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. )

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THE VIDEOTAPED DEPOSITION OF BERTON FISHER, PhD, produced as a witness on behalf of the Defendants in the above styled and numbered cause, taken on the 23rd day of January, 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.

A P P E A R A N C E S

FOR THE PLAINTIFFS: Mr. David Page
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-and-
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(Via phone)

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

BERTON FISHER, PhD,

having first been duly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

MR. PAGE: Robert, before we begin, can we have an agreement that we'll reserve objections except as to form?

MR. GEORGE: Certainly. 09:01AM

MR. PAGE: Thank you.

DIRECT EXAMINATION

BY MR. GEORGE:

**Q** Dr. Fisher, would you state your full name please? 09:01AM

**A** John Berton Fisher.

**Q** Dr. Fisher, you understand you're here today to give a deposition in connection with opinions that you have put forward on behalf of the State of Oklahoma in a case filed in the Northern District of Oklahoma? 09:01AM

**A** Yes.

**Q** Okay. You've given a deposition before; correct?

**A** I have. 09:01AM

floors of those confined areas within what is generally construed as litter, that is the cellulosic material that is placed there to take up those wastes, and then on a regular basis, typically recommended to be annual by some of the integrators, 10:24AM those wastes are taken out of the barns and applied to fields.

**Q** Where are those fields?

**A** The fields are near the barns.

**Q** Are the fields always in the watershed? 10:25AM

**A** No.

**Q** Okay. You concede there's transport of poultry litter out of the watershed; correct?

**A** Yes, and there's transport of poultry litter into the watershed. 10:25AM

**Q** But you can't assume, can you, sir, in any valid sense, that the generation of litter in the watershed equals the application of litter in the watershed?

**A** Given the short distance of transport of the 10:25AM litter, I think that you can make that assumption, that generation and -- absent long distance transport, generation is equivalent to disposal.

**Q** Is it your understanding, sir, that there's no long distance transport of poultry litter out of the 10:25AM

Illinois River watershed?
**A** No. It's my understanding, in fact, of recent date that there is long distance transport of poultry litter from the Illinois River watershed.
**Q** Okay. So in light of that, let's go back to where we were. We can't assume, can we, sir, in any valid sense that the generation of poultry litter in the watershed equals the amount of poultry litter land applied in the watershed? 10:26AM
**A** Okay. Prior to long distance transport, we can assume that generation of poultry litter within the watershed is equivalent to disposal within the watershed. Once one is looking at long distance transport, you would adjust that or you might adjust that for the long distance transport. 10:26AM
**Q** Okay. Let's talk about the present, right now.
**A** Okay.
**Q** Okay. Can we assume, sir, in any valid sense that the generation of poultry litter in the watershed is equal to the amount of poultry litter applied in the watershed? 10:26AM
**A** Okay. Let's look -- if we define the present as 2006 --
**Q** I want to define the present as today. 10:27AM

A In writing.
Q Okay, and did you produce those as part of your materials?
A I produced reports relevant to waste disposal as part of my materials, and they were previously 01:53PM
produced to you in the documents that are referred to specifically by Bates number.
Q Okay. I'll tell you what I saw in your physical production and I've looked at what you
referred me to in the Bates numbers. What I saw in 01:53PM
your physical production was photos and videos, not written reports.
A I know there are written reports in there.
Q Okay. In your physical production?
A Yes. 01:53PM
Q Okay. To the extent you received reports from investigators regarding waste disposal practices or land application of poultry litter, whatever terminology you want to use, have you produced
those? 01:53PM
A To my knowledge, yes.
Q Okay. Did any of these reports or your conversations with the investigators provide you with information that any person involved in the
land application of poultry litter in the watershed 01:54PM

was breaking the law?

MR. PAGE: Object to the form.

**A** There is no observation as to that.

**Q** Okay. So the eight investigators who spent a considerable amount of time in the watershed observing litter application practices never came back to you and said we caught somebody violating the law? 01:54PM

MR. PAGE: Object to the form.

**Q** Is that true? 01:54PM

**A** I received reports and there are reports of spreading which appears too near streams. You know, that's -- that appears to be a violation.

**Q** Okay. You're basing that on your review of a video? 01:54PM

**A** Review of a video and their verbal report and I believe the written report as well.

**Q** Let me ask the question again. Did any of the eight reporters who spent significant time in the watershed come back to you and say, Dr. Fisher, we caught somebody breaking the law? 01:54PM

MR. PAGE: Same objection.

**A** No.

**Q** Were they -- were the investigators given a tutorial on distances from streams and requirements 01:55PM

for land application of poultry litter?
**A** Yes.
**Q** They were? Who provided that?
**A** It was provided from materials from the Department of Agriculture. 01:55PM
**Q** If there had been an observed violation of the law, would you have reported it to the Oklahoma Department of Ag or to the Arkansas Natural Resources Commission?
**A** Yes, I would have. Oh, and let me think here. 01:55PM
In fact, there was -- there appeared to be a violation that was reported and had to do with improper composting of dead chickens. That was reported to Dan Parrish. Poultry inspector was sent on that -- out to inspect. I don't know the results 01:56PM
of that.
**Q** That was my question. Do you know what happened as a result of that report?
**A** I do not.
**Q** Okay. Other than that one instance relating 01:56PM
to composting of dead chickens, did you make any other reports to agencies in either Arkansas or Oklahoma of real or perceived violations of the law with respect to the handling or application of poultry litter? 01:56PM

A No.
Q How much time did you spend in the watershed, sir, yourself on these direct observations?
A In terms of -- gosh. I'd have to look at my records, but I suspect I spent maybe 60 days all 01:56PM
told days in the watershed from time to time. That wasn't my role specifically to look for application, but I certainly observed application.
Q Did you also observe cattle in the watershed?
A I did. 01:57PM
Q Okay. Did you ever observe cattle in streams?
A I observed a fraction of the cattle in streams, yes.
Q Okay. So there would be an occasion you'd drive over a bridge and you would look in the stream 01:57PM
and you'd see a cow?
A Sure.
Q Did you ever observe a cow defecating in the stream?
A No. 01:57PM
Q Would it surprise you that cows do frequently defecate in the streams?
MR. PAGE: Objection to form.
A No, it would not surprise me.
Q Let me refer to your affidavit, Page 8, 01:57PM

are produced by soils, how many tons of hay per acre are produced in the Illinois River watershed now?

**A** That would be beyond my expertise and within that of other experts in this matter.

**Q** Do you have any concept as to the value of the hay that's produced in the watershed at the present time? 05:54PM

**A** I do not. That would be other experts in this case.

**Q** Who would that be? 05:54PM

**A** I believe Dr. Gordon Johnson might be able to testify to that.

**Q** When poultry litter from a grower is sold, who sets the price of that?

**A** One would hope the market. I don't know who sets the price for poultry litter. 05:54PM

**Q** Who gets the money?

**A** Who gets the money? I -- the owner of the litter. The person who gets the money is the owner of the litter. 05:54PM

**Q** Do you know who gets the money now in the watershed?

**A** I do not.

**Q** On Page 7 of your affidavit you state that the geology and terrain of the Illinois River watershed 05:55PM