

STATEMENT OF FORMER EPA-ATHENS DIRECTOR

ROSEMARIE C. RUSSO, PH.D.

(Retired)

Regarding EPA's dismissal of David L. Lewis, Ph.D. for publishing research linking sewage sludge (biosolids) to illness and death

Subject: statement

Date: 3/6/2008 5:46:16 PM Eastern Standard Time

From: russo@charter.net

To: lewisdavel@aol.com

David, here is a short statement from me.
Rosemarie Russo

Dr. Lewis' involuntary termination over his research articles was not supported by the local lab management in Athens. He was an excellent researcher and an asset to EPA science.

Gattie, D.K. and D. L. Lewis. 2004. A high-level disinfection standard for land-applied sewage sludge (biosolids). *Environ. Health Perspect.* **112**:126-31.

Lewis, D.L., D.K. Gattie, M.E. Novak, S.Sanchez, and C. Pumphrey. 2002. Interactions of pathogens and irritant chemicals in land-applied sewage sludges (biosolids) *BMC Public Health* **2**:11 (28 Jun) www.biomedcentral.com/1471-2458/2/11

Lewis, D.L. and D.K. Gattie. 2002. Pathogen risks from applying sewage sludge to land *Environmental Science & Technology* **36**:286A-293A

Lewis, D.L., A.W. Garrison, K.E. Wommack, A. Whittemore, P. Steudler, J. Melillo. 1999. Influence of environmental changes on degradation of chiral pollutants in soils. *Nature* **401**:898-901.

Lewis, D.L. 1996. EPA Science: Casualty of election politics. *Nature* **381**:731-2.

See editorial: *Nature*, 2008, Vol. 453, p. 258.

Infection-control papers by Dr. Lewis:

Lewis, D.L. and M. Arens. 1995. Resistance of microorganisms to disinfection in dental and medical devices. *Nature Medicine* **1**:956-958.

Lewis, D.L., M. Arens, S. Appleton, K. Nakashima, J. Ryu, R.K. Boe, J. Patrick, D. Watanabe, & M. Suzuki. 1992. Cross-contamination potential with dental equipment. *Lancet* **340**: 1252-4.

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

DAVID L. LEWIS,
Complainant,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY,
Respondent.

Case No. 98-CAA-13

SETTLEMENT AGREEMENT

The parties in the above-captioned case, Respondent, the U.S. Environmental Protection Agency (EPA or Agency), and Complainant, David L. Lewis, hereby agree to settle the above-captioned case in accordance with the following terms and conditions:

1. The parties agree that this Settlement Agreement shall not constitute an admission of liability or wrongdoing on the part of EPA or any of its present and former employees, officials and agents, and is entered into by both parties for settlement purposes only.
2. The following terms of this Settlement Agreement constitute the complete and final settlement of all the issues raised in the above-captioned case:
 - a. Complainant agrees to withdraw his complaint, DOL Case No. 98-CAA-13, with prejudice;
 - b. Complainant further agrees that by withdrawing his complaint with prejudice, and upon dismissal of his complaint by the U.S. Department of Labor, the previous findings of the Occupational Safety and Health Administration regarding his complaint are moot and without effect;
 - c. Consistent with the Intergovernmental Personnel Act (IPA), the IPA's implementing regulations, and the EPA's IPA Policy and Procedures Manual, the parties agree to a two-year IPA assignment for Complainant with the University of Georgia (UGA). The parties agree to cooperate in good faith and comply with the aforementioned regulations and procedures in processing this IPA assignment. The parties further agree that, in the event they cannot reach a mutually-agreeable IPA

Assignment Agreement, this Settlement Agreement shall be considered null and void. Complainant represents that he has contacted the appropriate official(s) at UGA and that UGA will agree to his IPA assignment. Complainant further agrees that this IPA assignment will be limited to work on pathogen contamination of medical or dental devices and the application of this work to environmental issues of concern to the Agency. Complainant also agrees that his work and duty location while on this assignment will be at the UGA and not at the EPA Athens laboratory. Consistent with the IPA and the applicable policies and regulations, EPA agrees to consider a request for an extension of this assignment beyond the original two-year period;

d. The Agency agrees to pay 100% of Complainant's salary and benefits while he is on this IPA assignment. The Agency also agrees to pay for reasonable expenses incidental to this assignment, on a case-by-case basis, consistent with the IPA and the applicable policies and regulations;

