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Judge scolds Ohio EPA

Former coordinator of River Valley case to get his job back

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In a scathing rebuke of the Ohio Environmental Protection Agency, a federal judge has ruled that the agency illegally punished the coordinator of an investigation into possible contamination at River Valley Schools near Marion.

The ruling this week portrays top agency officials as being more concerned with their media image than with aggressively pursuing a probe of higher- than-normal rates of leukemia in Marion.

The EPA must immediately reinstate Paul Jayko, its former site coordinator, and pay him for wages and other benefits lost after he was transferred to the EPA's Bowling Green, Ohio, office, said Thomas F. Phalen Jr., an administrative law judge based in Cincinnati.

The judge ruled that Jayko is qualified for protection under a federal whistle-blower law. Jayko had written internal memos critical of the EPA's investigation of potential links between cancer-causing chemicals dumped in the Marion area and the number of leukemia cases among graduates of River Valley High School.

Chemical waste was dumped at the campus east of Marion for years during its previous use as a military-supply depot, but the leukemia cases have not been linked to specific causes.

"It is clear," Phalen wrote, "that OEPA held him (Jayko) in particular disfavor for reasons that may only be attributed to his vigorous prosecution of the Marion investigation . . . while OEPA management wanted to do something graduated and far less effective."



Paul Jayko must be reinstated and be paid for lost wages, the judge's ruling says.

In a statement released by his attorney, Dennis Muchnicki, Jayko called the ordeal the "worst time of my life."

"It's still so hard for me to believe that my superiors could go so far as to set me up, frame me and destroy my while life," Jayko said. "I just tried to do my job and tell the truth."

Chris Jones, who took over as EPA director after Jayko was transferred, declined to comment about the decision while the state considers whether to appeal.

The EPA accused Jayko of being sarcastic and not being a team player. He was moved off the Marion investigation after being suspended for 10 days for drinking two beers before a public meeting -- punishment that Phalen ruled groundless and retaliation for the memos Jayko had written.

"We strongly disagree with the conclusions made by this judge," said Carol Hester, an EPA spokeswoman. "We still maintain Mr. Jayko's claims have no merit."

Shortly after the EPA was notified in June 1997 of unusually high rates of leukemia in Marion, which is 40 miles north of Columbus, then- Gov. George Voinovich ordered the agency to "leave no stone unturned" in its investigation.

Frustrated about the pace of the probe and under pressure from parents of River Valley students, Jayko testified that he tried to "kick-start" the process with a series of memos recommending that various air, soil and water tests be conducted before students returned from summer break that year.

His superiors didn't sign off on Jayko's recommendations until shortly before school began. Tests later revealed contamination under playing fields that have since been closed off with a chain-link fence.

One Jayko memo, dated Oct. 15, 1997, took issue with tests of Marion's drinking water that failed to look for heavy metals, pesticides and a category of cancer-causing chemicals known as polycyclic aromatic hydrocarbons.

"Management viewed this as 'making them look foolish, making them look like they didn't know what they were doing,' " according to testimony during Jayko's administrative hearing last year.

The EPA later followed many of Jayko's recommendations, but on July 31, 1998, former EPA Director Donald Schregardus informed Voinovich that he was moving Jayko off the investigation.

Phalen ruled that Jayko was punished for criticizing the EPA for focusing on immediate causes of leukemia instead of studying long-term sources of contamination.

"Mr. Jayko knew that this was both disingenuous and in opposition to what the public was being told about the investigation," Phalen wrote.

In addition to paying back wages, the judge ordered the agency to pay Jayko's

legal fees and to post notices about his reinstatement on all employee bulletin boards at the EPA's main and district offices for at least 90 days.

Jayko's attorney said the back pay could amount to almost \$120,000.

Parents who fought to keep Jayko in Marion welcomed the decision.

"This was all about politics, no matter what the Ohio EPA says," said Jodi Griffith, who took her son out of River Valley last year. "It was unfair to our community and unfair to our school. We want and need Paul back."

An investigation involving the EPA, the Ohio Department of Health and the U.S. Army Corps of Engineers continues at the site, which is used daily by about 765 students attending River Valley High and Middle schools.

State and school district officials are concerned enough by what they have learned that they propose relocating the schools. Local voter approval of a \$19.6 million bond issue on Nov. 7 would leverage \$24 million in state and federal money for buildings on a new site and two new elementary schools to replace aging buildings elsewhere in the district.



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