, which resulted from the cows' depressed immune systems. In their weakened state, caused by the sludge poisoning, the herds experienced outbreaks of infections such as *Salmonella*. The farmers' experts concluded that increasing levels of cadmium, which resulted as soil pH dropped with successive applications of highly acidic sludge, was the "spark that started the fire" at both dairy farms. The jury in the Boyce case certainly agreed with the farmers' experts.

The exhibits sent with this letter prove that the City of Augusta's sludge did not, at any time, comply with federal or state regulations for heavy metals and other regulated contaminants. Forage for the dairy herds was grown on the lands upon which the City of Augusta spread, and in many cases dumped, its sludge. After years of ingesting the contaminated forage, milk production at the Boyce and McElmurray dairy farms plummeted and the cattle began to waste away. To test whether sewage sludge was causing the herds' illness, dairy cows at the Boyce farm cattle which had been impacted were taken off of the home grown feed and were fed forage grown on fields which had not received sludge. Sick cattle that were fed forage from a field that was not fertilized with sludge soon recovered.

The experts, including the farms' veterinarian, toxicologist, soil scientists, and nutritionists, came to the same conclusion that Dr. Lewis and his co-workers published in leading peer-reviewed science journals regarding illnesses among humans and animals exposed to sewage sludge. Sewage sludge contains mixtures of heavy metals and other potentially toxic materials that damage the natural defenses to infection. Our experts independently arrived at the same scientific conclusions as Dr. Lewis and his co-workers. This scenario speaks to the fact that Dr. Lewis' research has been independently corroborated by other scientists. See Exhibits 14 and 23 enclosed herewith.

### **III. PETITION FOR SLUDGE MORATORIUM**

#### **A. Background of EPA's Mehan Letter**

The Boyce and McElmurray dairy farms were discussed in an October 7, 2003 Petition filed with the EPA by the Center for Food Safety on behalf of itself and 72 other organizations. That Petition requested that the EPA place an immediate moratorium on the land application of sewage sludge, largely because of the wealth of information showing that the EPA has horribly mishandled the program and that sewage sludge applied under EPA's mismanaged program is dangerous.

In response to this Petition, Mr. G. Tracy Mehan, III, who represented himself to be the "Assistant (sic) Administrator" of the EPA at the time, issued a letter dated December 24, 2003 (the "Mehan letter") which purports to address and refute points made in the Petition. My letter specifically addresses the Mehan letter in order to:

1. respond to statements made in Section 5 of the Mehan letter, which are based on false statements made by the City of Augusta's attorney;
2. provide data that refute the conclusions in Section 5 of the Mehan letter in which he discusses the Augusta dairy farms; and
3. request an investigation by the EPA's Office of Inspector General regarding the egregious, false statements made in the Mehan letter, which Mr. Mehan either knew to be false, or other EPA employees who knew they were false prepared them for Mr. Mehan's signature.

I have attempted to locate Mr. Mehan in order to discuss the many false statements made in his letter. I have learned, however, that Mr. Mehan resigned his position with the EPA in November of 2003. His letter, which is represented to be the official position of the EPA, is dated after the date of his resignation. It appears that those behind the Mehan letter have conveniently failed to inform the recipients of the letter that Mr. Mehan wrote it after he resigned. It is abundantly clear that the Mehan letter, which is not in the form of sworn testimony, was choreographed such that Mr. Mehan could not be held accountable for his egregious actions in making numerous false statements. It is certainly warranted for all recipients of the Mehan letter to label it as a statement contrived by supporters of EPA's sewage sludge program who convinced Mr. Mehan to unwittingly sign it, without his independent verification of the assertions therein. The fact that Mr. Mehan, at best, wrote the letter as a "lame duck," and signed it after his resignation, is sufficient reason in and of itself to disregard the letter as the official position of the EPA.

It is my understanding that those knowledgeable about other sections of the Mehan letter will respond about untrue statements in those sections as well, and make similar requests for an investigation by the EPA Office of Inspector General.

Certain EPA officials obviously believe that they can make categorically untrue statements based on fraudulent scientific data, and continue on with business as usual without any accountability to the EPA Administration, Congress, and the public. Some EPA officials, including employees with the "Biosolids Incident Response Team" ("BIRT"), routinely communicate untruths as their normal pattern of behavior. They do so to such an extent that they must believe that their fabrications somehow become a factual record if they are published in the peer-reviewed scientific literature and certified by an EPA Assistant Administrator. This letter, hopefully, will prevent these individuals from getting away with creating a non-existent history in order to rewrite the horrendous track record of EPA's land application programs in Augusta, Georgia.

**B. Review of Section 5 of The Mehan Letter**

Section 5 of the Mehan letter is entitled "Death of 300 Cattle and Farmland Contamination." The dairy farmers, the Boyce family and the McElmurray family, who are the targets of Section 5 of the Mehan letter, do not believe that people with integrity in Congress and at the EPA will allow the abusive behavior and outrageous conduct of Robert Brobst and others to continue. As Edmund Burke said, "The only thing necessary for the triumph of evil is for good [people] to do nothing."

Notwithstanding the proven and admitted history of the City of Augusta's willful fabrication of completely unreliable scientific data, and the City's spreading of hazardous wastes on farms in the Augusta area, Mr. Mehan included only selective, false and misleading scientific information in his letter. Mr. Mehan only drew upon information supplied by the City Attorney for Augusta and BIRT individuals' untrue assertions. Specifically, he only disclosed the BIRT's and the City of Augusta's attorney's distortions of the truth. Moreover, Mr. Mehan never forwarded any of this information to the undersigned, the Boyces or McElmurrays, for review or comment, and he is now unavailable for discussion. Such conduct obviously circumvents any possibility of achieving a verifiable and valid response from the EPA to the Petition.

The Mehan letter asserts that the City of Augusta's sewage sludge application data were accurate and in compliance with applicable laws when the sewage sludge was applied to the Boyce and McElmurray farm lands. Mr. Mehan is seemingly unaware that uncontradicted documents prove that not a single application of sewage sludge by the City of Augusta made on the Boyce and McElmurray farms complied with applicable laws. In addition, it is unrefuted that the City of Augusta has knowingly placed hazardous wastes on these farm lands, has consistently failed to report accurate volumes of sewage sludge which were applied to the lands, and has inaccurately reported

the contents of sludge applications to government agencies. Furthermore, the City of Augusta and the EPA, for more than 20 years, ignored state government audits of this federal program, which, upon review, disclose that the City of Augusta was not requiring industries in Augusta to quantify hazardous materials being discharged in the sewage sludge, and has admitted to creating numerous versions of the same data in an attempt to obfuscate the truth by “cooking the books”. Not only have experts for the farms uncovered such conduct, but, the EPD documented all such actions from 1978 through December, 1998, and stated in an audit in 1998 that the sludge program should be “shut down.” See Exhibits 2 and 3 enclosed herewith.

Section 5 of the Mehan letter is an attempt to deflect attention from the true facts, by referencing and discussing data about sludge applications which occurred in 1999 upon lands which are not part of my clients’ dairy farms. The data described by Mr. Mehan did not even exist at the times of sludge applications to these farms. The data which Mr. Mehan references were “re-created” after the fact as the City tried to establish a record for the Court based on laboratory records that auditors found to be incomplete and completely unreliable. In the end, the City ended up with four different sets of calculations for the same data, none of which could be shown to be accurate. It is simply not possible that, out of this mess, Gaskin and co-authors created a scientifically reliable set of analytical data for publication. Furthermore, the Mehan letter manufactured alleged testimony from experts, when no such testimony has ever existed. Amazingly, Mr. Mehan tries to convince the reader of his letter that data created after January 1, 1999, regarding unrelated properties, somehow proves that there are no problems with the Boyce and McElmurray lands.

As will be made clear in this letter, the distortions and misrepresentations of data, testimony, and the applicable laws found in the Mehan letter constitute violations of the public trust, intellectual dishonesty, academic fraud, misstatements of clear, applicable environmental laws, scientific misconduct, and criminal conduct in violation of 18 U.S.C. § 1001. We are confident that the EPA’s Office of Inspector General and the Administrator of the EPA will finally see the depth of corruption which is present and has been allowed to flourish under the EPA’s sewage sludge land application program. It is clear that the BIRT will use any dishonest means available to cover up this corruption; and, the Mehan letter is clear proof that this corruption has reached the highest levels within the EPA.

In this letter, I will quote misstatements of fact and law knowingly made by those who drafted the Mehan letter, and I will respond to each false statement. If Mr. Mehan stands by his response, these comments are addressed to him directly. If Mr. Mehan was deceived by those who work for him, he, or the EPA employee who replaces him, should admit that deception immediately.

At the outset, it must be realized that neither Mr. Mehan nor anyone else requested that I review and comment upon the “findings” in his letter, even though he uses my name and he

references my alleged actions several times. The failure to ask for my comments so that he might address them is not acceptable when issuing an “official” decision, such as the Mehan letter. For example, Mr. Mehan did not seek my review and comment upon a letter which he states that he received from the attorney for the City of Augusta. Neither Mr. Mehan nor the attorney for the City of Augusta sent a copy of any such letter to me for comment. Mr. Mehan and Mr. Ellison are clearly aware that I am counsel of record for the Boyce and McElmurray families, the Plaintiffs in the two lawsuits against the City of Augusta. I was in trial with the City of Augusta’s attorneys during the *Boyce* trial for several weeks in June of 2003, which resulted in a jury verdict and judgment in favor of the Boyce family. There is no reason, therefore, for the failure to seek my comments before issuance of the Mehan letter, other than an attempt to prevent me from telling the truth and correcting such untruths. In like fashion, the City Attorney sent the February 27 letter to this Subcommittee, without copying it to me.

Indeed, the entire findings in Section 5 of the Mehan letter are a blind acceptance of the factual and legal assertions of the City of Augusta’s attorney, as if they are unquestioned, even though Mr. Ellison has never cited to a single verified fact, law, or legal precedent in his letter. The EPA Inspector General can readily determine that virtually all of the information in the Mehan letter was provided by Mr. Ellison of Augusta, Georgia and Mr. Brobst of the EPA, without any evidence to support the statements they made.

The sole purpose of the Mehan letter is to protect the EPA’s sewage sludge land application program, notwithstanding the reality that the City of Augusta’s sewage sludge was and is hazardous waste, as defined by the very laws which Mr. Mehan was commissioned to enforce. See Exhibits 14 and 23.

