

# **FLORIDA PEER**

## **FEDERAL AND STATE AGENCIES FAIL TO INVESTIGATE ALLEGATIONS OF CONTAMINATION AT AGRICULTURAL SITE**

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## **EXECUTIVE SUMMARY**

### I. Report Coverage

Over the past few years several citizens and residents of south-central Georgia have approached both the Environmental Protection Agency (EPA) and the State of Georgia, Environmental Protection Division (EPD) about alleged violations of environmental and other laws at an agricultural site in their area. The site is owned and operated by Coggins Farm Supply. The company has multiple affiliates in the area, including affiliates in Florida.

The environmental complaints raised by residents essentially concerned two areas: (1) wastewater discharges into surrounding wetlands and surface waters, and (2) solid waste violations associated with the wholesale dumping and storage of plastic bales contaminated with pesticides, fungicides and/or herbicides.

The area in which this activity is taking place is known as the Alapaha River Watershed. As such, the EPA's stated policy is that a high level of oversight is provided by the agency. The discharges in this case are largely into wetlands and the Alapahoochee River, which then flows into the Alapaha River. The Alapaha River, in turn, flows into the Suwannee River. In addition, however, the area's topography is such that surficial aquifers can be accessed from just 1 to 8 feet below the surface. The Floridan Aquifer, which supplies much of South Georgia and North Florida with its drinking water, lies no more than 165 feet below the area in which these discharges are occurring.

The population density of the area in question is small. Fewer than 750 people live in the area. However, within the past 10 years there have been at least 30 reported incidences of cancer or cancer related illnesses in an area within 4 miles of the facility in question. In addition, some residents who have private wells have ceased using their wells for drinking water and now use bottled water.

The report covers the allegations raised and the response to those allegations by the EPA and the EPD.

## II. The EPA's Handling of the Case

The EPA's Criminal Investigation Division received complaints from residents about the site and encouraged those residents to assist the agency in its investigation. Those residents complied. In some cases they took EPA agents directly to the site. In addition, FBI agents were involved in the investigation.

The concerns of the EPA were whether or not there were any violations of the Clean Water Act (CWA). One provision of the CWA is called the National Pollutant Discharge Elimination System (NPDES). NPDES permits are required for facilities that regularly discharge pollutants into surface waters of the United States, i.e. waters such as the Alapahoochee and Alapaha Rivers. In addition, the Resource Conservation and Recovery Act (RCRA) governs the disposal of certain materials, including materials commonly referred to as hazardous waste. In those situations in which a facility discharges such hazardous materials, a federal RCRA permit will typically be required. In the situation faced in this case, at least two chemicals, Vapam and Telone were regularly

used by the facility in question. The discharge of these chemicals would have required either a NPDES, a RCRA permit, or both.

The EPA provided its file to PEER after PEER submitted a FOIA request to the agency. The file reflects no photographs having been taken by the agents. In addition, no water or soil samples were obtained. It would be virtually impossible to initiate or continue a criminal or civil prosecution for alleged NPDES or RCRA violations without having water and/or soil samples that were tested by an accredited laboratory.

Though the agency redacted the names of persons with whom it spoke, it seems rather clear that the agents spoke with some residents and company representatives in furtherance of the investigation. It appears that the agency gave practically full credence to the rebuttals of the corporate representatives, while simultaneously dismissing the repeated complaints of the residents.

The EPA closed its file in late 2004 without taking any action. Instead, it referred the case to the Georgia, EPD for further handling.

### III. The Georgia EPD's Handling of the Case

The EPD provided PEER with copies of its files on this facility. Those files reflect a long-standing knowledge by the EPD that the facility in question was storing plastic bales on its property. The bales in question consisted of plastic that had been used to line the fields in which the crops were planted. As such, the plastic had been contaminated with those fertilizers, pesticides, fungicides, and/or herbicides that the facility sprayed on the crops. The used plastic was then compressed into bales and allowed to sit on the property.

The practice of storing the bales was in violation of Georgia environmental laws inasmuch as the facility did not have a permit authorizing the same. In December 1996, the EPD issued a Notice of Violation (NOV) to the facility because of this practice. When the facility denied the practice, the EPD took no further action. Then, three years later, when faced with continuing violations, the EPD sua sponte issued a permit to the facility; however, the permit did not authorize the wholesale storage of the plastic bales. The practice continues to this day. No formal enforcement, other than the issuance of an NOV, has been taken by the EPD.

The State of Georgia has been given the authority by the EPA to administer the federal NPDES and RCRA programs. In exchange for this delegated responsibility the State of Georgia receives federal grant money to undertake the necessary tasks associated therewith.

After continued complaints from residents about the unlawful (and unpermitted) discharge of pollutants into wetlands and the Alapahoochee River, the EPD went to the site in 2003. However, like the EPA, it took no water samples and yet determined that no violations were occurring. One year later, however, after receiving more complaints, the EPD went back to the site and finally began to take water samples. Those water samples confirmed the presence of a cancer-causing PCB. Nevertheless, rather than expanding the investigation, the EPD simply decided that a letter should be sent to the facility notifying it that some unlabelled tanks were found on the site, a violation of RCRA statutes. The files do not reflect that the letter was actually sent.

The EPD continued to receive complaints about the site for the duration of 2003 and into 2004. In June 2004 it sent a NOV to the facility because the agency had finally

determined that a discharge pipe running from the carrot shed to a discharge pond was unpermitted and thus illegal. The facility responded by stating that the pipe had been plugged. No further action was taken.

The EPD continued to receive complaints from residents about a milky, foul-smelling substance being observed in ditches in the area of the facility. While the EPD responded, it took no water samples to determine what, if any, illegal substances were present.

The EPD files do not reflect the transfer of the case from EPA in November 2004. However, about that same time, the EPD determined that a permitted land application system would be required. An EPD inspector then went to the site in January 2005 and observed yet another illegal discharge, a discharge that the facility's engineering firm had represented was not occurring. As a result, another NOV was sent to the facility.

Eventually, a Design Development Report (DDR) was prepared by the facility's consultant and submitted to the EPD. The DDR alleges that the only liquid used in the carrot washing system is water—an allegation disputed by the residents. The DDR fails to address the increased cancer rates in the area. It also fails to point out that several local residents have ceased using well water. The DDR calls for the implementation of a land application system at the site. If permitted, the system would come within 100 feet of adjacent wetlands. While monitoring would be utilized, no monitoring for pesticides, fungicides and/or herbicides is proposed. The DDR is currently under review by the EPD.

### III. Conclusions

It is difficult to see how any realistic enforcement of wastewater regulations can be undertaken when a state or federal agency fails to take samples of the wastewater alleged to contain contaminants. Yet, in this case neither agency went out of its way to conduct even the most basic testing. The failure to conduct rudimentary testing leads us to conclude that the agencies had no real interest in finding violations.

There is a conspicuous lack of coordination between EPA and EPD exhibited in this case. Particularly since Georgia is a delegated state for purposes of administering the NPDES and RCRA programs one would expect to find significant coordination in the two agencies' enforcement efforts. Additional coordination is sorely needed.

Substantial oversight of this facility is needed. Neither agency should entertain the idea of issuing a permit unless the permit calls for increased monitoring and the agency intends to be actively involved in the oversight.

Most importantly, immediate studies should be undertaken to determine the cause of the increased incidences of cancer in this community.

### IV. Recommendations

PEER has referred this matter to the EPA's Office of Inspector General and asked that a formal investigation be opened into the handling of this matter by the EPA's Criminal Investigation Division, as well as the Georgia EPD, inasmuch as the EPD is responsible for administering the NPDES and RCRA programs. In addition, we have referred the matter to the State of Florida, Department of Environmental Protection, for increased monitoring of Florida's waterways that may be affected.

