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February 27, 2004

Subcommittee on Energy and Minerals  
Committee on Resources  
U.S. House of Representatives  
Room 1324 Longworth House Office Bldg.  
Washington, D.C. 20515

**Re: February 4, 2004 Hearing – “The Impact of Science and Public Policy”**

Dear Sirs:

The undersigned is counsel for Augusta, Georgia in litigation filed by the Boyce and McElmurray dairy farms in Augusta, Georgia alleging that their land was contaminated by the application of biosolids and that their dairy cows died as a result of said applications.

I have read the written testimony of David L. Lewis submitted to this honorable subcommittee at the hearing on February 4, 2004, which testimony was posted on the internet. I have not been privy to Mr. Lewis' oral testimony before the subcommittee; however, the written materials apparently submitted by Mr. Lewis and posted on the internet contain numerous inaccuracies. Therefore, I respectfully request that this response be made part of the subcommittee's record of this particular hearing.

In his written testimony, Mr. Lewis makes numerous statements concerning the Augusta wastewater treatment plant and the litigation filed by the two dairy farms alleging damages as a result of the application of sewage sludge to their land. I would like to set the record straight concerning these inaccurate statements made by Mr. Lewis.

On page 5 of his written testimony, Mr. Lewis states that “veterinarians treating the cows analyzed liver biopsies and found toxic levels of cadmium and molybdenum.” This is an inaccurate statement. First of all, none of the cows from the Boyce and McElmurray farms referenced in Mr. Lewis' testimony had any liver biopsies performed. Secondly, while there were numerous deceased cows on the farms that had liver analysis for cadmium and molybdenum, none of the cows tested from these farms by the veterinarians treating the cows had any toxic levels of cadmium or molybdenum in their livers. This was one fact that was undisputed in these cases. Where Mr. Lewis obtained this erroneous information or what his basis is for the statements is completely unknown to me and is not explained in his testimony.

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I enclose excerpts from the deposition of Dr. William Breen Pritchard, the veterinarian who treated the cows on both of the dairy farms in question. This deposition was taken incident to both of the lawsuits. In the deposition, Dr. Pritchard acknowledges that no toxic levels of cadmium or molybdenum were found in any of the livers of the cows from these farms that he had tested.

Mr. Lewis also refers to a 1998 audit by the Georgia Environmental Protection Division (EPD). According to Mr. Lewis, the audit by the Georgia EPD found that the analytical data reported by the City of Augusta, which indicated levels of heavy metals in the biosolids were low, were completely unreliable, possibly even fraudulent. (See p. 5 of Mr. Lewis' written testimony.) This is another inaccurate statement.

My review of the 1998 EPD audit referenced by Mr. Lewis (Appendix III) does not reveal any basis for such a statement. The audit does reference the manner in which Augusta was taking its samples for pathogen and vector attraction reduction tests. However, those are different samples than the samples taken to test for metals which are used in monitoring the rate of biosolids applications. The samples of the biosolids that were taken for metal analysis for purposes of monitoring the application rates of metals were taken by Augusta on the 30<sup>th</sup> day of each month and were taken from the trucks that were hauling the sludge just before they left the plant. A composite sample was made of samples taken from each truck which was then analyzed for metals. To my knowledge, neither the Georgia EPD nor the EPA has had any criticism concerning the testing of metals in the biosolids produced at the Augusta, Georgia wastewater treatment plant.

In addition, Mr. Lewis states that, "the EPD report noted that the sludge was so corrosive that it dissolved fences and other metal structures, and was emitting toxic fumes that could make cattle sick." (See p. 5 of Mr. Lewis' written testimony.) The audit actually states that the sludge could not be applied up to the fence line because it will rust the barbed wire fences. This was an error by the EPD inspector. While the City's land application supervisor was giving the EPD personnel a tour of the application sites, it was explained that buffer zones were set up away from the fences in the fields because the farmers were concerned that the biosolids might rust their fences just as their liquid commercial fertilizer had been known to do. I am unaware of anyone who has ever stated or claimed that the Augusta biosolids were "dissolving fences". The audit report also contained a speculative statement that the presence of sulfides in the biosolids "could be causing the health problems in the dairy cattle". This speculative statement was never supported by any evidence whatsoever. Even the plaintiffs' attorneys in the litigation filed against Augusta, Georgia by the dairy farmers never attempted to advance this theory.