**C. Specific False Statements in the Mehan Letter**

In this response to Mr. Mehan’s untrue assertions about the *Boyce* and *McElmurray* cases, I will quote from statements made in the Mehan letter and provide my responses to such statements, proving that such statements are false, as follows:

1. Mehan letter False Statement: When describing the history of the *Boyce v. City of Augusta* litigation on page 10, Mr. Mehan states:

*Specifically, claims of violations of the federal CWA and Resource Conservation and Recovery Act (RCRA), and several state common law claims were made. The Plaintiffs withdrew four of the claims and the federal judge dismissed the remainder of the case in August 2000.*

Response: The Mehan letter intentionally distorts and misstates the history of the federal, and later state, litigation relating to the Boyce Dairy by echoing Augusta's attorney's false rendition of the truth. Mr. Mehan no doubt obtained his information directly from Mr. James Ellison, Augusta's lawyer, who notoriously attempts to: (1) create a history that does not exist; and (2) testify as if he is an expert, without any actual expert or evidentiary support.

In the *Boyce* and *McElmurray* lawsuits, the citizen suit claims, and the current state court claims, are based upon the federal Clean Water Act , 33 U.S.C.A. § 1365 ("CWA") and the Resource Conservation and Recovery Act, 42 U.S.C.A. § 6972 ("RCRA"). The citizen suit claims under these statutes were originally asserted in a federal lawsuit to require the enforcement of the laws applicable to the creation and land application of sewage sludge. Congress mandates that these laws are to be enforced by the EPA and the state agencies with authority delegated by the EPA, in this instance, the EPD. These claims were withdrawn by the Boyce family as separate claims because, during discovery in the case, the Boyces had uncovered documentation that the EPD, on behalf of the EPA and the State of Georgia had, in fact, conducted investigations of the City of Augusta's sludge program. Those investigations occurred from 1978 through and including all of the time period during which sludge had been applied to the Boyce farm lands, with a final audit of many years of data occurring in December, 1998. The investigations proved that there were illegal productions and applications of sewage sludge to the Boyce lands from the inception of the program in Augusta. See Exhibits 2, 3, 8 and 9. The EPD's investigations consistently disclosed ongoing violations of the applicable federal and state statutes and regulations. Therefore, there was no need for the EPD or the EPA to make further findings.

All of the Mehan letter's discourse about corrective activities beginning in 1999 is irrelevant to the damages inflicted on the two dairy farms prior to that time. Violations of the CWA and RCRA for more than 20 years prior to January 1, 1999, had been conclusively proven by the EPD in its findings. See Exhibits 2 and 3. Neither the Boyce nor McElmurray farms received any applications of sewage sludge after January 1, 1999.

EPD's investigation in December of 1998 again documented extensive violations of federal and state laws applicable to the City of Augusta's sewage sludge program. See Exhibit 2. Beginning in 1998, EPD employees in charge of the sewage sludge program, together with the EPA, stated to the dairy farmers on numerous occasions that these government officials would force the City of Augusta to address the problems with their lands. Long after the dismissal of the federal lawsuit, the EPA finally made it clear that it would take no action, contrary to the EPD's findings and the EPA's earlier commitments. The farmers' lands remain contaminated today.

Neither representatives of the EPA, nor of the EPD, can provide evidence of even one application of sewage sludge to the Boyce or McElmurray farm lands that complied with the laws

governing such applications at the time the sludge was applied. Contrary to every program administered by the EPA pursuant to the CWA and RCRA, the EPA, Mr. Brobst, and the BIRT have tried to ignore the proven fact that hazardous wastes were applied to the Boyce and McElmurray farms in the form of illegal sewage sludge.

The falsity of the Mehan letter's statement about the history of the litigation, which is adopted from Augusta's attorney, without any investigation, is shown by the following quote from the United State District Court's Order in the federal litigation:

The Plaintiffs seek dismissal of Count I because they allege that this Court (Judge Dudley H. Bowen) previously adjudicated Defendant ARC liable in Georgia Environmental Organization, Inc. v. City of Augusta, Civil Action No. 194-151, Southern District of Georgia, for Clean Water Act violations, National Pollutant Discharge Elimination System violations, and failing to comply with the Rules of the Georgia Department of Natural Resources. In addition, the Plaintiffs contend that a declaratory judgment is no longer needed because the EPD determined in an Administrative Order dated December 28, 1998 that ARC violated various environmental statutes, and because the EPA's and EPD's findings prove all of the issues for which the Plaintiffs' claim for declaratory judgment was originally filed.

The Plaintiffs seek dismissal of Count II because the Clean Water Act ("CWA") does not permit citizen suits if 'the Administrator or State has commenced and is diligently prosecuting a civil or criminal action ... to require compliance with' an effluent standard or limitation. 33 U.S.C. § 1365(b)(1)(B). They claim that when they filed this action in November of 1998, neither the EPD nor the EPA was 'diligently prosecuting' ARC for failing to comply with CWA provisions. However, during the week of December 7-11, 1998, the Plaintiffs allege that the EPD audited ARC's Messerly Wastewater Treatment Plant, and issued an Administrative Order on December 28, 1998 requiring ARC to make mandatory improvements to the wastewater system. They further contend that EPD and EPA officials have found that the sludge was illegally applied and was a hazardous material. In addition, the Plaintiffs allege that the EPA recently initiated an investigation of the wastewater treatment facility and is investigating the Land Application Program. Similarly, the Plaintiffs seek dismissal of the claim in Count III under the Resource Conservation

and Recovery Act ("RCRA") because it does not permit citizen suits when the 'Administrator ... has commenced and is diligently prosecuting an action under' RCRA 42 U.S.C. § 6972(b)(2)(B)(i). Again, the Plaintiffs allege that there is no need to pursue such a claim because the EPA and EPD are actively pursuing an investigation of ARC's sewage sludge program.

*Boyce v. Augusta-Richmond County*, 111 F. Supp.2d 1363 (S.D. Ga. 2000).

The federal court granted the requested dismissal without any prejudice to the Plaintiffs. The claims, other than the citizen suit claims, were dismissed by the federal court based upon the court's belief that state law, with the subset of federal claims, governed these claims when the federally-based citizens suit claims were dismissed. The United States District Court refused to exercise its supplemental jurisdiction over these claims, even though the legal basis of the cases is ultimately founded in federal law, as applied by the state agency, the EPD. The federal court advised the Boyce family and the McElmurray family to file those claims in state court, which they did. This in no way meant that the claims for violations of federal law were abandoned, but rather, it meant that those violations had been established by the EPD, the state agency having the delegated duty to enforce the applicable federal and state laws regarding sewage sludge.

2. Mehan letter False Statement: On page 10 of his letter, Mr. Mehan referenced a letter from Augusta's lawyer and simply parroted Mr. Jim Ellison's words as constituting a valid position, without any investigation or legal research about truthfulness of such words.

*The jury did not make any findings that biosolids damaged the soil or the cattle.*

Response: The claims which went to the jury in the *Boyce* case were based upon breaches of the agreement by the City of Augusta to place safe sewage sludge in the form of beneficial fertilizer on the farm lands. The City of Augusta agreed to apply safe fertilizer in the form of sewage sludge on the Boyce lands. At all times, the representatives of the City of Augusta stated that the sludge was safe when it was being applied. The claims in the *Boyce* Complaint as filed in the lawsuit included the following:

In the late 1970s, Defendant developed a land application program as a means of disposing of municipal sludge on private farm land. Disposal of sewage sludge by land application is a permitted activity requiring the authorization of the State of Georgia under the National Pollutant Discharge Elimination System ("NPDES") and in

compliance with other state and federal laws, including, but not limited to, 40 C.F.R. Part 257.3-5; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. § 9601 *et seq.* (“CERCLA”); the Resource Conservation and Recovery Act, 42 U.S.C.A. § 6901 *et seq.* (“RCRA”); and the Clean Water Act, 33 U.S.C.A. § 1251, *et seq.* (“CWA”) (hereinafter collectively referenced as ‘state and federal laws’). *See* Verified Complaint, ¶ 7.

At all times relevant hereto, Defendant operated the Messerly POTW in violation of state and federal laws. *Id.* at ¶ 15.

As a direct and proximate result of Defendant’s operation of the Messerly POTW and the hazardous content of the sewage sludge, herd health and milk production diminished substantially, and, by 1997, the herd developed an immune system deficiency, an excessive number of lactating cows died during periods of stress, such as calving, and the mortality rate escalated by 300% from 1996 to 1998. *Id.* at ¶ 19.

As a result of the hazardous content of the sewage sludge, the kidneys and livers in the cattle contained excessive to toxic levels of copper and excessive levels of cadmium. *Id.* at ¶ 20.

The combination of industrial chemicals and pollutants in the sewage sludge from the Messerly POTW, resulting from Defendant’s failure to properly operate the Messerly POTW, contaminated Plaintiffs’ Lands and caused immune system failure and excessive morbidity in Plaintiffs’ herd. *Id.* at ¶ 22.

Plaintiffs and Defendant entered into valid, binding contracts, the Agreements, pursuant to which the Defendant agreed to provide safe, “risk-free,” sewage sludge produced at the Messerly POTW to act as beneficial fertilizer in exchange for a place to dispose of the aforementioned sludge. *See* Plaintiffs’ Third Amendment to Complaint, ¶ 42.

Defendant breached the terms of the Agreements from the beginning of the contractual relationship with Plaintiffs because the Defendant supplied unsafe, dangerous, and hazardous sewage sludge to the

Plaintiffs instead of safe, “risk-free,” and beneficial sludge. *Id.* at ¶ 43.

Defendant breached the terms of the Agreements by applying sludge with excessive and unsafe levels of cadmium and polychlorinated biphenyls (PCBs), in violation of the limit of allowable cadmium present in sewage sludge applied to lands used for the production of food chain crops under 40 C.F.R. Part 257.3-5. *Id.* at ¶ 45.

Defendant breached the terms of the Agreements by applying sludge which was unfit for use as a fertilizer and which produced silage that caused death to and illness in Plaintiffs’ dairy heard. *Id.* at ¶ 46.

As a direct result of Defendant’s breach of the Agreements, Plaintiffs suffered severe financial damages. These damages include, but are not limited to, veterinary costs for determining the cause of sludge-induced illness and treating the cattle; losses due to the high mortality rate of cattle, lost milk production; lost productivity of Plaintiffs’ lands; and losses due to under productive herd capacity. *Id.* at ¶ 48.

As a direct result of Defendant’s breach of the Agreements, Defendant destroyed the property value of Plaintiffs’ lands because Defendant’s sludge applications contained excessive levels of cadmium. As a result of the excessive cadmium levels on their lands, Plaintiffs are required by federal law to notify future property owners that Plaintiffs’ lands have received “solid waste at high cadmium application rates and that food-chain crops should not be grown, due to a possible health hazard.” Defendant, by its illegal conduct and its breach of contract rendered Plaintiffs Lands unmarketable for agricultural purposes or otherwise. *Id.* at ¶ 49.