## **REPORT**

South Georgia is a region with a tradition rich with small town values. The people believe in family and in hard work. They live in an area that is not densely populated. Rather, the small towns are most often surrounded by farms of immense acreage. These farms provide much of the livelihood that the residents depend upon. In addition, they produce many crops that feed not only the local residents, but in many cases the rest of the country.

It is therefore not surprising that the owners of these farms often wield significant power at the local level. In an ongoing investigation that is being conducted by PEER it is becoming increasingly evident that one of these farms in particular holds significant influence over federal, state and local government officials. The influence appears to be strong enough to thwart legitimate requests for an investigation into environmental and other violations.

The requests made by local residents essentially center on activities at a series of companies, including, but not necessarily limited to four companies in tiny Lake Park, Georgia not far from the Georgia-Florida state line. The companies are Coggins Farm Supply, Coggins Farms, Circle C Produce, Coggins Farms and Produce. A fifth company, Coggins Farms, is located just over the state line in Jennings, Florida.

The allegations that have been made by the public are varied. With respect to the environmental arena the allegations cover a myriad of violations, including, but not limited to, (1) the direct discharge of pollutants into the Alapahoochee and Alapaha Rivers and into nearby wetlands that flow into the Alapaha, (2) the direct discharge of pollutants into manmade ditches located on private property as well as ditches that line



local roads, (3) the unlawful burial and discharge of solid waste, (4) the unlawful burning of materials that are contaminated with hazardous materials and (5) the improper handling and disposal of hazardous waste.

In evaluating the situation found at the site, PEER first submitted numerous Freedom of Information Act (FOIA) requests to federal agencies known to have been contacted about the problem. The principal agency involved was the EPA. And while the EPA provided what is believed to have been most of its files, it nonetheless withheld some documents—a move that PEER has appealed. Nonetheless, the documents provided by the EPA demonstrate a clear pattern of failure to conduct a meaningful investigation into the complaints raised by the residents who have to live with the problems on a daily basis. After doing precious little to actually get to the bottom of the issue (and taking no action) the files reflect that EPA referred the matter to state authorities. No recommendations for action were made.

PEER therefore also sought and obtained copies of the State of Georgia, Environmental Protection Division's (EPD or EPD's) files on this case. Those files reflect a similar attitude of seeming indifference to the situation at Coggins until very recently when, after PEER began looking into this matter, the EPD suddenly decided that the Coggins facility was improperly operating without the required permit(s). This does not mean, however, that the EPD has taken the further steps of initiating formal enforcement of the type that would require the payment of civil fines. Rather, the EPD, as will be shown below, has required studies to be undertaken and has also stepped up its monitoring of the site, all with an eye towards future issuance of permit(s) for the

facilities. Thus, it appears that the facilities will be “legalized” in the future without being required to suffer the payment of penalties associated with their alleged illegal conduct.

We first examine the handling of this matter by the EPA. We then turn to the handling of the case by the EPD.

## I. The EPA’s Handling Of The Coggins’ Case

### A. The Alapaha River Watershed

The Alapaha River is the backbone of the Alapaha River Watershed, according to the United States Environmental Protection Agency (EPA).<sup>1</sup> The Alapahoochee River is included in the Alapaha River Watershed. According to EPA, watersheds serve an important environmental function:

Watersheds are nature's boundaries. They are land areas that catch rain or snow and drain to specific water bodies (marshes, streams, rivers, lakes, or to groundwater). Over the past twenty years, substantial reductions in the discharge of pollutants into the nation's wetlands, streams, rivers, lakes, or directly to groundwater have been primarily achieved by the control of point sources of pollution. However, the majority of the remaining water quality problems in the United States result from nonpoint source pollution. Nonpoint source (NPS) water pollution, also known as polluted runoff, comes from diffuse or scattered sources in the environment rather than from a defined outlet such as a pipe. As water moves across and through the land it picks up and carries away natural and human-made pollutants depositing them into lakes, rivers, wetlands, coastal waters, and even our underground sources of drinking water. Therefore, a new strategy to address nonpoint source pollution has been developed.

For the past ten years, the Environmental Protection Agency (EPA) Region 4 has joined with others to promote a national **watershed approach** as a means to restore and maintain the physical, chemical, and biological quality of

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<sup>1</sup> <http://www.epa.gov/region4/water/watersheds/signage/georgia/alapaha.html>

our nation's water. This approach is a strategy for effectively protecting and restoring aquatic ecosystems and protecting human health. The strategy will focus on solving the problem at the local watershed level, in addition to the individual waterbody or discharger level. (Emphasis in Original)

See, Watersheds,

<http://www.epa.gov/region4/water/watersheds/watershedpg/index.html>.

EPA Region 4, which oversees the Alapaha River Watershed, prides itself on doing what it can to protect the area's watersheds. It maintains that "[s]upporting them is a **high priority** for EPA's national water program."<sup>2</sup> (Emphasis added) In protecting watersheds it is necessary to limit the amount of nonpoint source pollution (NPS) that is allowed to be discharged. NPS pollution is particularly harmful. In fact, according to EPA, "NPS pollution is the leading cause of water pollution in the United States and results from a wide variety of human activities."<sup>3</sup>

Discharges of pollutants into the Alapaha River have the potential to negatively impact more than just the Alapaha River Watershed in Georgia. Indeed, such discharges can also negatively impact Florida's Suwannee River, a water body that the State of Florida has identified as an Outstanding Florida Water (OFW).<sup>4</sup> Such water bodies are considered by Florida to be of such quality and importance to the State that when they are designated as an OFW they are thereupon entitled to the highest degree of protection that the State of Florida can provide. 62-302.700(1), Florida Administrative Code.

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<sup>2</sup> <http://www.epa.gov/region4/water/watersheds/watershedpg/index.html>

<sup>3</sup> <http://www.epa.gov/region4/water/nps/index.htm>

<sup>4</sup> See, 62-302.700(9)(i)33., Florida Administrative Code

B. Applicable Federal Law

1. The Clean Water Act

Section 301 of the federal Clean Water Act (CWA), 33 U.S.C. 1251 et seq., prohibits the discharge of pollutants into waters of the United States. While all surface waters are not covered under the CWA, such water bodies as surface waters, rivers, lakes, estuaries, coastal waters, and wetlands are covered. In addition, wetlands that are adjacent to an otherwise covered water body are entitled to protection under the program.<sup>5</sup>

Discharges into any of these water bodies are only allowed under the authority of what is known as a National Pollutant Discharge Elimination System Permit (NPDES Permit). These permits are issued either by EPA directly, or by the state, depending upon whether the state has been delegated authority by EPA to administer the NPDES program.

Agricultural operations enjoy a limited exemption from the application of the CWA. Generally, any “point source” must be permitted with an NPDES permit. The CWA defines a point source as:

“The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. **This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.**”

33 U.S.C. 1362(14) (2000). (Emphasis added) It is apparent that the “agricultural exemption” is limited to agricultural stormwater discharges and return flows. All other point sources from agricultural operations must be permitted. Indeed, in *United States v. Frezzo Brothers*, 546 F. Supp. 713 (E. D. Pennsylvania, 1982) the defendants were

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<sup>5</sup> <http://www.epa.gov/watertrain/cwa/glossary.htm#ps>

running a mushroom-composting business, which they argued was an agricultural activity, and that therefore any pollutant discharge was exempted from a permit requirement. The court held that mushroom-composting is not, in fact an “agricultural activity” under the CWA, and that a permit was required for the point-source discharge. However, *in dicta*, the court stated that even if mushroom composting was an agricultural activity, a permit would be required for any agricultural point source discharge since only agriculture stormwater discharge or return flow from irrigation agriculture is exempt. *Frezzo Brothers*, 546 F. Supp. at 724.

