

DECKER, HALLMAN, BARBER & BRIGGS

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

F. EDWIN HALLMAN, JR.
(404) 588-2525 Direct
e-mail: ehallman@dhbblaw.com

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

September 12, 2008

VIA ELECTRONIC MAIL

[Bettina Poirier@epw.senate.gov](mailto:Bettina.Poirier@epw.senate.gov)

ORIGINAL TO FOLLOW

BY REGULAR MAIL

Ms. Bettina Poirier, Staff Director
United States Senate Committee on Environment and Public Works
Majority Staff
Senate Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Re: Briefing on the Oversight on the
State of Science and Potential Issues
Associated with EPA's Sewage Sludge Program
DHBB File No. 2829/002

Dear Ms. Poirier:

This letter is written to you in your capacities as members of the Staff for the Environment and Public Works ("EPW") Committee of the United States Senate. I am writing to you in my capacity as legal representative for Mr. Andy McElmurray before the EPW Committee Briefing, as well as for Mr. McElmurray and Dr. David Lewis in federal false claims lawsuit filed on their behalf and on behalf of Mr. Bill Boyce, which is the subject of a September 3, 2008 letter that has been made public. All of these gentlemen, who are my clients, are "Relators," or Plaintiffs, in the False Claims Act case, styled *U.S. ex rel. David L. Lewis, Ph.D. v. John Walker, Ph.D.*, United States District Court, Middle District of Georgia, Civil Action File No. 3:06-CV-16.

At the outset, I will clear the air about my understanding of the reasons why the EPW Committee Staff decided that the Briefing scheduled for September 11, 2008,

regarding the EPA's sewage sludge program should be canceled. It is my understanding that, on the night of September 10, 2008, at approximately 8:00 p.m., you received, from an undisclosed source, a copy of a letter dated September 3, 2008, that was marked in bold lettering "FOR SETTLEMENT PURPOSES ONLY ... INADMISSIBLE." The September 3 letter was from me and was addressed to attorneys for certain of the Defendants in my clients' false claims act case. You decided that you had no choice but to cancel the Briefing until you had a better understanding of the implications of the letter.

The copy of the September 3 letter that you, as the Staff for the EPW, received was written by me on behalf of my clients, and contained a proposed settlement offer for some of the Defendants in the false claims act case filed in the United States District Court for the Middle District of Georgia. Beyond your review of the letter, you had no knowledge of the parties to the litigation and how, if at all, the release of the letter could affect the Briefing. It is understandable that you simply did not have time to evaluate the contents and the characterization added to the letter from the undisclosed source who provided it to you. After better understanding the factual context in which you and the EPW Committee members received this information late on the evening of September 10, we understand the action taken by you in canceling the Briefing. We will convey to our clients and all of the other persons who traveled to Washington for the Briefing, that the cancellation was not the result of any inappropriate actions by the Staff of the EPW Committee.

One of the first precepts learned in law school is the old adage: "If you cannot respond to the message, kill the messenger." Certain Defendants' lawyers and their clients were motivated to send the September 3, 2008, letter to you in desperation to stop the Briefing, because they want, at all costs and with any means available, to prevent the Committee from delving into the EPA's sewage sludge program. Enclosed herewith is a brief timeline outlining UGA's involvement with the EPA in protection of this program. I believe that the timeline will give you a full appreciation of why individuals associated with UGA leaked our settlement proposal in order to stop the Briefing.

I am surprised that members of the legal bar would take part in the kind of sleazy conduct that we have observed from the cadre of sludge promoters in EPA for many years. Based upon my ten years of experience of litigating in this area, I and my clients should not be surprised that the sewage sludge industry and their followers took this

disgusting and inappropriate action to stop the Briefing by improperly disclosing settlement negotiations in litigation.

We are publishing this letter to clarify the meaning of the September 3 settlement letter and to make it clear to all who read it that the cancellation of the Briefing was solely the responsibility of irresponsible lawyers and their clients.