The jury in the *Boyce* case issued a general verdict in favor of the Boyce family which was based on all paragraphs of the complaint in the lawsuit. *See* Exhibit 4. On February 16, 2004, the Superior Court of Richmond County, Georgia affirmed the verdict, and on March 2, 2004, the City of Augusta commissioners voted to pay the judgment, with interest, to the Boyce family. The judgement, together with interest, was paid on March 9, 2003.

Contrary to the untrue statements by Augusta’s lawyer, Mr. Ellison, as blindly adopted by Mr. Mehan, the general, all-encompassing jury verdict rendered in the *Boyce* case in the

State of Georgia ratifies, confirms, and adopts all of the Plaintiffs' assertions made in the pleadings. *See* O.C.G.A. § 9-12-1, a copy of which is attached hereto as Exhibit 5. To state that the jury in the *Boyce* case found for the Plaintiffs only because of dissatisfaction with the City of Augusta's record keeping practices is not supported anywhere, is a dishonest representation, is a knowing false statement, and is contrary to the clear, established law of Georgia courts. "The given purpose of a jury's verdict is the resolution of the issue submitted, not simply an acknowledgment of the controversy submitted." *Kane v. Cohen*, 182 Ga. App. 485 (1987).

The jury's verdict in the *Boyce* case confirmed all of the assertions listed above from the *Boyce* Complaint as filed in the case, and was a determination that the sewage sludge placed on the *Boyce* lands violated federal and state laws and caused the damages suffered by the *Boyce* family. Among other conclusions, the jury validated the *Boyces'* assertions that the City of Augusta applied "sludge which was unfit for use as a fertilizer and which produced silage that caused death to and illness in Plaintiffs' dairy herd," and "Defendant, by its illegal conduct and its breach of contract rendered Plaintiffs Lands unmarketable for agricultural purposes or otherwise." To assert that the jury made no findings that the sludge applied to the *Boyce* lands did not damage the soil or the cattle is preposterous.

Contrary to the speculation in the *Mehan* letter about the reason for the amount of the verdict, which was substantial, our conversations with jurors after the verdict was rendered revealed that there was discussion relating to the amount of damages and certain jurors' fears that taxes in the City of Augusta would rise if the damages award was too high. Not only is this theory more plausible than the City of Augusta's absurd analysis, but, the applicable legal precedent means that the jury found in favor of the *Boyce* family based upon the Complaint upon which the trial was based. The jury confirmed the *Boyce's* assertions as being true in their entirety.

3. Mehan letter False Statement: Mr. *Mehan* states on page 11:

*EPA was not a party to either of these lawsuits, and was only made aware of the situation in November 1998 by an outside private party who identified an Internet site which contained information and allegations regarding the death of cattle at the two dairy farms. EPA investigated the allegations.*

Response: Attached hereto as Exhibits 6 and 7 are letters which prove that this statement by Mr. *Mehan* is false and that the dairy farmers were contacting the EPD in 1998 as the agent for the EPA, requesting an investigation of the City of Augusta's sewage sludge land application program. The farmers never received responses to these letters and never heard from the EPA until after their lawsuits were filed in November of 1998. The public nature of the litigation,

and the EPA's fear that the sludge program could be impacted by the lawsuits, caused certain EPA employees, including Mr. Brobst, to emerge from hiding and blindly attack the Boyce and McElmurray families. Indeed, the farmers know of no independent investigation that was ever conducted by the EPA, with the exception of an investigation begun by the EPA Ombudsman. The EPA Ombudsman's investigation was not completed, because of the EPA's elimination of the Office of Ombudsman. Rather, Mr. Brobst and other sludge proponents within EPA and industry, have avoided any such investigation and have chosen instead to attempt to manufacture facts and law in concert with the City of Augusta. They also blindly adopt whatever statements are made by the City of Augusta's attorneys, without the support of empirical data.

4. Mehan letter False Statement: Mr. Mehan states on page 11:

*Beginning in December 1998, EPA Region 4 and the BIRT were in contact with the plaintiffs' attorneys (Decker & Hallman) and technical consultants (Newfields, Inc.) to obtain access to soil sampling data, expert reports, and other information related to the livestock deaths at the two dairy farms as well as permission to visit the farms. Minimal information was made available, and EPA was never allowed access to the two dairy farms.*

Response: At the request of the Boyce family, the McElmurray family, and the undersigned, in January of 1999, representatives of the EPA met with the experts for the dairy farms and attorneys for the farmers in Atlanta, Georgia. At that time, experts and attorneys for the farmers, including the undersigned, reviewed all information that was then available from the City of Augusta, and otherwise, with the EPA employees about the illegal sludge program in Augusta. By that time, we had uncovered multiple violations of virtually every regulation applicable to the creation and application of sewage sludge. All of this information was shared with the EPA's representatives in January of 1999. We also provided to the EPA employees information proving that fraudulent representations had been made by the City of Augusta's employees for at least 20 years, documents showing that the City of Augusta had created false data about sludge applications to farm lands, and information which proved that the City of Augusta had not informed the farmers about the hazardous contents of the sludge at the times when it was land applied. The EPA's representatives were not interested in the evidence when it was presented to them in January of 1999.

The EPA's representatives who attended the meeting in January of 1999 asked if they could go to the McElmurray and Boyce farms. At that time, the EPA's representatives were informed that the farms were engaged in inoculations as well as year-end accounting. We requested that EPA's representatives contact the farmers when they were ready to see the farms to arrange for an appropriate time for a visit that would not conflict with such farm activities. The EPA's

representatives indicated that they would contact the farmers when they traveled to Augusta. No such contact occurred. I telephoned the EPA's attendees of the January, 1999, meeting on several occasions and requested that they travel to the farms and see for themselves the devastation occurring within the dairy herds. There was never an additional attempt by any employee of the EPA to visit the farms, in spite of ongoing requests by the farmers.

The most amazing aspect of the EPA's blind eye to the truth about the City of Augusta's sewage sludge is shown by one inquiry made during the January, 1999, meeting. At that meeting and on numerous occasions thereafter, representatives of the Boyce and McElmurray farms, including the undersigned, challenged Mr. Brobst and other representatives of the EPA to point to just one application of sewage sludge which was made upon the Boyce and McElmurray farms that was in compliance with regulatory requirements applicable to such applications. No one with the EPA has or can do so. I respectfully request that this Subcommittee ask the question again. No one can truthfully represent that any application of sewage made over an 18-year period complied with applicable laws. Such a revelation is staggering in its implications of diabolical dereliction of duty by EPA personnel responsible for oversight of the sewage sludge land application program. This dereliction of duty occurred at least beginning in 1979 and continues today.

5. Mehan letter False Statement: Mr. Mehan states on page 11:

*EPA Region 4 staff met with the City of Augusta to review their current and historical operations and request data, expert reports, and other information from the City. EPA also met with the City's current biosolids land application contractor. Region 4 and the BIRT were told that the data and records from both the plaintiffs and the City of Augusta could not be made available due to discovery in the litigation.*

Response: The last sentence in this statement is totally untrue, as far as representatives of the Boyce and McElmurray farms are concerned. Neither the farmers nor any representative of the farmers told anyone with the EPA that data and records could not be made available until the conclusion of discovery in the litigation. Additionally, such a position could not be legally taken by the City of Augusta, which is obligated by federal law to provide records of compliance to the EPA and the public, upon request. The farmers made many documents available to the EPA which conclusively proved violations by the City of Augusta of multiple laws. The dairy farmers were in touch with representatives of the EPA and EPD beginning in 1998. When the attorneys for the farmers and the farmers' experts met with Mr. Brobst and others from the EPA in early 1999, the farmers, their expert witnesses, and their attorneys made volumes of information available, and told the EPA's employees that the records from the City of Augusta were totally disorganized and incomplete. Neither Mr. Brobst nor anyone else with the EPA provided any assistance to the farmers to assimilate the documents which the City of Augusta was required by law to maintain, nor did the EPA require the City of Augusta to provide understandable documentation of the sludge applications made upon the Boyce and McElmurray farm lands. It was not until later in 1999 that summary spreadsheets, allegedly showing the history of sludge applications to both farms, were manufactured for the first time and provided by the City of Augusta as a result of the litigation. These spreadsheets have themselves been proven to be fraudulent. Among other defects in the spreadsheets, the City of Augusta intentionally omitted millions of gallons of sludge from the calculations of sludge that was applied to the farmers' lands. The farmers' experts, not anyone with the EPA, made these determinations that millions of gallons were missing from the manufactured spread sheets. *See* Affidavits of Lewis Goodroad ("Goodroad Affidavit") dated April 30, 2002 and May 30, 2002 (Exhibits 8 and 9, respectively). We, and the farmers, were told to talk to Region 4 personnel about questions concerning Augusta's sludge activities. We implored the EPA Region 4 personnel to become active in requiring the City of Augusta to provide data which federal law obligated the City to have on hand and to investigate the City's activities prior to January 1, 1999. Rather than providing such assistance, EPA Region 4 personnel stated that they did not have resources for an investigation and Mr. Brobst disappeared from any involvement with the farmers. To our knowledge, Mr. Brobst never took any additional investigative action. Indeed, on August 1,

2001, Mr. Bill Boyce wrote to Mr. Brobst asking for responses to specific questions. *See* Exhibit 10. Mr. Boyce has never received any response to his August 6, 2001 letter.

The Boyces, McElmurrays and their representatives have never been provided a copy of any investigative report by the BIRT, which is referenced in the Mehan letter. Rather, the BIRT chose to become the forever-tainted “Charlie McCarthy” dummy spokesman for the City of Augusta, which resulted in the parroting of the City of Augusta’s ever changing story lines. The City of Augusta has been at all times Mr. Brobst’s “Edgar Bergin” ventriloquist.