The CWA is what is known as a strict liability statute. *United States v. Winchester Municipal Utils.*, 944 F.2d 301, 304 (6th Cir. 1991). Thus, it matters not whether or not activities that violate the CWA were undertaken negligently or willfully. A court has the authority to enjoin the offending behavior.

## 2. The Resource Conservation and Recovery Act

In addition, another federal statute, the Resource Conservation and Recovery Act (RCRA) governs the disposal of certain materials, including materials commonly referred to as hazardous waste. Hazardous waste is defined under 42 U.S.C. 6903(5) as:

(5) The term “hazardous waste” means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

Another term used in RCRA is “solid waste,” which is defined in 42 U.S.C. 6903(27) as:

(27) The term “solid waste” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C. 2011 et seq.].

Thus, wastes that are controlled under the CWA through an NPDES permit are generally not covered under RCRA. However, the converse is that RCRA will likely apply in situations in which the CWA does not control. Further, it is possible for pollutant discharges themselves to be allowed under an NPDES Permit, but the individual chemicals/pollutants might yet be also controlled by RCRA when the pollutants being handled are stored, i.e. prior to their discharge. 40 C.F.R. Section 261.4(a)(2).

Finally, in the case of agricultural operations, materials that might otherwise fall under the definition of solid waste are not considered to be hazardous waste—but only when the materials are “returned to the soil as fertilizers.” 40 C.F.R. Section 261.4(b)(2)(i). Thus, while RCRA would not apply to that limited set of pollutants, it otherwise applies to farming operations.

It should also be noted that courts have held that a threat or risk of harm to wildlife or to groundwater constitutes an endangerment to the “environment,” and that RCRA regulations protect against such threats. *Lincoln Properties, Ltd. v. Higgins*, 36 Env't Rep. Cas. (BNA) 1228, 1240-41; *United States vs. Valentine*, 856 F. Supp. 621,

626-27 (E.D. Wyoming 1994). In addition, an imminent and substantial endangerment to the "environment" may exist even where there is no threat to humans., *Lincoln Properties, Ltd.* at 1241; *United States vs. Conservation Chem. Co.*, 619 F. Supp. 162, 192 (W.D. Missouri 1985).

The above principles generally govern the issues contained herein. The immediate question posed by this White Paper is how the federal and state agencies that are charged with enforcing these laws have reacted to allegations of routine illegal discharges into an environmentally sensitive area, such as the Alapaha River Watershed.

C. The Allegations

1. Illegal Discharges Under Section 301 of the Clean Water Act

In 2002 allegations were made by a local resident of Lake Park, Georgia (near Valdosta, Georgia) pertaining to activities that the resident, Jim Harnage, had personally witnessed at the site of his former employer, Coggins Farm Supply. Mr. Harnage holds a 1984 certification as a Pest Control Operator from the Florida, Department of Health and Rehabilitative Services, Office of Entomology. In 1988 he was certified by the Georgia Structural Pest Control Commission. In 1989 he was certified by the State of Georgia as a Structural Pest Control Operator in the categories of Household Pest Control Wood Destroying Organisms. The American Society of Agronomy's Georgia Certified Crop Adviser Board certified Mr. Harnage as a Certified Crop Adviser on June 14, 2001. He is also in possession of a pesticide application license issued by the State of Georgia, Department of Agriculture on March 23, 2001. Finally, Mr. Harnage is also an Ordained Bishop in the Church of God.

In his position as the Chemical Supply Division Manager, Harnage was in a unique position to be privy to the manner in which the company handles chemicals on site. His allegations were simple and straightforward. Essentially he maintained that the company was knowingly discharging pollutants, i.e. phosphates, pesticides, fungicides and fertilizers, into a holding pit on Coggins' site. These discharges were then being pumped via generator to a large pond near Culpepper Road. The pond, in turn discharges into a wetland that empties into a creek. The creek then empties into the Alapahoochee River which then discharges into the Alapaha River.

According to Mr. Harnage, one of the substances being discharged in this fashion is a fumigant called Telone. According to studies on the fumigant, Telone is considered to be a probable carcinogen, causing bladder and lung cancer.<sup>6</sup> Telone is applied to crops in order to primarily control nematodes. According to literature supplied by the manufacturer, Dow AgroSciences LLC, particular care must be taken when applying Telone in areas known to have a karst topography. Its literature states that

“[t]o avoid direct introduction of 1,3-D into groundwater, applications in karst regions must be avoided. Karst topography is the irregular topography resulting from the solution of carbonate rock units (limestone, dolomite, and marble). Typical features associated with karst topography include sinkholes, sinking or disappearing streams, caves, and springs. Areas where karst topography and surface features occur are indicative of areas where karst geology features (limestone and dolomite bedrock) are located near the surface, and the potential of groundwater contamination is high.”

(A Guide To Application In Plastic Culture, Telone, Dow AgriSciences LLC, Page 30).

Given the care needed to prevent Telone from entering the groundwater, it is clear that it should not be direct discharged into surface waters.

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<sup>6</sup> <http://pmep.cce.cornell.edu/profiles/fumigant/dichloropropene/fumi-prof-dichloropropene.html>



According to Mr. Harnage, another fumigant allegedly used by Coggins Farm Supply Company is Vapam. Vapam, like Telone, is used to treat nematodes. According to Mr. Harnage it, like Telone, was being illegally discharged.

Mr. Harnage did more than just notify EPA of his concerns. He met with them repeatedly, escorted them to the areas of concern and provided them with photographs showing the construction of an underground pipe system that was ultimately used to illegally discharge the pollutants. Two photographs showing the construction follow:



The construction was in close proximity to existing water:



Once completed, the pipe discharged into the river:





As can be easily seen from the above photographic evidence, the area in which the construction and discharge was taking place was hardly a high traffic area. The activity could, and did, take place out of sight of passersby, including environmental regulators.<sup>7</sup>

But, under the circumstances it appears that the discharges did not need to be quite so secretive. In fact, some discharges were taking place in full view of the public. They were going directly into ditches that lined the area roads, as can be seen below:



## 2. Illegal Dumping of Solid Waste

Mr. Harnage also alerted regulators to the open dumping of materials on property owned by Coggins. The materials include plastic sheeting that had been used to irrigate local crops. The irrigation of these crops included application of pesticides and fertilizers.

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<sup>7</sup> Interestingly enough, copies of these photographs were not found in EPA's file on this case, even though the agency was given the opportunity to review and copy the same.

Thus, the plastic sheeting was contaminated. Rainwater would be expected to cause a discharge of these pollutants onto the ground and eventually could cause groundwater contamination. In like manner, if the sheeting were burned, as Mr. Harnage alleged, it would cause air pollution.

To our knowledge and the knowledge of Mr. Harnage, the facilities involved in this practice did not possess permits authorizing them to discharge of solid waste in this manner.

Just as he had done with respect to the use of pipes to illegally discharge liquid pollutants, Mr. Harnage photographed the activity. As can be seen in this first photograph, some of the activity occurred in plain view of vehicular traffic:



Other activity took place in more secluded areas of the property:



### 3. Elevated Incidences of Cancer and Other Diseases

The direct effects of the activities alleged may be varied. However, one issue that demands significant study is the unusually high incidence of deaths in the immediate area of this activity. The deaths are attributable to various forms of cancer. In less than ten (10) years the area has seen at least **thirty (30)** documented cases of deaths attributable to cancer and/or other related diseases. Consider that:

- 1 person died from leukemia
- 1 person died from stomach cancer
- 3 persons died from colon cancer
- 1 person diagnosed with testicular cancer
- 2 persons diagnosed with breast cancer
- 3 persons diagnosed with prostate cancer

- 1 person diagnosed with bladder cancer
- 1 person died from brain cancer
- 1 person diagnosed with brain cancer
- 1 person died from throat cancer
- 1 person diagnosed with throat cancer
- 12 persons died of and/or have been diagnosed with unspecified forms of cancer

All of these incidents have been in a geographical area in close proximity to the Coggins facilities—from 500 yards to 4 miles of the chemical release sites. The population of the Lake Park, Georgia area is quite small, on the order of 550 people, as of 2001.<sup>8</sup> The age of the victims varies widely. The cancers include colon cancer, testicular cancer, breast cancer, bladder cancer, and prostate cancer.