e. The parties agree that, upon termination of Complainant's IPA assignment, he will return to work at the Agency consistent with the provisions of the IPA and applicable regulations. The Agency agrees to provide Complainant with administrative leave in order to facilitate Complainant's transition back to work at EPA. This administrative leave will be granted on an as-needed basis, and will not exceed a total of ten (10) days;

f. Complainant agrees to resign or retire from the Agency no later than the date he is first eligible for optional retirement (May 28, 2003). Complainant agrees that should he fail to submit the paperwork necessary to effect his resignation or retirement on or before this date, the Agency may consider this Settlement Agreement as his irrevocable notice of resignation effective on that date; and

g. Within forty-five (45) days from the date this Settlement Agreement is approved by the U.S. Department of Labor, and the above-captioned case is dismissed with prejudice, the Agency agrees to pay twenty thousand dollars (\$20,000) in attorney fees and five thousand dollars (\$5,000) in costs. This amount will be made payable to "Kohn, Kohn, and Colapinto, P.C.," and mailed to the following address: Kohn, Kohn, and Colapinto, P.C., 3233 P Street, N.W., Washington, D.C.

3. Complainant, his heirs, administrators, representatives, and executors, irrevocably release the Agency and its employees, officers, agents, representatives and all persons acting by, through, or in concert with any of them from any and all liability, which has arisen, or may arise, from any acts, omissions, allegations, claims or charges which were the basis for the above-captioned case.

4. The parties agree to seek approval of this Settlement Agreement from the U.S. Department of Labor and shall file a copy of this agreement with the presiding Administrative Law Judge. The parties agree that upon approval of this agreement by the presiding Administrative Law Judge, the

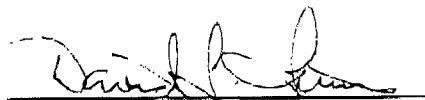
above-captioned proceeding shall be dismissed with prejudice and that the U.S. Department of Labor shall have the authority to enforce this Agreement.

5. The parties hereby confirm that this is the entire agreement and that not other agreement(s) exist which concern the above-captioned proceeding and/or the facts on which this proceeding is based upon.

6. Complainant, who is represented by counsel in this matter, agrees that he has thoroughly reviewed this Settlement Agreement, that he fully understands all of its provisions, and that he is voluntarily entering into and signing this Agreement.

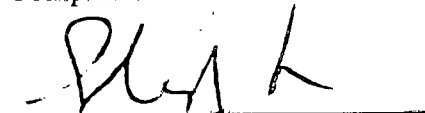
PARTIES TO THIS SETTLEMENT AGREEMENT

For the Complainant:



David L. Lewis
Complainant

10/15/98
Date



Stephen M. Kohn
Attorney for Complainant

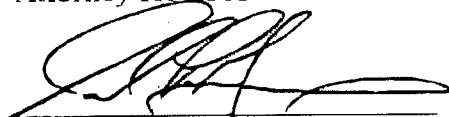
10-15-98
Date

For Respondent:



Bridget C. Shea
Attorney for EPA

October 1998
Date



David P. Guerrero
Attorney for EPA

10/2/98
Date

SERVICE SHEET

Case Name: DAVID L. LEWIS v. U.S. ENVIRONMENTAL PROTECTION
AGENCY
Case No.: 1998-CAA-13
Title of Document: RECOMMENDED DECISION AND ORDER APPROVING
SETTLEMENT

I certify that on 5 JAN 1999 a copy of the above-entitled document was mailed
to the following parties:

CERTIFIED MAIL

David P. Guerrero, Esq.
U.S. Environmental Protection Agency
Office of General Counsel (2377)
401 M Street, NW
Washington, DC 20460

Stephen M. Kohn, Esq.
Kohn, Kohn & Colapinto, P.C.
3233 P Street, NW
Washington, DC 20007

Bridget Shea, Esq.
Assistant General Counsel
U.S. Environmental Protection Agency
401 M Street, SW
Room MC-2377
Washington, DC 20460

REGULAR MAIL

Regional Administrator
U.S. Department of Labor/OSHA
61 Forsyth Street, SW
Atlanta, GA 30303

Directorate of Compliance Programs
U.S. Department of Labor, OSHA
Room N-3468 FPB
200 Constitution Avenue, NW
Washington, DC 20210

Madeline Ringling
MADELINE RINGLING
Legal Technician
REGULAR MAIL

Deputy Associate Solicitor
Division of Fair Labor Standards
Office of the Solicitor
U.S. Department of Labor
Room N-2716
200 Constitution Avenue, NW
Washington, DC 20210