6. Mehan letter False Statement: Mr. Mehan states on page 11:

*Discovery ended in July 1999. Region 4 and the BIRT again requested data from both the plaintiffs and the City of Augusta. EPA then began receiving information from both parties that had been filed with the Court, such as expert witness reports, soil sampling results, etc. EPA and the BIRT only received information previously filed with or prepared for the court and open for public record.*

Response: The farmers communicated with the EPA on numerous occasions and provided all available information to EPA Region 4 personnel and Mr. Brobst himself, whenever he requested. However, after Mr. Brobst met with the farmers’ attorneys and consultants in January of 1999, he never followed up with promised visits and never conducted any independent investigations of the City of Augusta’s sludge applications to the McElmurray and Boyce lands. In 1999, the farmers and their toxicologist expert traveled to the offices of the EPA, Region 4 for a conference with EPA personnel, including Mr. Brobst by telephone. At that time, the farmers continued to request an investigation and assistance. In addition, the farmers and their experts repeatedly talked to EPA Region 4 personnel. The farmers were told on more than one occasion that the EPA Region 4 did not have the resources to investigate or help investigate the allegations about the City of Augusta’s sludge program. Finally, Mr. Boyce never received any response to his 2001 letter to Mr. Brobst (Exhibit 10).

7. Mehan letter False Statement: On Page 11 of his letter, Mr. Mehan states:

*On December 8-9, 1998, EPA Region 4 conducted Compliance Evaluation Inspection (CEI) at the Messerly Wastewater Treatment Plant in Augusta, Georgia.*

In passing at the end of Section 5 of the letter on Page 12, Mr. Mehan references a December, 1998 audit conducted by the EPD. The Mehan letter references the EPD audit and says that the EPD

*“primarily focused on meeting NPDES effluent limits and sewer system rehabilitation.”* The letter further states: *“The deficiencies documented during the 1998 audit were addressed through a January 2000 Consent Order.”*

Response: The EPD’s December 1998 audit and EPA’s December, 1998 CEI only occurred because the Boyce and McElmurray families filed their lawsuits in November of 1998. The summary of the EPD’s December 1998 audit in the Mehan letter is misleading and intentionally false. *See* Exhibit 2. The Mehan letter characterizes the audit as if it did not focus on the City of Augusta’s sewage sludge program at all. The Mehan letter did not mention the findings of the EPD audit about the sludge program. See Exhibits 2 and 3. In addition, the Mehan letter arbitrarily dismisses the documented history at the wastewater treatment plant by saying that all is okay because of a Consent Order with the City of Augusta. Once again, the EPA willfully fails to even mention the findings of the EPD audit in which the EPD investigators stated that the sewage sludge land application program should be shut down immediately. *See* Exhibit 2. The primary purpose of the EPD audit was to review the status of the sewage sludge program at the Messerly Wastewater Treatment Plant.

The approach of the Mehan letter is to ignore the activities of the City of Augusta’s sludge program before January of 1999. This approach is akin to the federal government saying that it does not matter what went on behind the front doors of Enron, as long as the hierarchy of the company apologizes. The approach in the Mehan letter is to argue that the history at Augusta’s sewage treatment plant is irrelevant, if the City of Augusta apologizes and pays a fine in 2000, long after the applications of the illegal sewage sludge. For instance, the EPA never looked at the EPD’s findings that the sewage treatment plant records had likely been falsified. This conclusion by the EPD was verified by the experts for the dairy farmers, who determined that there are multiple versions of what should be static information. *See* Goodroad Affidavits, Exhibits 8 and 9; *see also* EPD audit report, Exhibit 2, and Hall Affidavit, Exhibit 14).

8. Mehan letter False Statement:

*The BIRT investigation included compiling and reviewing analytical data covering the quality of sewage sludge (i.e., pollutants, pathogens, vector attraction reduction), soil and forage data, clinical data on the cows, veterinarian records, feed and water quality, and herd management records. The BIRT sent the available data that met EPA’s Quality Assurance/Quality Control (QA/QC) requirements to outside independent reviewers as part of its investigation.*

Response: The Mehan letter admits that the data upon which the letter is founded was generated after January 1, 1999. The Mehan letter conveniently omits the finding by the EPD that the data about sludge applications was likely false and contrived. Once again, neither Mr. Mehan or anyone else with the EPA can show that a single application of sewage sludge by the City of Augusta before January of 1999 complied with applicable laws. The Mehan letter is a classic example of a smoke and mirrors attempt to imply that data from 1999 and later is representative of the sludge that was applied to the Boyce and McElmurray farms from 1979 until late-1997. The Mehan letter shows that the EPA failed to consider voluminous amounts of data collected from the City of Augusta and on the two farms, and limited the data which it considered to 1999 data which it then said met its QA/QC requirements. Because Mr. Brobst implied that he used data from the City of Augusta which was created prior to January 1, 1999, Mr. Brobst had to withhold important information and findings made by the EPD from 1978 through 1998 to avoid admitting that the data were false. The EPD made many, many findings that the City of Augusta's sewage sludge records which were created prior to December, 1998, were not sustainable. *See* Exhibit 2. The only data considered by the EPA were collected by the City of Augusta, the Defendant in the lawsuits, or by the EPA after January 1, 1999.

Also, most of the samples used by the EPA to determine that the lands in question were not contaminated were composites of multiple samples, taken many years after the sludge was applied. This means that each sample submitted by the City of Augusta was an amalgamation of nine separate samples, each taken from a large section of each field in question, which were then blended together and submitted for analysis. This procedure was designed to greatly dilute any "hot-spots" that existed in the farmers' fields, and thus resulted in artificially low sampling results. The sludge that was applied to the farmers' lands was not deposited uniformly on the lands. Sworn testimony and documentation show that great variations existed in the concentrations of heavy metals and other hazardous materials which were dumped on the lands in the sludge. By compositing the samples collected from each field, the City of Augusta manipulated the sampling results to show lower concentrations of contamination than actually existed on the lands. EPA chose only to consider the City's post-January, 1999 samples in its "investigation," ignoring a tremendous body of evidence taken directly from the City's records that does not support the position stated in the Mehan letter.

Numerous expert reports and sampling results were submitted in the *Boyce* case. All of the experts reached the same conclusion - the Boyce farm is contaminated by the City of Augusta's applications of toxic sewage sludge. The EPA has not even acknowledged the existence of this material, much less refuted it.

9. Mehan letter False Statement: Mr. Mehan states on page 12:

*The BIRT sent the available data that met EPA's Quality Assurance/Quality Control (QA/QC) requirements to outside independent reviewers as part of its investigation. Based on these reviews, the BIRT concluded that many of the identified dairy herd problems are typical of occurrences that can accompany herd expansion. These types of disease problems can insidiously increase if not routinely detected and managed ... The herds appear to be encountering multiple health problems including infections (e.g., Johnes' disease, bovine leukosis virus (BLV) and malignant lymphoma) and metabolic diseases.*

Response: The first issue is the names of the "outside independent reviewers." Neither the farmers nor the undersigned have ever heard of such "reviewers," nor received their report. The next issue is the nature of the data that were actually reviewed by the "independent reviewers," if any, and determined to meet QA/QC standards. There is no evidence of herd disease problems, not caused by the sludge, sufficient to cause the levels of proven herd mortality at issue. The Boyce herd has always been in the highest percentage of disease-free herds. All dairy herds have some rate of bovine disease. Indeed, in sworn testimony at trial, the City of Augusta's own veterinarian expert admitted that the levels of disease in the Boyce herd put the herd in the highest percentile of disease-free herds and that there was no proof that diseases caused the excess mortality problems.

The Mehan letter conveniently omits any discussion of the Boyce Herd Study, which proved that feed grown on sludged lands caused the excessive deaths of the cows. The Boyce Herd Study shows a dramatic improvement in the herd's health when the herd was removed from the home grown feed. See Exhibit 11. There is no evidence of review at the request of the EPA by "outside independent reviewers." This is the first time that this fable has been told by the EPA. We request that the Inspector General immediately request copies of this alleged "independent" review material. We will request all copies of such materials in accordance with the Freedom of Information Act, at which time we can better comment upon this spurious assertion.

10. Mehan letter False Statement: Mr. Mehan states on page 12:

*EPA's BIRT also reviewed scientifically credible soil information from samples taken from the site and found that the fields were within the range of national, uncontaminated background soil heavy metal levels for the metals in question ...*

Response: The EPA chose to use the national concentrations of the metals in question to determine the background concentrations for the Boyce and McElmurray farms. The EPA failed to account for regional differences in soil characteristics, even though the regional data for background concentrations were known to be available. The concentrations of cadmium found on the lands after sewage sludge was applied were well above regional levels. The EPA has attempted to justify its position that the metals concentrations on the Boyce and McElmurray lands are below dangerous levels by comparing uncomparable data. Ron Haaland, Ph.D., a soil scientist for the City of Augusta, testified under oath during the *Boyce* trial that silage grown on the Boyces' sludged fields contained exceedances of the maximum tolerable levels (MTLs) of cadmium, and therefore, cannot be fed to cows.

11. Mehan letter False Statement: On page 12 of the Mehan letter, reference is made to an alleged peer-reviewed paper which was prepared by Mr. Brobst and a faculty member at the University of Georgia, Ms. Julia Gaskin. The Mehan letter states:

*The paper presents the University of Georgia's findings of their analyses of trace metals levels in soils and feed that were implicated in the Georgia case.*

Response: Enclosed herewith as Exhibit 12 is a copy of a letter, with attachments, dated February 5, 2004, which was sent to Ms. Gaskin describing to her the manner in which she may have committed academic fraud in the referenced article, and asking that the paper be withdrawn as a peer-reviewed article. The Gaskin article is based upon suspect and false data that would not withstand an QA/QC evaluation if information about the data had been disclosed to reviewing persons. Specifically, the EPD's 1998 audit (Exhibit 2), and the facts developed in the Court record concerning this audit, prove conclusively that the data were not sustainable for use in any peer-reviewed scientific article.

12. Mehan letter False Statement: Mr. Mehan states, on page 13, that soil sampling of the McElmurray and Boyce farms conducted in 1999 by the EPD documented that

*the quality of sewage sludge is in compliance with State Rules and Regulations for Water Quality Control. The results of the values for the metals which were analyzed were below the pollutant concentration limits of the State Rules. (Georgia DNR, 1999B).*

Response: This representation in the Mehan letter is a complete fabrication. No soil samples were taken by the EPD or the EPA in 1999, or at any other time, even though the farmers repeatedly requested that such sampling be conducted.

13. Mehan letter False Statement: The conclusion in Section 5 of the Mehan letter on page 13 states:

*In summary, none of the information that has been brought to EPA's attention or obtained through its investigations with respect to the Boyceland Dairy matter provides a reasonable basis for a moratorium on the land application of sewage sludge.*

Response: My responses stated in this letter show conclusively that the Mehan letter is not only full of blatantly false statements, but Mr. Mehan and others in concert with him, including the City of Augusta's attorney, have attempted to pervert and misstate the law, have failed to even mention the violations of virtually every sewage sludge law by the City of Augusta for more than 20 years, have attempted to ignore the conclusive proof that the City of Augusta created multiple sets of books to hide the contents of the sewage sludge, including hazardous wastes, and have attempted to avoid even looking at the history of the City of Augusta's sludge program prior to January of 1999. The EPA has chosen to rely only upon information presented by the BIRT and has ignored all data which it finds is contrary to the BIRT's position in order to protect a program which has been totally flawed from its inception in 1979.