It is apparent that the attorneys and their clients to whom the September 3, 2008, letter was addressed published the letter and initiated the false speculation that the referenced settlement proposal somehow negatively affected the EPW Committee's ability to have a Briefing focused upon the EPA's science and implementation of the sewage sludge program. In my 37 years of practicing law, I have NEVER had opposing attorneys in litigation disclose settlement negotiation documents, and I find the actions of the defense attorneys and their clients in releasing the September 3, 2008, letter to be the lowest form of unprofessional, unethical and substandard conduct. Needless to say, we will bring this conduct to the attention of the Court and other appropriate oversight bodies. In any event, we will no longer trust these attorneys or their clients involved in these actions to follow ethical and professional conduct standards. It is valuable for us and our clients to know at this stage of the litigation the caliber of folks with whom we are dealing.

I will forward to you by mail copies of the First and Second Amended Complaints in the referenced false claims or "Qui Tam" lawsuit. The lawsuit was filed by our clients, Andy McElmurray, William Boyce and Dr. David Lewis, as "Relators", also known as Plaintiffs, in the case. You will see that the Defendants in the case are: John Walker (former EPA employee), Robert B. Brobst (current EPA employee), Julia W. Gaskin (University of Georgia ("UGA") employee), William P. Miller (UGA employee), E. William Tollner (UGA employee), L. Mark Risse (UGA employee), the University of Georgia Research Foundation, Inc., Robert K. Bastian (current EPA employee), Charles E. Gross (current EPA employee), and Joseph L. Key (former UGA Research Foundation employee). The September 3, 2008 letter was submitted to attorneys Clarence Lee Lott, III, who represents the UGA Research Foundation, Inc. and its employee, Joseph L. Key, and to George M. Weaver, who represents Julia W. Gaskin, William P. Miller, E. William Tollner and L. Mark Reese, all UGA employees. The letter was not addressed to the attorney for Mr. Walker, Mr. Brobst, Mr. Bastian, or Mr. Gross, the EPA employees. In fact, I called both Mr. Lott and Mr. Weaver to confirm with them that our clients would not settle with

the EPA Defendants under any terms. The attorney representing the EPA Defendants did not receive a copy of the September 3 letter.

The EPW Committee Briefing is not impacted by the September 3 letter that was released, in violation of numerous legal ethics and other rules, for many reasons, among which are the following:

(1) The September 3 letter has nothing to do with the EPW Committee oversight Briefing concerning the actions of the EPA, because there was no proposal whatsoever to settle with the EPA Defendants. Those who sent the letter to the EPW Committee know full well that the Briefing was focused exclusively upon the EPA's sewage sludge program, the recent court cases that prove its inadequacies, and the EPA's role in encouraging and participating in creation of fake, fraudulent, "invented" and "fudged" data to justify the sewage sludge program. Because the only Defendants to whom the offer was made were UGA-related Defendants, the September 3, 2008 letter, contrary to representations made to you, is totally irrelevant to the EPW Committees' overview of the EPA and investigation into sewage sludge. The factual fabric of the Complaint in the UGA/EPA false claims case is relevant and is covered in the written testimony of Mr. McElmurray and Dr. Lewis.

(2) Specifically, in the UGA/EPA false claims act case, our clients, the Relators, have alleged that the EPA Defendants solicited the UGA Defendants to apply for a grant with the purpose of issuing a study based upon false data to support the illegal activities of the City of Augusta in its applications of hazardous wastes to dairy farms and other agricultural properties and in Augusta's defense of lawsuits filed by farmers. Irrefutable evidence in the case already shows that the Defendants made false claims on a grant application to obtain federal funding to perform a research project and publish the referenced report. Among the salient documents is a notation on a draft of the study made by Defendant Miller to Defendant Gaskin in which Defendant Miller states "We should fess up here that we DON'T know exact rates of application, or specific characteristics of sludge applied ...??"

(3) Relators Lewis and McElmurray were called by the EPW Committee to testify about their personal experience regarding "the current state of science, potential issues with, and implementation of EPA's program regarding sewage sludge."

(4) The September 3 letter that was released to the EPW Committee on September 10, had no bearing on the September 11 Briefing that was canceled. The written testimony of Dr. Lewis and Mr. McElmurray was already submitted to the EPW Committee prior to the Briefing. This written testimony cannot be changed, and was never intended to change in any way.

