CERCLA COST RECOVERY AND NATURAL RESOURCE DAMAGE CLAIMS

- Joint and several liability for costs incurred responding to a release of a hazardous substance and for damages to natural resources.
- The State can recover its response costs and can obtain a declaratory judgment holding Defendants jointly and severally liable for all further necessary response costs.
- The State may also recover natural resource damages to restore, replace or acquire the equivalent of the damaged resource, obtain compensation for lost services and recover assessment costs.

CERCLA COST RECOVERY AND NATURAL RESOURCE DAMAGE CLAIMS

- Elements of the Claim under CERCLA Section 9607
  - Poultry Waste contains a "Hazardous Substance" as defined by Section 9601 of the Act;
  - There has been a release or threatened release of a "Hazardous Substance" into the IRW from a facility;
  - Poultry companies are facility owners, facility operators or arrangers of disposal of the waste;
  - The State incurred costs in responding to the release and/or the release caused damage to the State's natural resources.
- Fertilizer Exemption
  - Section 9601(22) provides an exemption for the "normal application of fertilizer" but does not exempt animal waste disposed of in excess of agronomic needs.

RCRA IMMINENT AND SUBSTANTIAL ENDANGERMENT

- 42 U.S.C. Section 6972(a)(1)(B) provides that "any person" may bring a civil action against any person who has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of a solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

- The State is seeking an injunction requiring the poultry companies to halt the land application of poultry waste, as well as reasonable attorney and expert witness fees.

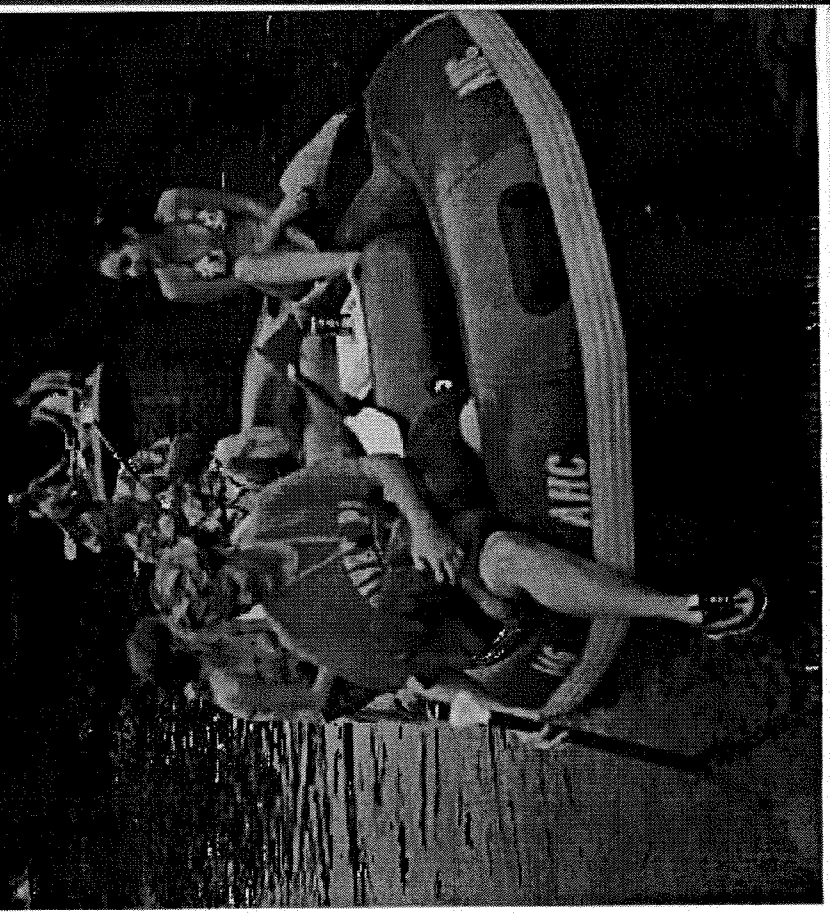
RCRA IMMINENT AND SUBSTANTIAL ENDANGERMENT

- The State alleges that:
  - Poultry waste is a solid and/or hazardous waste;
  - The poultry companies have contributed and are now contributing to the handling, storage, treatment, transportation, or disposal of poultry waste in the IRW; and
  - That poultry waste may create an imminent and substantial endangerment to health or the environment.
- No Applicable Fertilizer or Animal Manure Exemption

State and Common Law Claims

- The State is pursuing, among other things, the following other claims:
  - Injunctive relief to stop the discharge of pollutants to the IRW;
  - Cleanup of areas affected by pollution;
  - Restoration of the environment and damages;
  - Investigation and assessment costs; and
  - Attorneys fees and costs.

TRAVEL

River of Fun

You'll find small-town charm and all the water you need around eastern Oklahoma's Illinois River