#### **IV. ADDITIONAL INFORMATION NOT ADDRESSED BY THE BIRT OR MR. MEHAN**

The following information is a small portion of the enormous volume of data which the BIRT and Mr. Mehan did not address, and, in all likelihood, did not even review.

##### **A. Judgment in the *Boyce* Lawsuit.**

The Boyce family has received a Judgment from a jury in Augusta, Georgia, which states that their lands were contaminated by illegal sewage sludge and that excess herd mortality and other damages resulted. See Exhibit 4. The details which support the jury's verdict were provided

to the EPA, and ignored. Additional details are available from the EPA's own files, which they will no doubt continue to ignore. The obvious goal is to protect the EPA's sewage sludge land application program by using an "ends to justify the means" approach. We will be pleased to make all of the Boyce files available to your office and/or to the EPA Office of Inspector General. The Boyce files present a road map of EPA's knowing dereliction of duty by allowing the City of Augusta to continue illegal conduct from 1979 through today. On February 16, 2004, the Court affirmed the Boyce verdict and on March 2, 2004 the City of Augusta agreed to pay the judgment, together with interest. On March 9, 2004, the judgment, together with interest, was paid.

**B. The Real Story of The Sludge Applications to The McElmurray Lands.**

The McElmurray family has not had its day in court and will provide in the remainder of this letter an overview of data provided to the EPA which show that the lands owned by these farmers are contaminated with hazardous wastes in the form of excessive levels of heavy metals and materials defined as hazardous by federal and state law. There are exceedances of allowable standards for heavy metals and other constituents on their lands. The standards have been violated by the applications sewage sludge to the lands. On February 11, 2004, the Court in Richmond County, Georgia granted Augusta's motion for summary judgment after denying an identical motion several years earlier. The McElmurray family is appealing that ruling and is confident that their day in court will occur. Regardless, the facts cannot be refuted which prove that the EPA has ignored horrific violations of law by the City of Augusta concerning the McElmurray dairy farm.

Contrary to the Court's recent finding, the Farmers Service Administration of the United States Department of Agriculture ruled on February 12, 2004 that the McElmurray lands are contaminated by Augusta's sewage sludge and are not fit for growth of food chain crops.

Each state has its own hazardous waste laws which are the progeny of federal environmental laws. The operable law in Georgia that defines allowable levels of constituents on lands is the Hazardous Site Response Act, O.C.G.A. § 12-8-90, *et seq.*, as regulated by the Rules of the Department of Natural Resources, Chapter 391-3-19, *et seq.* ("HSRA"). Exhibit 13 herewith includes portions of the HSRA regulations and directives that are requirements of the EPD. Important language is found at page 27, as follows:

The corrective actions shall not allow exposure to concentrations which would cause food chain contamination, damage to soils, or to biota in the soils which could impair the use of soils for agricultural or silvicultural purposes, adverse effects on vegetation or wild life, ...

In addition, on page 30 of HSRA, the standard for allowable levels of contaminants on agricultural property is indicated to be “Type 3 standards.” Table 2 shows a list of the allowable levels under a Type 3 classification for constituents which have been found in sewage sludge and on the McElmurray lands. *See* Exhibit 13.

### **1. Background.**

The McElmurray farm lands received applications of sewage sludge from the City of Augusta’s Messerly Wastewater Treatment Plant (“Messerly WWTP”) from 1979 through 1990. It is affirmed by the City of Augusta’s land application supervisor that the McElmurrays were told at all times throughout those years and the 1990s, that the sewage sludge was safe fertilizer. Beginning in late-1998, after years of investigation, the McElmurrays learned that the City of Augusta’s sewage sludge applications to their family’s lands were, at all times, in violation of mandatory federal and state regulatory requirements. Waste containing industrial, hazardous constituents was converted into sewage sludge, which contained harmful constituents, in violation of state and federal laws. The sewage sludge was applied to the McElmurrays’ lands. The sewage sludge constituted hazardous substances and hazardous waste. *See* Affidavit of William L. Hall (“Hall Affidavit”) dated May 30, 2002, attached hereto as Exhibit 14; *see also* Exhibits 15 and 16.

The information provided in this submission is but the “tip of the iceberg” of available information. It is provided as conclusive and uncontroverted evidence that the McElmurray family’s lands cannot be planted with crops used in the human food chain.

### **2. Some of the Data Which Proves the Claims by the McElmurray Family Against the City of Augusta.**

From the beginning of sludge applications to the McElmurray family’s lands in 1979, the City of Augusta failed to disclose to the McElmurray family accurate information about:

- (a) the volume of sludge applied to the McElmurray family’s lands. *See* Goodroad Affidavits (Exhibits 8 and 9);
- (b) the location of sludge applications. *See* Goodroad Affidavit dated May 30, 2002 (Exhibit 9); and
- (c) the contents of the sludge. *See* Hall Affidavit dated May 30, 2002 (Exhibit 14).

The City of Augusta delivered and applied sewage sludge which, by definition, was hazardous material. See Hall Affidavit , Exhibit 14, p. 4. The City of Augusta knew, or should have known, that the levels of metals and other contaminants in the sewage sludge were, by definition, hazardous materials. See Hall Affidavit, Exhibit 14.

The City of Augusta's employee in charge of the sewage sludge land application program, Hugh Avery, has described the records of the sewage sludge program as being in "a shambles." See Deposition of Hugh Avery ("Avery Deposition") dated May 6, 1999, p. 19. (Exhibit 17). Since 1979, the City of Augusta has continuously produced inaccurate and misleading information about sewage sludge applications in the form of multiple sets of records which have been used repeatedly in communications with the EPD, EPA, and the landowners in order to conceal the truth about the contents of sewage sludge. This scheme of cover-up has continued until today and has become a way of life for the City of Augusta regarding the Messerly WWTP. The City of Augusta's representatives certainly feel empowered by the EPA's corrupt sewage sludge program. See Goodroad Affidavits dated April 30, 2002 (Exhibit 8) and May 30, 2002 (Exhibit 9); see also Deposition of Allen Saxon ("Saxon Deposition"), the City of Augusta's employee, dated July 23, 1999, pp. 121-124 (Exhibit 18).

The uncontroverted evidence shows that:

(a) The City of Augusta was obligated by federal and state laws to monitor and report the constituents in the sewage sludge. See 40 C.F.R. Part 257 (Exhibit 15).

(b) For the first five years during applications of sewage sludge to the McElmurray family's lands, the City of Augusta admitted that, as of 1984, the records were in "shambles" and there was no way to know the amount and exact location of sludge that was actually applied to the McElmurray family's lands, especially to evaluate cumulative loadings of metals and other hazardous materials in the sludge, as required by law. See Avery Deposition dated May 6, 1999, p. 19 (Exhibit 17); see also Guidelines for Land Application of Municipal Sludges, Georgia Environmental Protection Division, September, 1983 ("1983 Guidelines") (Exhibit 19).

(c) The City of Augusta admitted for the first time in March of 1999 that it had never, at any time prior to 1999, attempted to calculate year-to-date and cumulative heavy metal and other constituents loadings of sludge applications during its applications to the McElmurray family's lands from 1979 through 1990. This was a horrifying admission of violations of all laws applicable to sewage sludge which have been in existence from 1979 until today. The City of Augusta then proceeded to generate yet additional sets of fraudulent and misleading records, which should have been accurately generated at the time of the sewage sludge applications. See Goodroad Affidavit dated April 30, 2002, ¶¶ 21, 24, 25 (Exhibit 8).

(d) The computer program used by the City of Augusta to calculate metals concentrations in the sewage sludge was flawed, and the City of Augusta knowingly generated inaccurate data from the computer to distort the history of sewage sludge applications. *See* Saxon Deposition dated July 23, 1999, pp. 131-132 (Exhibit 18); *see also* Avery Deposition dated May 6, 1999, p. 186 (Exhibit 17). This conduct has been ignored by the EPA in its quest to refrain from looking at any documentation which was generated prior to January 1, 1999.

(e) The City of Augusta averaged laboratory data about the contents of sludge to reduce the levels of metals reported to the State of Georgia and the McElmurray family. *See* Saxon Deposition dated July 23, 1999, pp. 102-106 (Exhibit 18).

(f) The City of Augusta re-hired a former Supervisor of the Messerly WWTP, Allen Saxon, in January of 1999, to attempt to create a record of sludge applications that never existed. Mr. Saxon prepared spreadsheets in 1999 which allegedly showed cumulative loading calculations which were compiled and calculated *for the first time* in the 20-year history of the City of Augusta's land application program. *See* Saxon Deposition dated July 23, 1999, pp. 22-30 (Exhibit 18).

(g) The City of Augusta omitted from the 1999 spreadsheets in excess of 18,900,000 gallons of sewage sludge applied to the McElmurray family's lands and misstated how much sewage sludge went onto the McElmurray family's lands. *See* Goodroad Affidavit dated April 30, 2002 (Exhibit 8).

(h) The evidence shows that the City of Augusta submitted false and misleading data to the McElmurray family and the EPD for the duration of the land application program. The McElmurray family relied, to their detriment, on the City of Augusta's Field Update Reports, which the City of Augusta held out to be complete and accurate, until forced to tell the truth in the pending litigation. *See* Avery Deposition dated May 6, 1999, p. 19 (Exhibit 17).

(i) In addition to the express language of the License/Easement Agreements which required the City of Augusta to report accurate data to the farmers, the City of Augusta was required by federal and state laws to monitor the contents of the sludge to assure that concentrations of certain metals in the sludge did not cause a problem. *See* 40 C.F.R. Part 257 (Exhibit 15).

### **3. The McElmurray Lands Are Contaminated by Illegal Sewage Sludge.**

#### **(a) Cadmium.**

Federal law, pursuant to 40 C.F.R. Part 257.3-5(a)(1)(ii) (Exhibit 15), and the 1983 Guidelines (Exhibit 19, p. 3) limited the annual application of cadmium to 0.5 kg/ha (0.45 lb/acre) on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. This prohibition is extended to animals and animal products grown for human consumption. This law is still in effect today. *See* 40 C.F.R. Part 257 (Exhibit 15). Since the McElmurray family's lands were used for the production of silage to feed the dairy cattle, the City of Augusta was prohibited from exceeding this limitation on cadmium. The City of Augusta applied abnormally high levels of cadmium in sewage sludge to the McElmurray family's lands. *See* Goodroad Affidavit dated April 30, 2002, ¶ 36 (Exhibit 8); Goodroad Affidavit dated May 30, 2002, ¶ 3 (Exhibit 9); Hall Affidavit dated May 30, 2002, ¶¶ 6, 8 (Exhibit 14).

