IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)
)
Plaintiff,)
)
vs.)4:05-CV-00329-TCK-SAJ
)
TYSON FOODS, INC., et al,)
)
Defendants.)

- -

THE VIDEOTAPED DEPOSITION OF GORDON JOHNSON, PhD, produced as a witness on behalf of the Defendants in the above styled and numbered cause, taken on the 4th day of February, 2008, in the City of Tulsa, County of Tulsa, State of Oklahoma, before me, Lisa A. Steinmeyer, a Certified Shorthand Reporter, duly certified under and by virtue of the laws of the State of Oklahoma.

(Whereupon, the deposition began at 9:04 a.m.)

VIDEOGRAPHER: We are now on the Record for the deposition of Dr. Gordon Johnson. Today is February 4th, 2008. The time is 9:05 a.m. Would 09:04AM
counsel please identify themselves for the Record?

MR. NANCE: Bob Nance for the State of Oklahoma, being joined shortly by Trevor Hammons also for the State of Oklahoma.

MR. BASSETT: Woody Bassett for George's, 09:04AM
Inc. and George's Farms, Inc.

MR. SANDERS: Bob Sanders for the Cal-Maine defendants.

MR. BOND: Michael Bond for the Tyson defendants. 09:04AM

MS. SOUTHERLAND: Leslie Southerland for the Cargill defendants.

MR. McDANIEL: Scott McDaniel representing Peterson Farms, Inc.

MS. GRIFFIN: Jennifer Griffin for Willow 09:05AM
Brook Foods on the telephone.

VIDEOGRAPHER: Thank you. The witness may be sworn in.

GORDON JOHNSON, PhD,

having first been duly sworn to testify the truth,

the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. McDANIEL:

Q Would you state your full name for the Record, please, sir? 09:05AM

A Gordon Vernon Johnson.

MR. NANCE: Mr. McDaniel, do I understand correctly that we've agreed to reserve objections except to the form of the question until the time of trial? 09:05AM

MR. McDANIEL: That's correct.

MR. NANCE: Thank you, sir.

Q All right. Mr. Johnson, you heard me introduce myself. My name is Scott McDaniel, and I represent Peterson Farms, Inc., one of the defendants in the case. 09:05AM

A Yes.

Q Have you ever given a deposition before, Dr. Johnson? 09:05AM

A Yes.

Q How many times?

A Oh, probably fifteen or twenty times.

Q Really? When was the last time?

A Well, I don't know when the last deposition -- 09:05AM

by USDA that involves USDA people, like Sharpley and maybe university people, to look at phosphorus.

Q The paper says the National Phosphorus Project is being conducted across the country to better assess the relationship between soil test P and P runoff. The general objective of the National P Project is to develop P management recommendations that sustain agriculture and protect water quality. Do you see that statement? 10:35AM

A Yes. 10:36AM

Q Let's go to the bottom of the page. The author states, several states have adopted a multiplicative matrix and are making modifications to the original P index to more accurately reflect the local landscape characteristics in management practices. As with the original P index, most P indices are being developed through many discussions with area scientists and representatives of state and federal technical advisory and regulatory agencies. Are you aware of these cooperative efforts between universities, local scientists and agencies in order to develop state standards for phosphorus management? 10:36AM 10:36AM

A I'm aware of the interaction. I wouldn't -- I don't know that the term cooperative is appropriate. 10:36AM

Q Have you been involved personally, sir, in any aspect of the development of the phosphorus management criteria that's used in the state of Oklahoma that's applicable in the Illinois River watershed? 10:37AM

A I've been involved in the discussions with NRCS and with individuals from the University of Arkansas to the extent that I suggested that we shouldn't use the high values that have come to be because we didn't have scientific evidence to 10:37AM suggest that higher numbers should be used.

Q Let's --

A Those recommendations, incidentally, were not accepted.

Q All right. So let me understand your 10:37AM testimony. Your involvement with regard to the standards that are employed in Oklahoma is you offered your opinion to the Natural Resource Conservation Service that the Code 590 standard allowed the application of phosphorus-containing 10:38AM fertilizers at a level higher than you felt was appropriate?

A Yes.

Q And the USDA, Natural Resources Conservation Service did not change their Code as a result of 10:38AM

your comments?

A Well, I believe at the time they were -- as indicated here, each state was developing specifics for their state after looking at what the federal level people had sent down to them, and my input 10:38AM probably, as I recall, was two-fold. One is that I disagreed with the intent of having a different phosphorus soil test calibration for animal waste than you had for commercial fertilizer if your purpose as stated on the first page of 590 was to 10:39AM minimize runoff of pollutants, non-source pollutants because, in fact, animal waste has a lower density than commercial fertilizer and it's more subject to runoff.

So if anything, you ought to have more 10:39AM stringent requirements when you are using animal waste and you ought to at least accept the same guidelines that NRCS has in place for subsidizing the use of commercial fertilizer when they're trying to stabilize erodible areas with vegetation. 10:39AM

Q And Oklahoma has adopted the NRCS standards; correct?

MR. NANCE: Objection, calls for a legal conclusion.

A I believe so. 10:40AM

A I don't believe it's an environmental threshold. I believe it's a waste disposal threshold. I believe it's in conflict with the stated purpose on the first page, that these guidelines are to minimize agricultural non-point source pollution of surface and groundwater resources, and to use this table does not minimize that. 11:08AM

Q And --

A In fact, it maximizes the amount of waste you could dispose of without regard to the increased non-point source pollution. 11:08AM

Q And you have -- you have expressed those concerns to NRCS?

A Yes. 11:08AM

Q When was the last time you expressed your concerns to them?

A It would be several years ago when I was at OSU.

Q Okay. So at least four years ago then? 11:08AM

A Yes.

MR. McDANIEL: Before we start something new, he says we have five minutes left, so let's go ahead and take a break.

VIDEOGRAPHER: We're now off the Record, 11:08AM