#### D. The Federal Government's Response

##### 1. The EPA's Reaction

###### a. *PEER's FOIA Request*

In November 2004, PEER submitted a request for records to EPA under the Freedom of Information Act. At the time that the request was submitted EPA was representing to one reporter that its investigation into this case was ongoing. The investigation was supposedly a criminal investigation. However, shortly after PEER submitted its FOIA request it was learned that EPA had, in fact, closed its files and that

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<sup>8</sup> <http://www.city-data.com/city/Lake-Park-Georgia.html>

its files had been closed at the time that the agency was representing to citizens that its investigation was still active.

In late March 2004, EPA responded to PEER's request for records. It submitted the agency's case file on this matter; however, it withheld some records and has not disclosed the records at this point in time. The basis for refusal to produce records did not include an allegation that a continuing enforcement case was being pursued. Amazingly, the agency relied, in part, upon an assertion that disclosure would require production of documents related to internal agency procedures, documents that PEER's request did not cover.

PEER has appealed EPA's refusal to produce its complete file in this case.

b. *EPA's Records*

The records supplied by EPA reflect that the investigator, Charles Carfagno, closed the agency's file on September 17, 2004. Carfagno's supervisor approved of the closure on September 20, 2004. Again, months later the public was being assured by the EPA that the investigation was still active.

There is no indication in the file that any of the facilities involved in this investigation are in possession of either a NPDES permit or a RCRA permit.

EPA's file on this matter appears to have been formally opened on or about August 21, 2003. Almost all names have been deleted from the file, making review difficult. However, it is apparent that EPA was receiving information relative to illegal activities at the site from multiple sources. It is also apparent that the FBI was involved in the investigation to a certain extent.

The file reflects that on July 1, 2003, EPA Special Agents (SA or SAs) interviewed someone regarding the Coggins case. The person interviewed appears to have been Jim Harnage and the interview was conducted in his home. The contents of EPA's interview summary indicate that the SAs were advised that Vapam was being routinely drained into surrounding wetlands, and that soil had been contaminated with the material. EPA was advised that workers were improperly exposed and falling ill because of the chemical. Mr. Harnage also informed the SAs that:

- Department of Agriculture officials were routinely given special favors in exchange for ignoring illegal activities. Harnage provided the SAs with a Department of Agriculture report containing the I.D. of the inspector that Mr. Harnage alleged was being bribed by Coggins
- Contaminated plastics were being buried on site—both in Georgia and in Florida. The resulting smoke was affecting the public
- Coggins made extensive use of illegal alien labor

According to the report, Harnage advised the SAs that he could take the SAs directly to the locations of the illegal activities.

Thirty days later, an EPA SA spoke with someone, apparently Harnage, on the phone. The person told the SA that two companies had been set up to “process” illegal aliens. The SA was also given the names of crew leaders who were used to smuggle the illegal immigrants and drugs.

Five days later, on August 6, 2003, the EPA spoke with someone, presumably Harnage, about physical and financial threats that had been made against him. The next day, the SA spoke with the Echols County Sheriff and discussed the matter with him.

According to the EPA files, nothing else happened on the case over the next two weeks. Then, on August 21, 2003, a meeting was held with Harnage in the FBI's



Valdosta Field Office. During that meeting the source advised a SA (presumably Carfagno) of the following, inter alia:

At COGGINS FARMS there is a concrete slab, approximately 16x40x8 with a pit at the end of it, that meets EPA specifications. Contained on this slab are tanks and containers of Nitrogen, Vapam, various pesticides and insecticides, liquid fertilizer, and other hazardous chemicals. The pit at the end of the slab catches any spills, leaks, or runoff from the containers on the slab. Whatever chemicals end up in the pit are supposed to be pumped out and disposed of properly. Instead of doing this, they put a mud pump in the pit that pumps the contents into an underground 2" pipe that leads to an 18" pipe that discharges into the pond. [NAME DELETED] is the person who put the pump in the pit and installed the underground piping. [NAME DELETED] was instructed to do by [NAME DELETED].

There is a wash out pad on COGGINS FARMS that is the designated area to wash out the transport trucks. These trucks contain Vapam and various insecticides and pesticides. A ditch or "swill" was dug to channel the runoff from the wash out pad to the pond area. [NAME DELETED] dug the "swill" and was instructed to do so by [NAME DELETED].

On site at COGGINS FARMS is a 10,000 gallon tank containing Telone. There is about a 3-foot concrete wall around the tank area. Within this walled area containing the tank, there is a mud pump. Connected to the mud pump is a hose that runs over the concrete wall and onto county property. On a regular basis, Telone that leaks or is spilled is pumped onto county property rather than into a storage tank. [NAME DELETED] put the mud pump near the Telone tank and ran the hose over the wall at the instruction of [NAME DELETED].

In early 2002, 5,000 gallons of Vapam was spilled onto the dirt at COGGINS FARMS. Dirt was put on top of the spill and about a week later [NAME DELETED] used a back-ho to dig up the contaminated dirt and move it to the pond area.

Twelve days later, someone advised EPA that another person who had dealings with the FBI had relayed the following information:

WITNESS told [NAME DELETED] that on 8/26/2003 and 8/27/2003 [NAME DELETED] observed COGGINS FARMS discharging TELONE (DICHLOROPROPENE) onto the county road through a 1" hose. [NAME DELETED] left the area of the discharge and returned about 30 minutes later and they were still discharging TELONE from the hose onto the ground.

On 8/18/2003 and 8/19/2003, WITNESS observed bails of plastics being burned at COGGINS FARMS near the home pump. Each bail weighs about 1 ton and is contaminated with many pesticides and other farming chemicals.

Three weeks later the SA completed an Investigation Summary Report outlining the status of the investigation to that point. The report reflects that five (5) interviews were conducted, though it is unknown how many different people were actually interviewed.

EPA's next activity was on October 26, 2003, when the file reflects that a SA interviewed a former employee at the facility. That employee told EPA:

COGGINS FARMS employees (sic) a large number of Migrant Workers to work the fields. The Migrant Camp houses the workers and is located on the property of COGGINS FARMS AND PRODUCE. The Department of Labor (DOL) requires an annual test on the Well water provided to the Migrant workers. COGGINS FARMS has the Lowndes County Department of Health (LCDOH) do the testing of the Well. For numerous years, [NAME DELETED] of the LCDOH, (229) 245-2314, and good friend of the [NAME DELETED], has physically done the testing. The results of the Well sampling is sent to COGGINS FARMS who in turn send the results to the DOL.

In 2002, [NAME DELETED] did not do the testing. The Well sample failed the test 2-3 times. [NAME DELETED] called [NAME DELETED] and had [NAME DELETED] come out to do the test. When [NAME DELETED] did the test, it passed.