Analyses by A&L Analytical Laboratories include soil sample results taken from McElmurray lands that show exceedances of allowable cadmium levels under federal law. *See* Exhibit 20. These exceedances directly correlate to the excessive levels of cadmium put on the McElmurray family's lands. The standard for calculating pounds per acre of constituents is described at Exhibit 21. The soil samples described that when the parts per million are multiplied by two, which is the procedure for determining pounds per acre, the lifetime limit established by federal law for cadmium of 4.5 pounds per acre is violated. *See* Exhibits 15, 21 and 20. An example in Exhibit 20 is where one sample disclosed 12.5 pounds per acre of cadmium. Also, the "Type 3" HSRA cleanup standard for soil criteria of 2 parts per million is exceeded.

As of 1980, state law in Georgia mirrored 40 C.F.R. Part 257.3-5(a)(1)(ii) (Exhibit 15), which is still in effect. In 1980, the EPD informed the City of Augusta that 40 C.F.R. Part 257 was the applicable law which had to be followed. The EPD again confirmed the application of this law in Guidelines for Land Application of Municipal Sludges released in September, 1983, acknowledging that "municipal sewage sludge can be applied to the land safely and beneficially under controlled conditions." (Emphasis added) (Exhibit 19). In supplement and compliment to 40 C.F.R. Part 257, the 1983 Guidelines provided that "the annual application of cadmium must be no greater than 0.5 kg/ha (0.45 lb/acre) on land used for the production of tobacco, leafy vegetables, or root crops." The clear message is that any exceedances of this level in applications are dangerous to "tobacco, leafy vegetables, or root crops." The cumulative level cannot exceed 4.5 lbs per acre. *See* 1983 Guidelines, p. 3 (Exhibit 19).

Under the 1983 Guidelines and other requirements, the City of Augusta was required to keep permanent records of "all sludge, soil, and water monitoring required by the Division." The City of Augusta knew of the duty to keep such "permanent records." *See* 1983 Guidelines, p. 6 (Exhibit 19). Moreover, the City of Augusta was required to submit the results of all monitoring and application activities to the EPD. The 1983 Guidelines also include annual allowable loading rates for cadmium as well as allowable cumulative loading rates for cadmium,

copper, lead, nickel, and zinc. *See* 1983 Guidelines, p. 2 (Exhibit 19). In a proceeding before the Farm Service Agency of the United States Department of Agriculture, Mr. Brobst stated as follows:

... The other thing about that number which bothered me was that analytically, when we go out and sample the soil, I don't see the result that would indicate that it had a high lifetime loading rate. When we look at the lifetime loading rate, typically they were anywhere from 30, 40, 50 percent of the lifetime loading rate except this one field and it was roughly 40 or 50 times the lifetime loading rate on this one field. And it just looks so askew that I'd have to go back and really do an evaluation of that one field. ...

*See* Exhibit 22.

In addition, according to 40 C.F.R. Part 257.3-5(a)(1)(i) (Exhibit 15), the City of Augusta was required to maintain a sludge/soil pH of 6.5 or greater at the time of each application of sludge, except where the sludge cadmium concentrations were 2 mg/kg or less dry weight. There is no evidence in the record showing that the pH of 6.5 was ever maintained, as required by law, when sludge applications were made to the McElmurray family's lands. This glaring deficiency means that none of the sludge was legally applied to the McElmurray family's lands. *See* 40 C.F.R. Part 257.3-5(a)(1)(i) (Exhibit 15); Goodroad Affidavits dated April 30, 2002 and May 30, 2002 (Exhibits 8 and 9).

**(b) Unlawful Application of Hazardous Substances.**

The sludge generated from the City of Augusta's Messerly WWTP during the years of sewage sludge applications to the McElmurray family's lands contained hazardous substances within the meaning of CERCLA, § 9601(14), and HSRA, DNR Rules Chapter 391-3-19, *et seq.* The wastewater which flowed into the plant contained, among other constituents, silver, mercury, nickel, antimony, PCBs, and selenium. *See* Carr Lab Reports (Exhibit 23). These analytes are listed as "hazardous substances" under CERCLA as outlined in 40 C.F.R. § 302.4 (Exhibit 16).

**(c) Hazardous Wastes Were Deposited in the Messerly WWTP and into the Sludge.**

The City of Augusta's representatives have agreed that whatever went into the Messerly WWTP would, by necessity, go into the sludge. *See* Marion Harris Deposition dated July 8, 1999, p. 306 (Exhibit 24). After extensive investigations beginning in late-1998, we

now know that the purpose of the creation of the sewage sludge was to transfer and retain all of the heavy metals and other hazardous constituents into the sludge, so that effluent from the Messerly WWTP would meet the requirements of the NPDES effluent permits.

Once the McElmurray family agreed to accept land applications of sewage sludge, the City of Augusta was required, by contract law and federal and state law, to monitor all sludge applications to the McElmurray family's lands and provide data about loadings of metals and other constituents which were received by the Messerly WWTP and assimilated into the sludge. See City of Augusta, Georgia Wastewater Treatment Plant Operating Manual dated October, 1985 (Exhibit 25); 40 C.F.R. Part 257 (Exhibit 15); 40 C.F.R. Part 302.4 (Exhibit 16); RCRA and CERCLA. The record is unrefuted that the City of Augusta does not now know, nor has it ever known or tried to determine, the amounts of loadings of hazardous substances and hazardous waste in the form of heavy metals and other constituents in the sludge applied to the McElmurray family's lands. The City of Augusta did not even try to calculate the cumulative amounts of sludge applied to the McElmurray family's lands until the McElmurrays filed suit, and Mr. Saxon was hired in 1999 for this purpose, 20 years after the McElmurray family's lands began to receive sludge. See Saxon Deposition dated July 23, 1999, pp. 22, 131-132 (Exhibit 18); Goodroad Affidavits dated April 30, 2002 and May 30, 2002 (Exhibits 8 and 9). Mr. Saxon then generated new data, intended to perpetuate the City of Augusta's ongoing cover-up and fraud imposed upon the McElmurray family, which continues today.

Based upon the City of Augusta's continuing and repeated representations that the sewage sludge was safe, the McElmurray family members were unaware that the City of Augusta caused the damage to their lands until late-1998 and early-1999, when the City of Augusta's scheme began to unravel. It was not until 1999 that the McElmurray family discovered and finally confirmed evidence that the City of Augusta had fraudulently concealed:

- (1) The actual amount of sludge which was applied to their lands. See Goodroad Affidavit dated April 30, 2002 (Exhibit 8) ¶ 35.
- (2) The locations where the sludge was applied. See Goodroad Affidavits dated April 30, 2002 and May 30, 2002 (Exhibits 8 and 9).
- (3) The concentrations of heavy metals and other hazardous materials contained in the sludge applications from the beginning of the McElmurray family's participation in the sludge program. See Goodroad Affidavits dated April 30, 2002 and May 30, 2002 (Exhibits 8 and 9); Hall Affidavit

(Exhibit 14); Carr Laboratory Reports showing that hazardous materials went on the land (Exhibit 23); Hazardous Waste Calculations (Exhibit 26).

The McElmurray family did not have reason to know until late-1998 and early-1999 that the City of Augusta was purposefully misrepresenting data about the sludge applications to their lands. *See* Goodroad Affidavits dated April 30, 2002 and May 30, 2002 (Exhibits 8 and 9).

In addition to containing hazardous substances as listed in 40 C.F.R. Part 302.4, the sewage sludge applied to the McElmurray family's lands was "hazardous waste" as defined under RCRA, 42 U.S.C. § 6903(5). *See* Hall Affidavit dated May 30, 2002, Exhibit A (Exhibit 14); and Goodroad Affidavits dated April 30, 2002 and May 30, 2002 (Exhibits 8 and 9).

At all times when sludge was applied to the McElmurray family's lands, Mr. Marion Harris was working for, or the manager of, the City of Augusta's laboratory at the Messerly WWTP. Mr. Harris has more than 20 years of experience as a laboratory technician at the Messerly WWTP. *See* Marion Harris Deposition dated July 6, 1999, pp. 16-17. (Exhibit 24). Since 1978, Mr. Harris has held various positions at the Messerly WWTP in addition to that of Laboratory Technician, including Laboratory Supervisor, Pretreatment Supervisor, and Superintendent since 1981. *See* Marion Harris Deposition dated July 6, 1999, pp. 26, 44, 100 (Exhibit 24).

From his lengthy tenure with the Messerly WWTP, Mr. Harris is very familiar with the operations of the laboratory. As the head of the laboratory, Mr. Harris stated that he was "responsible ... for the accuracy of the information in the computer printout and in the metal analysis report[s]." *See* Marion Harris Deposition dated July 6, 1999, pp. 170-171 (Exhibit 24). Mr. Harris testified that he would stand behind the accuracy of the numbers produced by his lab. *See* Marion Harris Deposition dated July 6, 1999, p. 147 (Exhibit 24). At the same time, Mr. Harris expressed concerns about the levels of metals and other constituent analyses of the sludge from the early 1980s. *See* Marion Harris Deposition dated July 8, 1999, pp. 254-306 (Exhibit 24).

By Mr. Harris' admission, it is clear that the City of Augusta ignored the existence of all state and federal regulations regarding sludge applications during all times when sludge was applied to the McElmurray family's lands. At a minimum, as early as 1979, Mr. Harris' laboratory should have been monitoring cadmium levels, polychlorinated biphenyls (PCBs), and other constituent levels in accordance with 40 C.F.R. Part 257 (Exhibit 15). Furthermore, the City of Augusta should have had *permanent records* of "the results of all sludge, soil, and water monitoring required by the [Georgia Environmental Protection] Division" since 1983, pursuant to the 1983 Guidelines, p. 6 (Exhibit 19). According to Mr. Harris, "[w]e have had some records that

were either five years old or--I think in some cases of sewage, seven years old that probably have been--they should have been, if they weren't, that we no longer--that can be discarded or destroyed." See Marion Harris Deposition dated July 6, 1999, p.130 (Exhibit 24). This means that the City of Augusta intentionally destroyed baseline information about previous sewage sludge applications to lands.

