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harrassing scientists (fwd)

- **To: "unlikely.suspects": ;**
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 - **From: MichaelP <papadop@peak.org>**
 - **Date: Fri, 29 May 1998 11:40:00 -0700 (PDT)**
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 - **Resent-From: gentech@ping.de**
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From: Carolyn Raffensperger <craffensperger@compuserve.com>
Subject: harrassing scientists

Another way of intimidating public interest scientists! Bad bad stuff.

Carolyn Raffensperger
Science and Environmental Health Network

This article is on the front page of today's (Sunday, May 17, 1998) Mpls. Star Tribune (startribune.com). It is long but worth reading. It appears that the pulp and paper industry is going after a University of Minnesota scientist using a FOIA request in an attempt to intimidate her.

Sunday, May 17, 1998
Minneapolis. Star Tribune

RESEARCHER INVESTIGATING TOXIN BECOMES SUBJECT OF INVESTIGATION
Maura Lerner / Star Tribune

For more than 12 years, Deborah Swackhamer of the University of Minnesota has been scouring the Great Lakes for an outlawed pesticide called toxaphene, one of the most dangerous environmental toxins since DDT.

And she's found it -- in some cases at far higher levels than anyone expected. As a scientist, she thought that deserved some attention.

But now, she's getting more than she bargained for.

Someone has hired a prominent New York law firm to investigate Swackhamer, 43, a nationally known environmental chemist, and her husband, David DeVault, a biologist formerly with the U.S. Environmental Protection

Agency (EPA).

The lawyers, acting on behalf of an anonymous client, have asked the university and the EPA to turn over copies of virtually every document written by or about the two scientists since 1984 -- including all of Swackhamer's toxaphene research.

The lawyers have used federal freedom-of-information (FOI) and state open-records laws -- designed to open up government records to the public -- to seek thousands of memos, phone logs, financial records and even information about the couple's "familial relationship." When they met, DeVault was Swackhamer's project manager at the EPA, which funds much of her research.

The requests are perfectly legal. But their mysterious origins and their sweeping, personal nature have alarmed both the scientists and their supporters at the university and beyond. They fear that anyone with an ax to grind could use FOI laws to harass or intimidate scientists and to undermine research.

"I think they're . . . trying to come up with a way to discredit me, personally [or] professionally," Swackhamer said. Who is behind the investigation is a matter of speculation.

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Swackhamer and her colleagues, including EPA officials, believe it's most likely the pulp and paper industry -- because her research has prompted questions about whether paper mills could be a source of toxaphene. The industry says it's never created toxaphene, but it has tried to talk the EPA out of looking for toxaphene near mills.

The law firm that filed the requests, Cravath Swaine & Moore, which represents a long list of blue-chip companies, isn't talking and isn't required to reveal its client. However, Georgia Pacific Corp., the nation's second-largest paper company, is one of its regular clients. A spokesman for Georgia Pacific refused to confirm or deny any involvement in the investigation.

Industry trade groups, including the Minnesota Forest Industry, say they have nothing to do with it.

Regardless of whoever is behind it, Swackhamer and other academicians fear that it could be a dangerous precedent.

"If you want to incapacitate the faculty here, inundate them with four or five of these things," said Jack Mandel, Swackhamer's supervisor and head of environmental and occupational health at the university. At best, these kinds of requests can tie up scientists for months, he said. At worst, they can have a chilling effect on important research.

"If you make this an unpleasant experience and that word gets out, people will shy away from tackling controversial subjects," he said. And "if you don't do it here, where are you going to do it?"

The Swackhamer case is one of only a few such cases that have come to light, according to national experts.

Dr. Paul Fischer, a Georgia medical professor, was forced to give the R.J. Reynolds Co. almost everything in his office files after he published a

survey about the effects of tobacco advertising on children. He later quit his research in frustration.

"Obviously, their goal is to get rid of people who do research that was against their position," he said.

The fact is, almost any researcher who gets public money may be subject to requests under open-records laws, which basically require public institutions (such as the University of Minnesota) to open their files to anyone who wants to see them, with exceptions for such things as privacy and confidentiality.

"I think it's very troubling," said Jonathan Knight, who heads the ethics and academic freedom section of the American Association of University Professors.

The university has refused to provide some of the data requested, specifically Swackhamer's unpublished data, which it considers a trade secret. "I think this case is an example of an abuse of the [law]," said Mark Rotenberg, the university's chief lawyer.