That same day, another interview was conducted at which time the SA reported that:<sup>9</sup>

Recently [NAME DELETED], Supervisor for the Echols County Forestry Unit at 209 Hwy 129 N., found a discharge pipe at COGGINS FARMS that discharged into the bordering Wetland area. [NAME DELETED] met with [NAME DELETED] regarding this pipe and told [NAME DELETED] had to remove it. [NAME DELETED] said [NAME DELETED] was sorry and didn't know why it was there and [NAME DELETED] would fix it right away and thanked [NAME DELETED] for notifying [NAME DELETED] of this problem. **[NAME DELETED] then asked [NAME DELETED] how much money [NAME DELETED] wanted. [NAME DELETED] was somewhat shocked at the question. [NAME DELETED] again asked how much should I make the check for? [NAME DELETED] told [NAME DELETED] that [NAME DELETED] didn't want any money, [NAME DELETED] just wanted [NAME DELETED] to fix the problem. [NAME DELETED] said ok, and proceeded to invite [NAME DELETED] on [NAME DELETED] property to hunt anytime [NAME DELETED] wanted.** (Emphasis added)

EPA's files reflect that on December 1, 2003, the SA spoke with someone at the Georgia Environmental Protection Division. The GA EPD told the SA that someone had complained to them of a milky substance that was leaking from the ground onto the banks of a creek in the area. The GA EPD went to Coggins and spoke with someone who informed them that a tank containing 12% calcium had spilled into the retention tank, but that it had not been disposed of off of Coggins' property.

Almost three (3) months later, on February 23, 2004, an EPA SA spoke with someone at the GA Forestry Commission about the allegations that a discharge pipe had

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<sup>9</sup> It should be noted the following note reflects the finding of a violation of the CWA. The allegation that the person (presumably the owner) didn't know why the discharge was occurring would be no defense under the CWA. Yet, the file does not reflect that water samples were taken in order to determine exactly what pollutants were being discharged. There is likewise no clear indication that the EPA directly checked the site.

been found on Coggins' property and that the agent had been offered a bribe to ignore it. The interview was the result of information that the SA had received on October 23, 2003. The interview was conducted telephonically rather than in person. The official simply denied finding such a pipe and also denied that a bribe had been offered to him. Nothing further was done.

There is an indication in the file that this case had been elevated somewhat in importance, because of the involvement of the Office of the United States Attorney. The files reflect that a conversation took place between a SA and Assistant United States Attorney, Don Johnstono on March 9, 2004. The substance of the call is not revealed in the files. Significantly, further EPA activity ceased after this call. It was then formally decided to close the case on September 17, 2004, and refer it to the Georgia EPD.

*The EPA file reflects no attempt on the part of EPA to ever enter onto the property to locate any unlawful discharge pipes, or to take water samples to determine whether the wetlands and/or the adjacent rivers contained any pollutants that could have come from the Coggins facilities.*

## 2. PEER's FOIA Request to the U.S. Attorney

Given the involvement of the U.S. Attorney's office in this matter, PEER submitted a FOIA request to that office in order to secure their records. The request was submitted on June 17, 2005. To date the records have not been produced.

### 3. PEER's FOIA Request to the INS

The allegations involving this operation include the use of illegal immigrants in violation of federal immigration laws. According to the allegations the immigrants are exposed to the pollutants identified herein. In addition, there are allegations of labor law violations, as well as other federal and state violations. It is known that federal authorities were advised of these allegations. Therefore, on April 19, 2005, PEER submitted a FOIA request to the INS. This request has been shuffled to the Department of Homeland Security and to various departments therein. To date no records have been produced.

### 4. The FBI's Reaction

PEER's federal Freedom of Information Act request for the EPA's records on the Coggins' facilities was referred by the EPA to the FBI. The EPA did this because, according to the EPA, the FBI would have records responsive to our request. The FBI is known to have been involved in EPA's investigation into the environmental issues surrounding the facilities. On June 20, 2005, the FBI formally denied PEER's request for records. The basis for the denial was incredible—the request was refused because to do so would allegedly interfere with enforcement proceedings.

Notwithstanding the FBI's position regarding PEER's FOIA request, it seems rather clear that no enforcement was actually contemplated. Indeed, PEER attempted to contact the FBI regarding photographs that document environmental violations in this matter, however, the FBI failed to contact PEER, or otherwise expressed a continuing interest in this case. Therefore, we must assume that the case is closed.

Given the FBI's inaction in this case, coupled with the EPA's position that no enforcement is being taken at the federal level against Coggins, the FBI's refusal to turn over documents seems to be a blatant abuse of the system. PEER is appealing the agency's decision.

## **II. Georgia, EPD Follows In The EPA's Lost Footsteps**

### **A. PEER's Request for Records**

On November 9, 2004, PEER submitted a public records request under Georgia law to the Georgia EPD. Nine days later the EPD responded by producing records.

After receiving the EPA's files related to the Coggins' enterprises and learning that EPA referred handling of the matter to the Georgia EPD, PEER submitted a new records request to the EPD asking for any records that might have been generated subsequent to EPA's referral in late 2004. In response, PEER received several additional documents from the EPD.

### **B. Solid Waste Disposal**

How did the EPD handle its oversight responsibility on the issue of solid waste disposal? The EPD files reflect that as far back as 1996, the EPD had been in communication with Coggins regarding the issue of plastic bales disposal. Indeed, Kevin Coggins had notified the EPD that the bales of plastic were not solid waste because they did not remain on site. Instead, they were removed from the site by a company called

GeoWaste. The action that prompted these discussions was a notice of violation (NOV) that was sent from EPD to Coggins on December 13, 1996. The NOV states, in pertinent part, that:

“The Wildlife Resources Division Law Enforcement Section has informed this Albany EPD Office that large piles of plastic sheeting and piping from your vegetable farming operation have been open dumped on your property. It has been suggested that these piles of waste plastic are intended to be open burned in violation of State law.”

The NOV goes on to state that under Code Section 12-9-23(a) of the Georgia Air Quality Act of 1992 the violation of state regulations pertaining to improper waste disposal can result in a penalty of up to \$25,000 per day. And, as the statute states, “[e]ach day during which the violation or failure continues shall be a separate violation.” This means that the potential liability for allowing the piles of waste plastic to remain on site was highly significant.

The NOV also cited Section 391-3-4-.04(4)(c), a provision that states that, “Open Dump: no solid waste may be disposed of by any person in an open dump, nor may any person cause, suffer, allow or permit open dumping on his property.” Instead, such waste material is required, by statute, to be taken to a licensed, solid waste handling facility, i.e. landfill. (Section 391-3-4-.04(5), Ga. Stat.) Otherwise, a permit was required, pursuant to Section 391-3-4-.02, Ga. Stat.

Coggins managed to circumvent the Georgia statutes by alleging that the operation was only storing the bales of plastic for months, until such time that enough bales were accumulated in order to make the transfer to a landfill feasible from a cost

standpoint. In his December 16, 1996, letter to the EPD, Kevin Coggins, the Owner of Circle C. Produce, a division of Coggins Farm Supply, Inc., took exactly that position:

“You may be wondering, why compact the materials or waste time waiting for the compactor at all? Well, time saves me money! If I were to haul Geowaste the bulk goods not compacted, I could haul approximately one tone of waste per truck load. If I compact the waste, one truck will haul 8-9 tons of the compacted waste. This ideally saves me and my company in the long run. Even though one to two acres of my land has to be set aside to hold the waste until it can be compacted, this set-aside allows me to clear my fields as quickly as possible to re-plant for the following season.”

Mr. Coggins enclosed weight tickets with his letter. These tickets showed that in December 1996 several tons of waste had been disposed of at the GeoWaste site.

The EPD’s apparent response was to send Coggins a letter on January 27, 1997, requiring Coggins to go onto a compliance schedule until March 31, 1997. Then, on July 10, 1997, Bill Lucas (Ga, EPD) conducted a follow-up inspection at the site and observed “5 large round bales of plastic sheeting.” The office staff told Mr. Lucas that the bales were from the current season and not the 1996 season. Mr. Coggins confirmed this when contacted by Mr. Lucas and sent Lucas additional weight tickets from early 1997. Lucas noted in the file that “[t]his facility is in compliance.”

What is not addressed in the EPD file of 1996 and 1997 is whether it was proper for Coggins to temporarily store these bales for months at a time prior to their disposal. Coggins admitted in his correspondence to the EPD that he had set aside over an acre of land in order to store the material. Thus, there was a significant amount of such material that was allowed to sit, exposed to the elements, with runoff from the material being discharged directly onto the ground. Coggins had no permit for this. EPD did not seek to



require a permit which could have required that the ground on which the bales were stored be lined so as to avoid ground and groundwater contamination.