At his deposition, Mr. Harris reviewed the City of Augusta's analytical data from 1981-1982 and admitted that the levels of metals and other constituents which were put on McElmurray lands, as shown in Carr Laboratory reports, were the basis for concern. See Exhibit 23. He expressed concern about the levels of PCBs 1251, PCBs 1016, cadmium, copper, nickel, chlordane, mercury, molybdenum, arochlor, zinc, and antimony in the sludge in 1981-1982. Mr. Harris admitted that he "probably reviewed [these metals], but [he] really didn't have a clear view--or it wasn't clear in [his] mind what acceptable levels of these were at the time." See Marion Harris Deposition dated July 8, 1999, pp. 258-259 (Exhibit 24); Carr Reports (Exhibit 23). The McElmurray family never saw the 1981-1983 Carr Laboratory reports, along with thousands of other documents, until reviewing documents produced by the City of Augusta beginning in late-1998.

Mr. Harris admitted that most of the metals that enter the stream of effluent which passes through the Messerly WWTP eventually commingle with the sludge: "metals are concentrated in the sludge." See Marion Harris Deposition dated July 8, 1999, pp. 305-306 (Exhibit 24). The City of Augusta's own records show that it took virtually no precautions to prevent such materials from passing as part of the sewage sludge onto the McElmurray family's lands. In fact, the record is conclusive that all of these constituents went on to the McElmurray family's lands.

**(d) Evidence of Contamination of the McElmurray Family's Lands Which Prevent Planting of Crops.**

The McElmurray family has demonstrated that exceedances of heavy metals and other constituents were dumped on their lands, which is sufficient to prove that the lands are contaminated. However, sampling data shows that such hazardous materials are located on their lands. *See* Goodroad Affidavits dated April 30, 2002 and May 30, 2002 (Exhibits 8 and 9); Hall Affidavit dated May 30, 2002 (Exhibit 14).

The following discussion will relate to documents which are available in the file and which prove that the City of Augusta applied hazardous waste and materials to the McElmurray family's lands in violation of numerous federal and state laws. The contamination has not been remediated.

- (1) Exhibit 27 enclosed herewith is a compilation of documents which relate to the method for calculation by the EPA to determine the existence of hazardous waste. The City of August failed to analyze materials for hazardous waste when they have a history of significant industrial input into a solid waste. This material was, in turn, put on the McElmurray family's lands.
- (2) The Carr Laboratory Reports found at Exhibit 23 indicate that there are numerous listed hazardous wastes that were included in the sewage sludge which was applied to the McElmurray family's lands. *See* 40 C.F.R. Part 302.4 (Exhibit 16).
- (3) The materials in Exhibit 26 prove that, not only are the constituents which were applied to the McElmurray family's lands listed as hazardous wastes, but they fail when the hazardous waste formula for definition is utilized. Exhibit 26 is the compilation of the calculations of the exceedances above the allowable levels of the materials in the sludge samples put on the McElmurray family's lands when the formula established by the EPA was utilized.
- (4) Exhibit 25 is a copy of an operations manual from the City of Augusta dated October, 1985, wherein the following language is found:

... The following guidelines for heavy metals apply to the land farming of digested sludge from the City of Augusta wastewater treatment plant:

- A. Sludges should not contain more than 20 ppm cadmium, 1,000 ppm lead or 10 ppm PCB's on a dry weight basis:

See Exhibit 25, p. 10-8.

- (5) The data found at Exhibit 23, which is the Carr Laboratory reports, and the information found at Exhibit 26, are the calculations of the levels of hazardous wastes placed upon the lands disclose that the requirements of the City of Augusta's own Operating Manual were not met, and that the levels of cadmium were exceeded on numerous occasions throughout the history of sewage sludge to the lands.
- (6) Exhibit 21 is a document which includes, at page 6, the basis for calculation of pounds per acre in the top six inches of soil, when a level of a constituent has been defined as follows:

To convert PPM to LB/acre, multiply PPM by 2.

By applying this formula to the levels of constituents found in the McElmurray family's lands, it is easy to determine that the levels of cadmium and other contaminants are extremely high, especially when compared to other documents which limit the amount which can be applied to farm lands. In addition to issues relating to cadmium, there are numerous other constituents which have become an issue on the McElmurray family's lands, including thallium which is addressed at Exhibits 28 and 29 at p. 24, and is indicated to be a danger in the food chain when there are recommended limits of thallium in agricultural soils of 1 milligram per kilogram. See Exhibit 29. The Georgia cleanup standard under HSRA is 2 ppm (Exhibit 13). In addition, there are numerous scientific

publications about molybdenum and the allowable levels of that constituent, including the following:

Under such conditions 2-3 mg/kg of total Mo in soil has produced forages with toxic concentrations for ruminants.

See Exhibit 29, p. 31.

- (7) It can be stated without question that the City of Augusta's sewage sludge program has never been handled properly from the beginning of the program in 1979 through today's date. See 1983 Guidelines (Exhibit 19).
- (8) Exhibit 30 is a complete copy of the original Gaskin/Brobst article which is referenced in the Mehan letter. Exhibit 12 is a copy of my letter to Ms. Gaskin informing her that she must remove this article as a peer reviewed material because of misrepresentations about the lack of credibility of the supporting data. This article, which was choreographed by the BIRT was designed to cover-up the truth by using data that was questioned as fraudulent by the EPD. In addition, the Mehan letter does not even mention the portion of the Gaskin/Brobst article which describes dangerous levels of constituents from food grown on lands sludged for a period greater than six years. The McElmurray lands received sewage sludge for 11 years. The City of Augusta and the University of Georgia cooperated to perform this study in an effort to disprove that there was any contamination on the McElmurray family's lands. Contrary to the attempted distortion of the document by the Mehan letter, and even though the City of Augusta's data upon which they relied was found by the EPD not to be sustainable, portions of the article not mentioned prove that unacceptable contamination exists on lands where sludge has been applied by the City of Augusta for in excess of six years in the Richmond/Burke County areas.

Page 00010 of the Gaskin/Brobst article (Exhibit 30) shows an analysis of a hay sample involved in the study, which

indicates that cadmium exceeds the maximum tolerable level (“MTL”) for cadmium of .5 pm. The hay sample result is 1.41 ppm for cadmium. In addition, page 00030 of the study shows that cadmium, once again, was found at the level of .729 ppm, when the MTL, according to the National Research Counsel (“NRC”) is .5 ppm. The study indicates that further research is needed concerning high levels of cadmium found during the study. To date no additional research has been conducted by the City of Augusta. See Exhibit 30, p. 00059.

In addition, the study finds that:

... three fields had cadmium concentrations near or above the MTL for cattle ... The high cadmium levels in these fields are a source of concern; however, the MTL is developed assuming the animal has no other source of food which should provide a safety factor for animals fed the hay.

See Exhibit 30, p. 00058. Anyone familiar with a dairy farm, and anyone familiar with the feeding of crops grown on lands, will know that there are significant points in time in the life of a dairy cow when practically 100% of its feed will come from home grown silage. This is a very alarming issue when related to the McElmurray family’s history of growing plants for human consumption, when the MTL for a dairy cow would be at this level. There is also additional language which indicates as follows:

Although the concentrations of these metals were significantly higher in the > 6 years group compared to the NS group, the average hay concentrations were below the MTLs set by the National Research Council.

See Exhibit 30, p. 00058. This is an indication that there are significant problems where sludge is placed upon lands for greater than six years. The EPA Office of Inspector General should take particular note that, when this study is talking

about averaging, it is talking about averaging the concentrations among different fields to reach the average number, not concentrations from the same field which received sludge for greater than six years. This conclusion will not pass muster in the real world and is yet additional proof of the Mehan letter's and the City of Augusta's attempts to obfuscate the truth about the impacts of sewage sludge on lands that could be used for the growth of crops.

- (9) Exhibit 20 includes soil and plant tissue samples taken from McElmurray family's lands that show exceedances of allowable cadmium levels under federal law, 40 C.F.R. Part 257 (Exhibit 15), and 1983 Guidelines (Exhibit 19). When the parts per million, after being multiplied by two (Exhibit 21), exceeds the lifetime limit on cadmium of 4.5 pounds per acre according to 40 C.F.R. 257 (Exhibit 15), the land can no longer be used to grow food crops. See Exhibit 15. An example is given where one soil sample shows that the property has 12.4 pounds per acre and also exceeds the Type 3 HSRA cleanup standard for soil criteria of 2 parts per million.

The soil and tissue samples found at Exhibit 20 provide additional proof that the McElmurray family's lands are contaminated.

- a. Sample date: November 10, 1997.  
Exceedances under 1983 Guidelines (Exhibit 19), Type 3 HSRA standards (Exhibit 13), and federal law, 40 C.F.R. Part 257 (Exhibit 15) for cadmium. These samples were taken from locations as shown on the analytical reports.
- b. Sample date: January 5, 1999 from "The Clark Place".  
(1) HSRA Type 3 standard = 4 ppm for antimony (Exhibit 13).  
Soil sample analysis = 96.8 ppm for antimony (Exhibit 20)

- (2) HSRA Type 3 standard = 20 ppm for arsenic (Exhibit 13)  
Soil sample analysis = 44.2 ppm for arsenic (Exhibit 20)
  - (3) HSRA Type 3 standard = 2 ppm for cadmium (Exhibit 13)  
Soil sample analysis = 6.41 ppm for cadmium (Exhibit 20)  
(This analysis also exceeds 40 C.F.R. Part 257 allowable levels for cadmium) (Exhibit 15).
  - (4) HSRA Type 3 standard = 2 ppm for selenium (Exhibit 13)  
Soil sample analysis = 5.40 ppm for selenium (Exhibit 20)
  - (5) HSRA Type 3 standard = 2 ppm for thallium (Exhibit 13)  
Soil sample analysis = 51.6 ppm for thallium (Exhibit 20)
- c. Sample date: January 5, 1999 from “The Henderson Place”
- (1) HSRA Type 3 standard = 4 ppm for antimony (Exhibit 13)  
Soil sample analysis = 84.1 ppm for antimony (Exhibit 20)
  - (2) HSRA Type 3 standard = 2 ppm for cadmium (Exhibit 13)  
Soil sample analysis = 7.27 ppm for cadmium (Exhibit 20)  
(This analysis also exceeds 40 C.F.R. Part 257 allowable levels for cadmium of 4.5 lbs per acre, because it equals 14.5 lbs per acre) (Exhibit 15).
  - (3) HSRA Type 3 standard = 2 ppm for selenium (Exhibit 13)  
Soil sample analysis = 3.13 ppm for selenium (Exhibit 20)