Even so, Swackhamer has shipped off thousands of other records to the New York law firm. "They literally have gotten six to ten boxes filled with every shred of [grant] money I've ever spent; every receipt, every pencil order for 15 years," she said.

The EPA, in turn, has sent only some of the requested documents, saying many records already have been destroyed.

An innovator

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"I feel like I'm in the middle of a Grisham novel," says Swackhamer, an associate professor of environmental health. "I just feel at the mercy of . . . this giant law firm."

Since she was 32, Swackhamer has had an international reputation as an expert on toxaphene. As a post-graduate student, she developed the method now used around the world to measure the complex pesticide.

Since coming to the University of Minnesota in 1987, she's spent countless hours scavenging the bottoms of the Great Lakes, sometimes in submarines, studying the water and mud, where contaminants tend to build up.

Toxaphene is particularly worrisome because it's a suspected carcinogen and has been shown in lab tests to cause birth defects in wildlife. Experts fear that it could do the same to humans if they eat enough contaminated fish.

Until recently, scientists thought they knew how much toxaphene was in the lakes and how it got there -- via wind carrying it from cotton and soybean fields in the South, where it was widely used as a pesticide until being phased out in the early 1980s and then banned.

But Swackhamer discovered in the mid-1990s that the levels were even higher than expected in Lake Superior water and the sediment of northern Lake Michigan. Her findings, and those of other researchers, raised the question of whether there might be another source of toxaphene closer to home.

Her research didn't pinpoint any source, and she's never claimed it was the paper industry. But when her husband was with the EPA, he thought it was worth exploring, if only to eliminate the mills as a possibility. Why? Because toxaphene and paper have some things in common: Toxaphene is made by adding chlorine (bleach) to pine tree resin, and paper is made sometimes by adding chlorine to wood pulp.

DeVault wondered whether the paper mills could have made toxaphene as an unintentional byproduct. So, as an EPA project officer, he pushed the agency to study the toxaphene levels in the river sediment near some mills along Midwestern rivers. The study is underway; Swackhamer isn't involved with it.

'No convincing science'
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The paper industry, of course, isn't the only possible explanation. But if it were the source, it could face millions of dollars' worth of potential cleanup costs and damages, and tighter EPA regulations.

The industry says it's simply a false alarm. "When you look at the details, there's just no convincing science or data to support that hypothesis," said Jay Unwin, a regional manager of the industry's scientific arm, the National Council of the Paper Industry for Air and Stream Improvement Inc. He says toxaphene has never been found in the waste water from paper mills.

But he acknowledges that the industry tried to talk the EPA out of the latest study near the paper mills, "because it's a waste of time and money, and field sampling like that is fraught with errors." Scientists say testing for contaminants in sediment can be unreliable because the chemicals can drift between layers of mud, making measurements imprecise.

Still, the paper industry took notice of Swackhamer's research. In January 1996, Unwin sent her a letter asking to see her raw data on toxaphene. It was just months after she first discussed it at a scientific conference, and her work hadn't been published yet.

Swackhamer was unnerved. Like many scientists, she considers her raw data intellectual property, the lifeblood of her academic career. And she's reluctant to share it prematurely.

Privately, Swackhamer confided to colleagues that she was suspicious of the industry's motives.

"[They] are not happy, to say the least," she wrote to her two collaborators at the time. "Inside information suggests that Jay's interest in our data is not idle, but that he wishes to discredit our data by digging through the details of it. I have no interest in a biased, non-objective review . . ."

She refused his request.

Unwin said recently that he merely wanted to check her findings and that he wrote to her with the EPA's blessing. "I didn't know she was suspicious of our motives," he said in an interview. "I feel any scientist should not feel threatened by sharing their data. If the data are good, they're good. If they're not, that's how the scientific process works."

He dropped the request when she turned him down.

Several months later, Swackhamer found herself in a battle of words with Larry LaFleur, another industry scientist. She said he tried to discredit her during a conference call with other scientists, when they were discussing the results of a test in which she found elevated levels of toxaphene downstream from the Potlatch paper mill in Cloquet, Minn.

Swackhamer fired off a letter of protest the next day, calling the phone conference a "rude . . . twisted . . . trumped up attack by an industry-funded chemist."

LaFleur's reaction couldn't be determined; he declined to talk to the Star Tribune.