In addition, the EPD received the tip that something was wrong at the site from another law enforcement agency. It should be assumed that another local agency would be well aware of common farming practices in the community and found this practice to be problematic. Further, the referral indicated the possibility or suggestion that the bales were at least partially being burned—not transferred to a solid waste facility. However, the EPD files lack any indication that even a minimal investigation was conducted into this possibility. No witnesses were interviewed. Rather, the agency simply took the word of Mr. Coggins and thereupon concluded that the facility was in compliance.

The end result, therefore, was that no enforcement was pursued against the facility at that time. Indeed, documents produced by the EPD in July 2005, reflect that the facility was allowed to operate without a permit for three (3) years after the EPD first learned of the improper storage of these bales on Coggins' land.

On February 22, 2000, the EPD issued what Georgia calls a "Permit by Rule Operation" to Coggins Farms. Essentially, the permit was issued to Coggins based upon the latter's representation that it needed to store certain produce waste on-site. The permit was issued in spite of the fact that the facility had been illegally operated without a permit for years. No civil penalties were sought by the EPD.

The permit that was issued now allowed the storage of waste identified as "produce waste, chicken litter, hay, cotton fine trash, pecan hulls etc." near Lake Park, Georgia. Condition 3 of the permit required that "[t]he areas for storing wastes prior to processing must be clearly defined and the maximum capacity specified." The permit

itself appears to make clear that there is a distinction to be drawn from “produce waste, chicken litter, hay, cotton fine trash, pecan hulls etc.” and other forms of waste. Indeed, two specific conditions of this permit are noteworthy on that point. First, condition 13 states, in pertinent part, that:

“No person shall engage in solid waste handling in a manner which will be conducive to insect and rodent infestation or the harboring and feeding of wild dogs or other animals; impair the air quality; impair the quality of the ground or surface waters; impair the quality of the environment; or likely create other hazards to the public health, safety, or well-being as may be determined by the Director.”

Condition 15 states:

“Prohibited acts: No solid waste may be burned at a solid waste handling facility, except by a thermal treatment technology facility approved by the Division. No solid waste may be disposed of by any person in an open dump, nor may any person cause, suffer, allow or permit open dumping on his property.”

In other words, only certain types of waste are allowed to be stored on site. The remaining solid wastes must be disposed of either via an additional permit, or at a proper dump site. Based upon the above conditions of Coggins’ permit, the facility was grossly in violation of the above two conditions given the myriad allegations of (1) improper waste storage of bails of chemically treated plastics and other materials onsite and (2) the improper burning of these materials. Jim Harnage, an Echols County resident, alone took several photographs documenting the illegal storage of the materials. The storage was not sporadic, it was routine and continuous. But it was not in “clearly defined” areas. Instead,

it was scattered about the property. According to witnesses such as Mr. Harnage it continues to this day.<sup>10</sup>

### C. Wastewater Issues

#### 1. Pre-November 2004

As for wastewater, the EPD files are silent until November 14, 2003, when a citizen, Larry Boyd, called them about a bad smell coming from a ditch located along Kinsey Road. The smell was apparently so bad that people were getting sick. Mr. Boyd later told EPD that he had seen a milky substance seeping from the ground in the side of a creek.<sup>11</sup> Mr. Boyd told EPD that he knew that Coggins was illegally handling hazardous materials. It wasn't until three days later that an EPD investigator, Bill Lucas, went to the site. The records reflect that he spoke with one of the three owners, Gerald Coggins, who gave him a tour of the site. Coggins advised him that a friend of his, Lindy Kinsey, had notified him of the bad smell and that he, Coggins, had reported the incident to the Echols County Sheriff. Coggins also maintained that the problem could have resulted from a dispute that Kinsey had with another neighbor when Kinsey complained about mobile homes being set up using above ground sewage systems. According to Coggins, Kinsey had surmised that the neighbor may have illegally discharged something onto the ground. Lucas' notes reflect the presence of a surveillance system that might have identified the perpetrator, yet no effort was made to check the system to prove the theory.

Lucas' notes reflect that he saw nothing out of the ordinary. He saw no evidence of a discharge and was told that greenhouses in the area are constructed so that any

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<sup>10</sup> Harnage even took agents from EPA and the FBI to the areas where the bales were being stored. Neither EPA nor the FBI did anything about it.

<sup>11</sup> This complaint is referenced in EPA's files. GA EPD officials notified them of the same.

chemicals used in the greenhouses are not allowed to escape into the environment. His notes also reflect his belief that the Coggins facility is exempt from complying with stormwater regulations as an industrial site because it sells directly to farmers. Lucas took no water or soil samples.

On November 18, 2003, EPD Geologist, Penny Gaynor was contacted by Ms. Bonnie Pope of the EPD Southwest Regional Office. Ms. Pope informed Ms. Gaynor that her office was continuing to receive complaints from residents in the area. Mr. Boyd had complained of Coggins illegally discharging Vapam and, for that reason, the matter was referred to the hazardous waste section within EPD. Six days later, on November 24, 2003, Ms. Gaynor was on-site to conduct an inspection of the area.

Ms. Gaynor's inspection notes reflect that she was given a tour of the facility by another owner, Felton Coggins. She found no evidence of malfunctioning equipment and no stressed vegetation. Her notes contain this statement:

Mr. Coggins stated that farm equipment (tractors, etc.) were washed down on the pad. Drainage from the pad goes into the dug pond. The pond drains to a cypress swamp which then turns into a creek that crosses Kinsey road near the church. A bird was seen catching a fish in the pond during the inspection. We then left the Coggins Farm Supply and went back to the creek across from the church and collected a surface water and sediment sample where the white straining was seen. The water had a swampy sulfurous smell.

Gaynor took both water and soil samples at that time. Her notes indicate that there was no evidence of illegal disposal. She received the laboratory results on December 16, 2003. The results showed evidence of a pesticide, decachlorobiphenyl (DCBP) in levels

that the laboratory indicated that were “outside acceptable control limits.” DCBP is a PCB with suspected links to cancer in humans.<sup>12</sup>

The inability to locate stressed vegetation in the area is surprising, because, as Mr. Harnage’s photographs indicate, there is no lack of stressed vegetation in the area:



The above photograph shows a discharge (believed to be pesticides) from a pond on Coggins’ property going into a county ditch. Abundant stressed and dead vegetation can be seen along the drain field and in the ditch itself. At certain times of the year, the plastic sheeting used on the crops is flushed in preparation for the next planting cycle.

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<sup>12</sup> <http://www.reciprocalnet.org/ecipnet/showsample.jsp?sampleId=27344626&sampleHistoryId=17560>.

The following photograph shows the impacts from this operation. The dead vegetation along the ditch is believed to be the result of excessive Vapam in the rinsate.



Another photograph shows a line of trees in clear distress:



Gaynor's notes reflect that her inspection showed a used oil tank was not properly labeled in accordance with 29 CFR 1910.1200(f)(5). She felt that a letter should be sent

to Coggins advising them of this violation. The files do not reflect that such a letter was ever sent.

The EPD files reflect no activity for the next six months. They then address an admitted problem with overflow from a drainage pond as a result of an outfall pipe that apparently ran from a carrot shed onsite to the pond. The EPD had sent a notice of violation to Coggins on June 24, 2004, concerning this issue. This pipe was carrying runoff from the shed and discharging it directly into the pond. When EPD notified Coggins in mid-2004 about the problem Coggins responded through their engineer that the pipe had been plugged. It appears that EPD did nothing to verify whether or not this corrective action actually took place.