Jaylynn K. Fortney, Regional Solicitor
U.S. Department of Labor
61 Forsyth Street, SW, Room 7T10
Atlanta, GA 30303


David L. Lewis
1310 Saxon Road
Watkinsville, GA 30677

Rosemarie Russo
05/08/2003 10:17 AM

To: David Lewis/ATH/USEPA/US@EPA
cc: lewisdavel@aol.com
Subject: Personnel Issue

David, FYI. Can you stop by this afternoon (I will be gone from tomorrow and then all next week), please.
thanks
rose

----- Forwarded by Rosemarie Russo/ATH/USC on 05/08/2003 10:15 AM -----


Jewel Morris
05/08/2003 09:31 AM

To: Rosemarie Russo/ATH/USEPA/US@EPA
cc:
Subject: Personnel Issue

Rose,

As you know, David Lewis will separate from the Agency, either through retirement or resignation, effective May 28, 2003, as provided for in a 1998 settlement agreement between David and EPA. David's attorney has been informed that should David wish to retire, David must initiate the processing of his retirement paperwork. David should contact Cathy Davis (919-541-3533) at HRMD for information regarding his retirement.

Should David decide not to retire, EPA will effect his resignation in accordance with the settlement agreement. In taking this action, NERL will prepare and process the necessary resignation paperwork. ERD will ensure that David's time card for the pay period that includes May 28 reflects that the 28th was David's last day as an employee.

Regardless of which separation route David chooses (retirement or resignation), ERD must also outprocess David (e.g. close out projects, collect his EPA ID card, etc.) as it would for any other departing employee. Please contact me should you have any questions.

Thanks.

Jewel F. Morris
Deputy Director
National Exposure Research Laboratory
Office of Research and Development
Phone: (919)541-2106
Fax: (919)541-0445
email: Morris.Jewel@epamail.epa.gov

Subj: Re: Personnel Issue
Date: 5/8/2003 10:32:07 AM Eastern Standard Time
From: LewisDavid
To: Russ.Roseman@epamail.epa.gov
Cc: snik@kks.com

Rose,

My attorney, Stephen Kohn, is out of his office until the end of next week.

In the meantime, Jewel Morris is fully aware that the 1998 settlement agreement she referred to requires that my IPA assignment and resignation/retirement be consistent with IPA rules and regulations, and states that the agreement becomes null and void if that condition is not met.

My first optional retirement/resignation date consistent with IPA rules and regulations and the settlement agreement is December 1, 2006. Jewel's statement that I will choose to retire or resign effective May 28, 2003 is incorrect. I will do neither.

Should EPA choose to involuntarily terminate me before December 1, 2006, it will be in violation of IPA rules and my settlement agreement.

It will also disregard findings of the EPA Inspector General that the Agency has been misusing IPAs to get rid of "unwanted employees" before they fulfill the "mutual benefit" requirement that employees return to the government an equal number of years spent on the IPA.

OIG stated in its report that EPA jeopardizes its IPA program by such actions, regardless of whether the employee agrees to leave before fulfilling the mutual benefit requirement. Judy Vanderhoef at OIG, an author of that report, has looked into my specific situation and informed me that the Agency's intent to send me on a 4-year IPA and effect my resignation/retirement without fulfilling the mutual benefit requirement is "illegal."

Should EPA choose to involuntarily terminate me before December 1, 2006, any EPA official authorizing such the termination will be in violation of IPA rules and regulations, and will be doing so fully aware that the OIG has determined that the action is illegal. Such an action would also violate the terms of the 1998 settlement agreement, making the agreement null and void.

As Jewel Morris is aware, EPA's intention to terminate me on May 28, 2003 is currently being investigated by the Office of Special Counsel.

Please forward this reply to Jewel.

-David Lewis

Rosemarie Russo
05/20/2003 03:10 PM

To: Yvonne Hohe/ATH/USEPA/US@EPA
cc: David Lewis/ATH/USEPA/US@EPA, Frank
Stancil/ATH/USEPA/US@EPA, holm.harvey@epa.gov
Subject: Action Required

Yvonne,

I have been directed to complete David Lewis's outprocessing no later than May 28, 2003. NERL HQ will complete the paperwork needed to officially process his resignation, and will forward a copy of the SF-50 effecting his resignation to ERD. In concert with Frank Stancil, please complete David's outprocessing no later than May 28, 2003, including having a time card prepared for David for the pay period that includes May 28, reflecting that this date was his last day as an employee.