Two weeks later, in September 1996, the first FOI request arrived on the doorsteps of university. It asked for: "All applications and supporting documents, memoranda, correspondence, reports, meeting minutes, telephone logs, and all other documents relating to grants awarded after 1984 in which Dr. Deborah L. Swackhamer was the principal investigator or a co-investigator."

Plus: "All other documents relating or referring to Dr. Deborah L. Swackhamer, including correspondence records, meeting minutes, telephone logs, and public personnel data."

A virtually identical request was sent the same day to the EPA, regarding both Swackhamer and DeVault. Over the next year, the letters would continue -- at least 14 in all -- in some cases seeking more detailed information.

"[We] are particularly anxious," said one letter to the EPA on March 27, 1997, for information on Swackhamer's "familial relationship" with EPA officials, and "any disclosures . . . of conflict of interest." Another asked whether DeVault had ever been disciplined by the EPA.

Swackhamer was appalled. As a scientist, she said, she expects others to challenge her findings. But not her phone logs and financial records.

DeVault says he laughed off the requests at first. But "when they ask for every piece of paper that mentioned my name since 1984, you begin to wonder," he said, and now "I think they were very clearly trying to intimidate, if not me personally, then the agency." He left the EPA last summer for a job with the U.S. Fish and Wildlife Service in St. Paul.

Clues and denials ~~~~~

Swackhamer says her suspicions that the paper industry was behind the FOI requests were essentially confirmed last summer, when she ran into some industry scientists at a convention in Indianapolis. She said two of them -- Stewart Holm, of Georgia Pacific, and Tom Deardorff, of International Paper -- told her they knew of the FOI requests and believed that someone in the industry was behind them.

"I said, 'Why me?' " she recalled asking Holm privately.

By her account, he replied: " 'Well, you fingered us back in '95.' He said, 'People who heard you speak in 1995 said you blame the paper industry for toxaphene, and we heard you were a zealot.' "

Swackhamer said she was taken aback. "I said, 'How can I make it go away?' " As she recalls, Holm told her that she could ask the EPA "to back off."

Holm vigorously disputed her account. "I never asked Dr. Swackhamer to intercede with EPA on this or any other issue, nor would I ever do that," he said. "The totality of the scientific research is much stronger than the opinion of Dr. Swackhamer and all pointing to the same conclusion, and that is that pulp mills were not a source of toxaphene." He also said he had no idea who was behind the investigation.

His employer, Georgia Pacific, would not comment on whether it initiated the FOI requests. When asked by the Star Tribune whether it was behind the investigation, the company released a one-paragraph statement saying it had a "history of working closely" with researchers. "To suggest that we would do anything other than encourage and foster sound scientific research at universities is baseless."

Deardorff, for his part, says he merely told Swackhamer that he was sure the industry trade group wasn't behind the FOI requests. "I do not know who filed it," he told the Star Tribune.

Other industry officials have been quick to distance themselves from the investigation. "If nothing else, it's obviously a very burdensome request," said Jerry Schwartz, director of water quality for the American Forest and Paper Products Association, an industry trade group. "All I can tell you is that we didn't have anything to do with it."

"I can see why a person would be angry about that," said Unwin, of the industry science group.

"We wouldn't do that," said Jim Foster, spokesman for International Paper, the largest U.S. pulp and paper company.

The Minnesota Forest Industry called the Star Tribune last week, on its own initiative, to say it had nothing to do with the FOI requests.

At the same time, Wayne Brandt, executive vice president of the Minnesota organization, said that if the research is publicly funded, it should be open to public scrutiny, at least after it's published.

"I always figured if we're paying for something, it's in the public domain at some level," he said.

EPA official Frank Anscombe says he "would be surprised if it was not a paper company," but he also said he has no problem sharing "the information with the public."

But Rotenberg, the university's lawyer, said the requests in this case went too far. "The act was never drafted with an eye toward ongoing faculty research," he said.

"When [someone] seeks to force disclosure of data and notes and theories and ideas and creative hunches of a faculty member before that faculty member has put them all together in published form, I think that is a serious abuse," he said. "The university has routinely taken the position that this kind of thing must be protected."

In the meantime, Swackhamer says she hasn't given up her toxaphene research, but she has become more gun-shy.

"My husband has said, 'Are you sure you want to submit that proposal? Maybe you don't want to do toxaphene research for a few years,' " she said, laughing. "No, they're not going to do that to me."

But she said she doesn't know what to expect next.

"If I don't hear from them for a year, two years, can I say they've gone away?" she said. "When can I say this has passed? I don't know."

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