On September 21, 2004, ten months after the EPD first received complaints of bad smells in the Kinsey Road area, they again heard from the residents. This time the complainant was Patrick Dupree. Mr. Dupree is a Department of Natural Resources Ranger. Inspector Bill Lucas's notes indicate that Mr. Dupree and the Echols County Sheriff went to the area on or about September 19, 2004, but could not find a discharge site. They did, however, observe a white material on subsurface vegetation in the cypress pond in the area. A nearby ditch was bright green with a waxy film on it. Bill Lucas spoke with Dupree and told him that since a source was not identified it would be hard to do anything with the complaint. No samples were taken for testing.

Less than a month later, on October 8, 2004, Mr. Dupree, still concerned about the problems at the site, contacted Ms. Jean Brown at the EPD. She met with him on October 14, 2004, at the site. Her notes reflect that she observed the white substance and

that she suspected that it could be the result of runoff from the Coggins' facility. She also detected a "faint chemical odor." No samples were taken for testing.

Then, on October 14, 2004, Lindy Kinsey contacted Tom Hopkins with the EPD about contaminated runoff in the area. He was instructed to contact Jean Brown in the office. The files do not reflect whether or not Ms. Brown ever spoke with Mr. Kinsey.

## 2. Post-November 2004

As previously stated, the EPA's files reflect that in late 2004, the EPA handed over its investigation on the Coggins matter to the EPD. Yet, none of the EPD documents reflect any attempt to work a coordinated investigation with the EPA.

EPD files reflect that on September 3, 2004, Regulatory Compliance Services, Inc. (RCS), an engineering firm, responded to the EPD's June 24, 2004, NOV. RCS indicated to EPD that Coggins' intent was that the discharges from the drainage pond would be eliminated, but that land application would be continued under a land application system to be in place in the fall or winter of 2004. Bill Lucas responded on November 16, 2004, indicating that a permitted land application system would be required if the discharges from the pond could not be eliminated. Two weeks later RCS responded by saying that no discharge was occurring and that water samples were being taken in order to evaluate the situation with the process water.

On January 6, 2005, four months after RCS responded to EPD and represented that no discharges were occurring on site, someone (presumably Bill Lucas) conducted a field investigation and photographed a discharge into the secondary lagoon on the Coggins' property. The caption from the photograph reads:



1-6-05 Coggins Carrot Processing, Echols County  
View of Discharge Pipe Into Secondary Lagoon Discharge  
is a violation of the 6-24-04 NOV.

The caption from another photograph, taken the same day, shows another view of the secondary lagoon. The caption to the photograph says:

1. Receiving wastewater
2. Collapsed exit pipe allowing flow to leave property.
3. Due to healthy, green vegetation on the bottom surface of lagoon, it appears that the lagoon has been discharging for a long time.

*There is no inspection report in the EPD files. There is likewise no indication that wastewater samples were collected in order to determine the types of pollutant(s) that were being illegally discharged into the secondary lagoon.*

Two weeks later, on January 21, 2005, Bonnie Pope, the South Unit Coordinator for the EPD sent another Notice of Violation (NOV) to Edwin Coggins, President of Coggins Farms and Produce. The NOV addresses the violations observed by Bill Lucas on January 6. The NOV further advises Coggins that the Georgia Water Quality Control Act provides that anyone violating the Act shall be liable for a civil penalty of up to \$50,000 per day for each violation.

The January 21, 2005, NOV demanded that the unpermitted discharges cease and that the violator “obtain a Land Application or other appropriate commercial wastewater permit.” A Design Development Report (DDR) was to be submitted within 60 days of the NOV, i.e. March 25, 2005.

Midway into the 60 day time period, Bill Lucas emailed Trey Fausett, (RCS) and asked for the status of the DDR and reminded him of the March 25 deadline. Mr. Fausett responded on March 2 and indicated that an engineer, Jeff Lovell, was working on the

DDR preparation. Two weeks later, on March 15, Mr. Lovell submitted a letter to EPD stating that his firm had just been retained by Coggins and that they needed a 30 day extension to provide the DDR. Bill Lucas responded on March 25 by granting the request for extension. The new deadline was April 25, 2005.

EPD next heard from Lovell on April 25, 2005. In that letter Lovell asks for a 60-day extension, due to “inclement weather and other scheduling problems, soil borings and peizometer installation for the Coggins Farm sprayfield.” Ms. Pope initialed the letter, approving the extension “as long as they are not violating W/Rules.” There is no indication that an inspection was conducted to determine whether ongoing violations were present. It appears that the extension was nevertheless granted.

On June 20, 2005, Mr. Lovell again asked for yet another extension:

Due to inclement weather and other scheduling problems, we did not receive the geotechnical report for the Coggins Farms sprayfield until June 9, 2005. We are diligently working to complete the DDR. We respectfully request an extension until July 15, 2005 to allow time for preparation of a quality final report.

The request was granted via letter on July 5, 2005. The letter included a notice that:

Condition-Until a Permit is issued by the Division, daily checks will be made of the final holding pond to insure that no discharges to state waters occur. These daily checks will be documented on a form which will be submitted to the Division’s Albany office by the 15<sup>th</sup> day following the month being reported.

On July 29, 2005, Mr. Fausett sent the EPD a form showing that checks were being made of the facility’s discharge. However, rather than the checks being done on a

daily basis, as required, only sixteen (16) checks were completed over the twenty-four days encompassed by the report. The “daily checks” were not completed by the EPD, rather, they were conducted by an agent of Coggins. Apparently the EPD found nothing wrong with Coggins’ failure to follow its orders regarding daily checks concerning the discharge.

Mr. Lovell’s DDR was submitted to the EPD on July 14, 2005. It was apparently received in Albany two months later, on September 14, 2005. The document lays out Coggins’ plans for the facility.

In short, the purpose of the DDR is to set forth Coggins’ intent to build a land application system next to the carrot processing plant. The land application system consists of a spray field that is proposed to encompass twenty (20) acres. (DDR, 5). It maintains that the only ingredient used in washing the carrots brought into the plant is water. The land upon which the facility operates slopes from west to east. (DDR, 1)

The DDR acknowledges the close proximity of the facility to the Alapahoochee River. In fact, the river is located a mere 2000 feet to the northeast and east of the facility. In addition, there are associated wetlands bounding the river. And, “[a]n un-named intermittent drainage way lies to the south of the site that eventually drains into the river.” (DDR, 2) The spray field that Coggins is proposing would lie to the west of the Alapahoochee River and these wetlands. The perimeter of the spray field would be one hundred (100) feet from the edge of these same wetlands. The direction of flow for any runoff would be into these wetlands and the river. The Alapahoochee River then flows into the Alapaha River. The Alapaha River ultimately discharges into the Suwannee

River; a river that the State of Florida has determined is entitled to the highest protection that laws can afford.

The facility also sits directly above the Floridan Aquifer, which lies approximately 125-165 feet below the surface. There is also a surficial aquifer underneath the site. About these aquifer's the DDR states:

“The surficial aquifer located within the proposed site area is regional in extent. For this reason, it is a probable, reliable source of drinking water. Yields for the shallow Miocene Aquifer system are expected to be small in comparison to the Floridan Aquifer. The Floridan Aquifer is a major source of drinking water in South Georgia and North Florida. Domestic and municipal water wells are installed within this aquifer. It should be expected that the shallower Miocene aquifer and the deeper Floridan Aquifer are both being used as sources of drinking water.”

(DDR, 5) In addition, the level at which one encounters the surficial aquifer is shallow. In fact, according to the DDR, the aquifer is located a mere 1 to 8 feet below the surface. (DDR, 5) Indeed, as a result, the consultant plans to convert five (5) piezometers into monitoring wells, none of which are more than fifteen (15) feet deep.