(5) My letter transmitting our settlement proposal simply points out that, should we be asked about UGA's position on the fabricated data, we would like to be in a position to say UGA does not contest Judge Alaimo's ruling. There was no way for UGA to take that position, unless we first resolved the qui tam action involving UGA employees and the UGA Research Foundation. Hence, we informed the UGA Defendants of the bare minimum conditions under which we would agree to drop the qui tam against them, pending approval from the DOJ.

(6) I am an alumnus of the UGA School of Law. Prior to the events of the last few days, I had believed, and encouraged my clients to believe, that the actions of the UGA Defendants were not the actions of the institution. We now know that the UGA Defendants and the actions of the UGA Research Foundation are endorsed by and fully supported by the administration of UGA at its highest level, and we will now proceed with the litigation with that clarified understanding. This is a very sad day for me as an alumnus, because of my realization that the President of UGA and all those in positions of power are now on record as endorsing the blatant, illegal actions of the UGA Defendants who published a study based upon fake data in concert with the EPA Defendants. The September 3 letter simply provided a graceful exit for the UGA Research Foundation and the UGA Defendants from the False Claims Act lawsuit, by having Defendant Gaskin publically admit that the data in the report were false, prior to the Briefing.

(7) The September 3 settlement proposal also included proposals for modest payments to Boyce and McElmurray, as well as an employment opportunity for Dr. Lewis. These requests were minuscule in light of the millions of dollars of losses experienced by these Relators. It is also curious that no one has noticed that, as the September 3 letter states, any potential settlement is subject to the approval of the Department of Justice and the federal government receives the majority of any payments. Unless the DOJ agreed otherwise, the most the Boyce and McElmurray families could hope to receive from the settlement amounts would likely be \$20,000 each, and the federal

government would be entitled to the majority of the salary paid to Dr. Lewis. This would not even cover the legal expenses of my clients associated with dealing with the fabricated data published by EPA and UGA.

(8) There is no indication anywhere in the September 3 letter that the Relators would alter their testimony in any way based upon acceptance of the terms of settlement. The Relators cannot change the truth, and would never testify before this Committee or any other tribunal to anything but the truth.

(9) The leaking of the September 3 letter by attorneys for the Defendants and the Defendants themselves is reprehensible and should not be condoned, but should be condemned by members of the EPW Committee. The September 3 letter is not admissible as evidence in the False Claims Act lawsuit. It appears that counsel for the Defendants saw the Briefing as a unique opportunity to poison a potential jury pool by publically disclosing information that otherwise would have remained confidential.

(10) Dissemination of inadmissible evidence by means of public communication in an attempt to alter an adjudicative proceeding is a violation of the American Bar Association Model Rules of Professional Conduct.

A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

Rule 3.6 (a).

Relators will seek all remedies available for this egregious ethical violation.

(11) Despite the clear prejudice to my clients' case resulting from the wrongful disclosure of the September 3 letter, we can and will prove that the Defendants presented false claims to the government to obtain federal funds in violation of the False Claims Act.

Ms. Bettina Poirier
September 12, 2008
Page 7

We are confident that the EPW Committee and its staff will not consider any further the improper disclosure of the September 3 letter and that a full Briefing will rescheduled in the near future. The Relators' testimony will remain unchanged. We look forward to the Committee holding a full Hearing or Briefing on the status of the sewage sludge program and Andy McElmurray, who I represent for the Briefing, remains ready and willing to testify.

Thank you for your investigation of this horrific nationwide EPA program that is created under the guise of providing free fertilizer for agricultural lands, but is in fact an EPA fiefdom created by evil minds, whereby hazardous wastes are being put on lands, only to continue to harm human health and destroy the value of lands and the environments in which the lands are located.

Sincerely,



F. Edwin Hallman, Jr.

For DECKER, HALLMAN, BARBER & BRIGGS

FEHjr:raw
Enclosures

Timeline
First Amended Complaint
Second Amended Complaint

c: Erik D. Olson, Esq. (erik_olson@epw.senate.gov)
Mr. Grant Cope (Grant_Cope@epw.senate.gov)