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Mr. Lewis also states that the "EPD recommended that the [Augusta] land application program should be shut down immediately ... "(see p. 17 of Mr. Lewis' written testimony.) This is another inaccurate statement. While the audit report contains such a recommendation from EPD employees the EPD never made any such recommendation. The EPD does not make that type of recommendation. If the Georgia EPD found evidence that the Augusta land application program should have been shut down, it had the power and authority to shut the program down. The recommendation to which Mr. Lewis refers was made by lower level EPD employees that conducted the audit. However, the Augusta program was never shut down by EPD. While I certainly cannot speak for the Georgia EPD, it is my understanding that no decision was made to shut down the Augusta program because based upon further investigation and the response to the audit report by Augusta, it was discovered there were numerous inaccuracies in the 1998 audit.<sup>1</sup>

What is very disturbing about Mr. Lewis' testimony is the way he utilizes this 1998 audit report from the Georgia EPD to castigate the work of Julia Gaskin of the University of Georgia and Bob Brobst of the EPA. Mr. Lewis accuses the authors of the cited research study of using metal analysis of the biosolids from Augusta which has been deemed to be unreliable and possibly fraudulent. (See Gaskin, J.W., R.B. Brobst, W., Dr. P. Miller, and E.W. Tolner. 2003. *J. Env. Qual.* 32:146-152) However, as previously pointed out, the 1998 EPD audit did not make any such findings.

Further, Mr. Lewis obviously misunderstood the whole point of the study conducted by Ms. Gaskin and Mr. Brobst. The metal analysis of the Augusta biosolids from my reading of the paper was merely included for historical information. The real thrust of the research conducted and reported concerned the soil and plant analyses from fields that had received applications of biosolids from Augusta as compared to fields that had never received any such applications. The conclusions of the authors were drawn from those analyses which Augusta had nothing whatsoever to do with. The authors concluded from the soil and plant analyses as follows:

"Although biosolids containing higher metals concentrations than would currently be allowed were applied to the fields in the >6YR group, our study indicated that toxic levels of metals have not accumulated in the soils. The long-term application of biosolids has increased some metal concentrations in the soil, which was reflected in the forage

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<sup>1</sup> For example, the audit states that there were 200 trucks per day leaving the plant for land application during the time of the audit inspection. However, this was a ludicrously inaccurate statement as there have never been 200 truckloads of biosolids leaving the Augusta wastewater treatment plant in one day. In reality, to my knowledge, there have never been more than approximately 25 truckloads per day leaving the Augusta plant.

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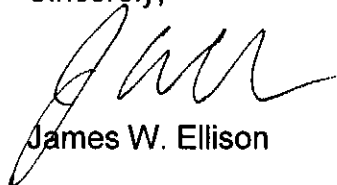
samples. Overall, forage quality from fields with long-term application of biosolids was similar to that having only commercial fertilizer and should not pose a risk to animal health."

Mr. Lewis did not dispute these findings but merely utilized an inaccurate interpretation of the 1998 EPD audit to criticize Ms. Gaskin and the others involved in the study.

For the subcommittee's information, I enclose a recent order which was entered by the Superior Court of Richmond County, Georgia involving one of the dairy farm cases referenced by Mr. Lewis in his testimony. On February 11, 2004, the Court entered an order granting judgment in favor of Augusta in the pending case filed by the McElmurray dairy farm contending that their land had been contaminated by the application of Augusta biosolids and that their dairy cows died as a result. Although the Court granted summary judgment on a statute of limitations defense, the Court also in its Order found there was insufficient evidence that plaintiffs had suffered any damages to their dairy farm or dairy herd as a result of the application of biosolids to their farmlands. In addition, the Court found that there was insufficient evidence supporting the plaintiffs' claim that their farmland had been damaged as a result of the application of biosolids to their land.

It is my hope that this letter and the enclosed information will shed additional light on the issues raised by Mr. Lewis in his testimony before this honorable subcommittee. If there is any further information that I can provide, I will be more than happy to do so.

Sincerely,



James W. Ellison

JWE/bl

cc: Benjamin Grumbles  
Acting Assistant Administrator  
Office of Water

Jeffrey Grubbs  
Director of Science & Technology  
Office of Water