Rose

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) LEWIS, DAVID L.	2. Social Security Number REDACTED	3. Date of Birth 05-28-48	4. Effective Date 05-27-03
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FIRST ACTION		SECOND ACTION	
5-A. Code 317	5-B. Nature of Action RESIGNATION	6-A. Code	6-B. Nature of Action
5-C. Code RPM	5-D. Legal Authority R36 715.202	6-C. Code	6-D. Legal Authority
5-E. Code	5-F. Legal Authority	6-E. Code	6-F. Legal Authority

7. FROM: Position Title and Number 0009753 MICROBIOLOGIST	15. TO: Position Title and Number
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8. Pay Plan GS	9. Occ. Code 0403	10. Grade/Level 15	11. Step/Rate 05	12. Total Salary \$105775.00	13. Pay Basis PA	16. Pay Plan	17. Occ. Code	18. Grade/Level	19. Step/Rate	20. Total Salary/Award	21. Pay Basis
12A. Basic Pay 96492.00	12B. Locality Adj. 9283.00	12C. Adj. Basic Pay 105775.00	12D. Other Pay	20A. Basic Pay	20B. Locality Adj.	20C. Adj. Basic Pay	20D. Other Pay				

14. Name and Location of Position's Organization 32283000 EPA, AA FOR RESEARCH & DEVELOPMENT, NATIONAL EXPOSURE RESEARCH LABORATORY, OFC OF THE DEPUTY DIR, ECOSYSTEMS RESEARCH DIV, ECOSYSTEMS ASSESSMENT BR ATHENS, GEORGIA	22. Name and Location of Position's Organization
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EMPLOYEE DATA			
23. Veterans Preference 1 1 - None 3 - 10-Point/Disability 5 - 10-Point/Other * 2 - 5-Point 4 - 10-Point/Compensable 6 - 10-Point/Compensable/30%		24. Tenure 1 0 - None 2 - Conditional 1 - Permanent 3 - Indefinite	25. Agency Use
27. FEGLI 31 BASIC + B (5XPAY) + A + C (MULT)		28. Annuitant Indicator 9 NOT APPLICABLE	26. Veterans Preference for RIF <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
30. Retirement Plan 1 CSRS	31. Service Comp. Date (Leave) 11-04-72	32. Work Schedule F FULL TIME	29. Pay Rate Determinant 0
33. Part-Time Hours Per Biweekly Pay Period 00		34. Position Occupied 1 1 - Competitive Service 3 - SES General 2 - Excepted Service 4 - SES Career Reserved	

POSITION DATA	
35. FLSA Category E E - Exempt N - Nonexempt	36. Appropriation Code 8012
37. Bargaining Unit Status 0024	38. Duty Station Code 13-0270-059
39. Duty Station (City - County - State or Overseas Location) ATHENS, GEORGIA	

40. AGENCY DATA 001	41. C4-06-03	42. 71	43. ZZZ	44. 00-00-00 07-01-01
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45. Remarks

SF-2819 WAS PROVIDED. LIFE INSURANCE COVERAGE IS EXTENDED FOR 31 DAYS DURING WHICH YOU ARE ELIGIBLE TO CONVERT TO AN INDIVIDUAL POLICY (NONGROUP CONTRACT). HEALTH BENEFITS COVERAGE IS EXTENDED FOR 31 DAYS DURING WHICH YOU ARE ELIGIBLE TO CONVERT TO AN INDIVIDUAL POLICY (NONGROUP CONTRACT). YOU ARE ALSO ELIGIBLE FOR TEMPORARY CONTINUATION OF YOUR FERS COVERAGE FOR UP TO 18 MONTHS. LUMP-SUM PAYMENT TO BE MADE FOR ANY UNUSED ANNUAL LEAVE. REASON FOR RESIGNATION: NO REASON GIVEN FORWARDING ADDRESS: 1310 SAXON ROAD WATKINSVILLE GA 30677

SF-8 ISSUED

46. Employing Department or Agency ENVIRONMENTAL PROTECTION AGENCY			50. Signature/Authentication and Title of Approving Official <i>Mary S. Day</i> DIR, HUMAN RESOURCES MGMT. DIV	
47. Agency Code EP 00	48. Personnel Office ID 3318	49. Approval Date 05-27-03		