- (4) HSRA Type 3 standard = 2 ppm for thallium (Exhibit 13)  
Soil sample analysis = 61.3 ppm for thallium (Exhibit 20) (30 times the cleanup standard)
  
- d. Sample date: December 9, 1998 from “The Pennington Place”
  - (1) HSRA Type 3 standard = 4 ppm for antimony (Exhibit 13)  
Soil sample analysis = 12.4 ppm for antimony (Exhibit 20)
  - (2) HSRA Type 3 standard = 2 ppm for thallium (Exhibit 13)  
Soil sample analysis = 9.22 ppm for thallium (Exhibit 20)
  
- e. Sample date: December 9, 1998 from “Dye’s Crossroads”
  - (1) HSRA Type 3 standard = 4 ppm for antimony (Exhibit 13)  
Soil sample analysis = 24 ppm for antimony (Exhibit 20)
  - (2) HSRA Type 3 standard = 2 ppm for thallium (Exhibit 13)  
Soil sample analysis = 19.17 ppm for thallium (Exhibit 20)
  
- f. Sample date: June 9, 1998 for “The Home Place”
  - (1) Georgia biosolids regulatory limit = 8 ppm for molybdenum (Exhibit 30)  
1<sup>st</sup> soil sample analysis = 9.8 ppm for molybdenum (Exhibit 20)  
2<sup>nd</sup> soil sample analysis = 92 ppm for molybdenum (Exhibit 20)
  
- g. Sample date: June 14, 1990 for “The Clark Place”
  - (1) Georgia biosolids regulatory limit = 8 ppm for molybdenum (Exhibit 30)

1<sup>st</sup> soil sample analysis = 23 ppm for molybdenum (Exhibit 20)

2<sup>nd</sup> soil sample analysis = 21 ppm for molybdenum (Exhibit 20)

3<sup>rd</sup> soil sample analysis = 24 ppm for molybdenum (Exhibit 20)

This means 46 pounds per acre, 42 pounds per acre, and 48 pounds per acre (See calculation rule at Exhibit 21). 48 pounds per acre is three times the Georgia regulatory limit for biosolids. See Rules of the Georgia Department of Natural Resources, Chapter 391-3-6-.17. Sewage Sludge (Biosolids) Requirements (Exhibit 30, p. 00009).

- h. Plant Tissue Sample date: June 15, 1998 for “Dye’s Crossroads”
- (1) National Research Council (“NRC”) Limit = .5 ppm for cadmium (Exhibit 30, p. 00009; Exhibit 31)  
Plant tissue sample analysis = 5.98 ppm for cadmium (Exhibit 20)
  - (2) NRC Limit = 6 ppm for molybdenum (Exhibit 30, p. 00009).  
Plant tissue sample analysis = 11.3 ppm for molybdenum (Exhibit 20)
- i. Plant Tissue Sample date: June 15, 1998 for “The Home Place”
- (1) NRC Limit = .5 ppm for cadmium (Exhibit 31)  
Plant tissue sample analysis = 3.15 ppm for cadmium (Exhibit 20)
  - (2) NRC Limit = 6 ppm for molybdenum (Exhibit 30, p. 00009)  
Plant tissue sample analysis = 12.4 ppm for molybdenum (Exhibit 20)

- j. Plant Tissue Sample date: June 14, 1990 for “The Clark Place”
  - (1) NRC Limit = .5 ppm for cadmium (Exhibit 31)
    - 1<sup>st</sup> plant tissue sample analysis = 35 ppm for cadmium (Exhibit 20)
    - 2<sup>nd</sup> plant tissue sample analysis = 7 ppm for cadmium (Exhibit 20)

Exhibit 32 contains the Affidavit of Paul T. Chandler dated May 29, 2002, who is an expert dairy nutritionist. At page 8 of his Affidavit, Dr. Chandler states his opinion that there are “abnormal levels of one or more heavy metals in soils from the McElmurray croplands [which] were confirmed from the extensive testing conducted by A&L Laboratories and summarized in Report No. 96-351-9349.”

The sampling conducted by the City of Augusta during the litigation was designed to avoid the discovery of contamination, and consisted of a sampling protocol of nine samples taken from a very large area which were then combined into a composite from the top six inches of the lands. No sampling was taken by the City of Augusta below six inches.

#### **4. McElmurray Summary.**

The McElmurray family and their experts have spent the last five years evaluating thousands of pages of documents obtained from the City of Augusta which show that the records are in a “shambles” and show that the City of Augusta has no idea how much sludge was applied to the McElmurray family’s lands or the extent of contaminants in the sludge. In itself, that is a sufficient basis upon which the EPA, from the beginning, should, and could, have confirmed that the McElmurray lands and dairy herd was damaged by the City of Augusta’s sewage sludge. The EPA could have used the Augusta situation as a banner example of how not to conduct a sewage sludge land application program, which could have served to otherwise support a proper program. However, the EPA’s actions in trying to protect such a substandard program only serves to further prove that the entire sewage sludge program within EPA is corrupt.

The BIRT is focused upon perpetuating intellectual and academic fraud to protect the application of any sewage sludge, regardless of whether the sludge is, in reality, hazardous waste. The EPA is advocating that fertilizer should be applied to farmlands when, in fact, it is industrial waste. The EPA Office of Inspector General can correct this horrible history of wrongdoing by looking at and disclosing to the United States Congress and the public the facts

which support an immediate moratorium on the land application of sewage sludge and a extensive investigation of the prior conduct of certain employees within the EPA.

A jury in Richmond County, Georgia has confirmed that the sewage sludge dumped upon the Boyce Dairy farm lands killed cows and contaminated the lands by evaluation of the data from that farm. Products from dairy farms are part of the food chain for animals and humans. All of that data, similar to the data provided herein concerning the McElmurray dairy farm, is available for review by Congress and the EPA Inspector General. The data which has been uncovered concerning the Boyce and McElmurray farms, a small portion of which is outlined in this submission, conclusively prove that levels of heavy metals and other contaminants were applied to the Boyce and McElmurray families' lands at extremely high levels, and remain upon those lands, whether or not they have been located. In addition, the laboratory data outlined herein shows that there are illegal exceedances of numerous hazardous constituents.

Finally, there is conclusive proof that the City of Augusta applied hazardous wastes on the Boyce and McElmurray families' lands without telling them, with the fraud and cover-up beginning in 1979 and continuing until the present time. There is no evidence in contravention of this information which has been disclosed to the BIRT or others with the EPA and is readily available this Honorable Subcommittee and/or to the Inspector General of the EPA.

## **V. CONCLUSION**

This letter constitutes a request by the Boyce and McElmurray families for an investigation by your honorable Congressional Subcommittee and by the EPA Office of Inspector General of the EPA's and City of Augusta's illegal activities based upon:

- (1) the response herein to the Mehan letter, which proves that numerous false statements are made in Section 5 of that letter;
- (2) the jury's findings that the Boyceland Dairy farm, its lands and dairy herd, were damaged by illegally constituted and applied sewage sludge; and
- (3) the conclusive proof outlined herein showing the EPA's and the City of Augusta's fraudulent and likely criminal activity.

These illegal activities include the false representations made in the Mehan letter and the EPA's endorsement of the creation and maintenance of known false documentation which was disclosed by the EPD's December 1998 audit and confirmed by the dairy farmers' investigations and assimilation of the City of Augusta's documents.

Honorable Barbara Cubin  
March 31, 2004  
Page 43

---

Respectfully Submitted,

F. Edwin Hallman, Jr.

For DECKER, HALLMAN, BARBER & BRIGGS

FEHjr:nlb  
Enclosures

c: R. A. McElmurray and Sons, Inc.  
Boyceland Dairy  
Mr. Joseph Mendelson, III  
Thomas Alan Linzey, Esq.



**TABLE OF CONTENTS**

1. 02/27/04 Letter from James W. Ellison to the Subcommittee on Energy and Minerals
2. 12/16/98 Memorandum from Compliance Evaluation Task Force to Alan Hallum
3. 12/18/98 Memoranda from Jeff Larson to Alan Hallum re: compliance evaluation
4. 06/24/03 Judgment in Boyce, et al. v. Augusta, Georgia
5. O.C.G.A. § 9-12-1
6. 04/08/98 Letter from Ed Hallman to Alan Hallum
7. 04/08/98 Letter from Ed Hallman to Alan Hallum
8. 04/30/02 Affidavit of Lewis Goodroad, Ph.D.
9. 05/30/02 Affidavit of Lewis Goodroad, Ph.D.
10. 08/01/01 Letter from Bill Boyce to Robert B. Brobst
11. 10/11/01 Boyceland Dairy Herd Study prepared by Holly T. Ballantine and George William Boyce
12. 02/05/04 Letter from Ed Hallman to Julia Gaskin

13. Rules of the Georgia Department of Natural Resources Environmental Protection Division, Chapter 391-3-19, Hazardous Site Response Act
14. 05/30/02 Affidavit of William L. Hall, P.E.
15. 40 C.F.R. Part 257
16. 40 C.F.R. Part 302.4
17. 05/06/99 Excerpts from Deposition of Hugh Elbert Avery, Jr.
18. 07/23/99 Excerpts from Deposition of Durwood Allen Saxon, Jr.
19. 09/1983 Guidelines for Land Application of Municipal Sludges
20. Reports of Analyses by A&L Analytical Laboratories, Inc.
21. 08/1999 Course: 01.463 for Landscape Design and Management, Unit 3: Managing Landscape Soils and Fertility, Lesson 2: Sample and Analyze Soil
22. 12/11/03 Excerpt of testimony by Robert Brobst from hearing before the Georgia State FSA Committee
23. Carr Laboratory Reports for 1980, 1981, 1982, 1983
24. 07/06/99 Excerpts from Depositions of Marion Willie Harris

07/08/99

25. 10/1985 City of Augusta Wastewater Treatment Plant Operating Manual
26. Regulatory level exceedances greater than Maximum Theoretical Concentrations (Hazardous Waste Calculations)
27. 12/31/87 Letter from Gail Ann Hansen to Joanna Cole re: total constituent analysis to determine hazardous characteristics of waste sample
28. 03/04/99 Hazardous Site Response Program Release Notification Reporting Forms
29. 08/1997 The Case for Caution, Recommendations for Land Application of Sewage Sludges and an Appraisal of the US EPA's Part 503 Sludge Rules
30. Metals Assessment for Burke County Hay Fields Receiving Biosolids prepared by Julia W. Gaskin, William P. Miller, Ernest W. Toller, and Myron Fowler for the USEPA
31. 2001 Nutrient Requirements of Dairy Cattle, Seventh Revised Edition, 2001
32. 05/29/02 Affidavit of Paul T. Chandler