The spray field that is proposed for this facility would encompass twenty (20) acres. It has been designed such that buffer zones will surround it. The buffer zones call for the spray field perimeter to be no closer than one hundred (100) feet of any “perennial lake or stream.” (DDR, 7) It may not be closer than three hundred (300) feet of any habitable structure. (DDR,7) The overall plan provides for discharge from the carrot processing plant to an existing primary settling pond (0.6 million gallons) and from there to a wet weather storage pond. From there the effluent would be discharged onto the adjacent spray field.

The DDR proposes that regular monitoring of the wastewater will include only three (3) parameters: pH, BOD5 (Biochemical Oxygen Demand) and TSS (Total Suspended Solids) (DDR, 8). While the five groundwater monitoring wells will be sampled for the same three parameters (DDR, 9) there is no provision for sampling either the wastewater or the groundwater for any of the herbicides and/or pesticides routinely used by the facility on a daily basis in crop cultivation.

The DDR does not address the alleged illegal storage of solid waste on the facility. Neither does it address the alleged previous illegal discharges that supposedly resulted in the EPD's demand for a DDR in the first place.

In addition, according to Jim Harnage, who used to work at this operation, water was not the only ingredient used in the carrot washing process. Rather, bleach or hypochlorate tablets were mixed with the water to aid in the operation. If this practice is continuing (and Mr. Harnage sees no reason why it would have been halted), the discharge coming from the carrot washing operation would not be as benign as represented by Coggins' consultant.

In addition, the DDR does not mention that residents who live in the vicinity of the facility no longer use their wells for drinking water. Rather, they now rely upon bottled water due to contaminants allegedly found in their wells.

To date the EPD has not determined the sufficiency of the DDR.

### **III. Conclusion**

#### **A. The EPA**

On the surface it is difficult to assess the EPA's handling of this case given the agency's failure to produce its entire file on the subject facilities. No other agencies have produced their records. Several matters can be concluded, however:

- The facilities do not have either permits authorizing either NPDES or RCRA discharges.
- Both NPDES and RCRA violations are clearly alleged.
- The allegations of increased incidents of cancer in the Lake Park, GA area are serious and should be addressed by the appropriate agencies, both local, state and federal.
- The files are devoid of any attempts by the EPA to conduct its own water quality testing. Therefore, it would be exceedingly difficult, if not impossible, for an enforcement attorney to build a case for pursuing civil or criminal enforcement against the facilities involved. The facilities are therefore able to essentially operate with impunity.
- The files contain no photographs that would document the conditions observed by the EPA inspectors when the facilities were visited. The failure to use this most basic form of investigative tool is inexplicable.
- The files contain no indication that soil samples were taken in order to determine whether unlawful discharges had occurred that could affect the safety of the groundwater.

- The manner in which the investigation was handled would serve to discourage any member of the public from actively assisting the EPA or the FBI. In essence, the agencies appear to have done nothing more than to give lip-service to the complaints that they received from the public.
- Equally disturbing is the rather obvious failure on the part of the agencies to produce records that they are obligated to produce under the Freedom of Information Act. Whether or not this failure is a result of the agencies acting together, it is egregious and not in keeping with the spirit of FOIA.

B. The EPD and EPA Relationship

PEER requested and received EPD's files in November 2004, two months after EPA's files reflect that EPA had transferred handling of the case to EPD. Yet, EPD's files reflect no referral from EPA. More troubling, however, is the failure in EPA's files to mention the fact that the EPD had issued an NOV to Coggins for wastewater violations in June 2004 at a time when EPA's case was supposedly still open and EPA had apparently assumed primary responsibility for enforcement of the case. Moreover, EPA was telling the public during this time that it was aggressively investigating the issues raised. The wastewater violations identified by the EPD are likewise violations of federal law. It is clear, however, that the EPA had no interest in actually uncovering the truth in this case—much less prosecuting an enforcement action.

C. EPD and Solid Waste Enforcement

The EPD's files reflect every effort being taken to avoid prosecuting an enforcement case against Coggins for failure to abide by Georgia's solid waste rules. It is evident that since at least 1996, Coggins has been allowed to store, and perhaps burn, bales of plastics that are contaminated with chemicals used in the growing of crops on Coggins' property. This has been done without a permit and even when complaints were brought by sister agencies no realistic investigation was undertaken in order to confirm or deny the allegations. In the long run, such handling of a case file does not properly serve the public or, for that matter, Coggins.

D. EPD and Wastewater Enforcement

The first wastewater issue to be addressed, we believe, is the issue of how to conduct an effective investigation. In this case, neither the EPD nor the EPA have exhibited even the slightest inclination to utilize the most rudimentary investigative tools, such as taking of statements under oath and taking water samples (except on one occasion) and having the samples tested for contaminants. It is impossible to build an enforcement case when the prosecuting agency cannot prove what, exactly, the alleged violator was discharging into the waters of the state and United States. It is likewise extremely difficult to prosecute a case when an agency fails to interview witnesses in order to determine the potential scope of the alleged violations.

Under the circumstances we have to question whether, absent significant public interest, there will ever be a realistic effort to bring the Coggins' facilities into compliance. There cannot be much confidence when an agency identifies violations,



issues a NOV to the violator, then finds the same violations repeated months later and yet does nothing more than issue another NOV.

It is laudable that the EPD finally demanded a Design Development Report. However the DDR fails to address two critical issues. First, have the business practices of the facility contributed to the significant occurrence of cancer illnesses and deaths in the immediate area? Second, have these same, or similar, business practices caused the failure of neighboring private wells? The DDR should not be accepted by the EPD until these fundamental questions are answered, since if the business practices are the root cause of these problems then serious consideration needs to be given to the efficacy of issuing a permit that will, for all intents and purposes, allow continued degradation of the area.

Indeed, one has to question the efficacy of even issuing a permit in light of the apparent multiple failures of the facility over the years to abide by the controlling environmental laws. Furthermore, even if a permit is issued, we have to question whether the permit will be adhered to and, if not, whether it will be enforced via the demand for substantial civil penalties.

E. Surface and Ground Water Contamination Concerns

Finally, there is a very real concern about the potential for serious pollution entering the Suwannee River and the Floridan Aquifer. Both of these two entities cross southern Georgia and the State of Florida. The Suwannee River is one of Florida's Outstanding Florida Waterbodies and hence entitled to heightened protection. Furthermore, as the DDR points out, the Floridan Aquifer is a primary source of drinking

water for north Florida. Given the shallow surficial aquifer in the area of the Coggins discharges, together with the close proximity to the Alapahoochee River, it is reasonable for heightened safeguards to be implemented to protect the surface waters and ground waters in the region. To date those safeguards have been nonexistent. This must be revisited if a healthy ecosystem is to be fostered.

F. Cancer and Related Illnesses

Last, but certainly not least, is the issue of the high incidences of cancer and related illnesses in the area in close proximity to this site. We cannot assert, nor do we, that all, or even some, of these illnesses are the direct result of exposure to contaminants discharged at the site. However, given the relatively high number of diseases juxtaposed against the small population, and coupled with the close proximity to the site, there is certainly a sufficient incidence of these illnesses to warrant an investigation to determine whether there is a common stressor that is linked to the diseases.

**IV. Recommendations**

PEER is referring this matter to two agencies for review. We strongly believe that an investigation needs to be undertaken into the handling of the enforcement case by the agents of the EPA's Criminal Enforcement Division. For that reason, and inasmuch as EPA has oversight responsibilities for Georgia's administration of the federally delegated programs, we are referring this matter to the EPA's Office of Inspector General with a request for a formal investigation.

In addition, inasmuch as the discharges of pollutants may have an impact upon the Floridan Aquifer, from which North Florida receives its drinking water supply, we are referring the matter to the Secretary of the State of Florida, Department of Environmental Protection (FDEP), to alert the State of Florida to the situation. Thus, the FDEP can take any steps deemed necessary to increase monitoring of contiguous water bodies, e.g. the Suwannee River.