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 DEPOSITION OF STEVE BUTLER, produced as a witness on behalf of the Plaintiff in the above styled and numbered cause, taken on the 26th day of April, 2007, in the City of West Siloam Springs, County of Delaware, 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.

1 (Whereupon, the deposition began at
2 9:05 a.m.)
3 STEVE BUTLER
4 having first been duly sworn to testify the truth,
5 the whole truth and nothing but the truth, testified
6 as follows:
7 DIRECT EXAMINATION
8 BY MR. GARREN:
9 Q Mr. Butler, my name is Richard Garren. I'm
10 here representing the State of Oklahoma and I have a 09:05AM
11 few preparatory questions. Have you ever given a
12 deposition before?
13 A No, sir.
14 Q Okay. It's really pretty simple. I'm going
15 to be asking the questions and it's going to be your 09:05AM
16 responsibility to answer those as best you can.
17 Probably the first rule you need to use is that you
18 would answer verbally so that Lisa, our court
19 reporter, can take those responses down and get them
20 correct. It's all too easy for us in conversation 09:06AM
21 to get used to nodding our head or saying uh-huh or
22 huh-uh. Those don't come across good, and so that
23 we have a good Record, I'd ask you to respond yes or
24 no and refrain from nodding your head when
25 necessary. Okay? 09:06AM

1 middle point of the reporting here. So we took what
2 Tyson had done up to that point and completed with
3 what we did in order to do the inspection for the
4 June to July deal or July, June, however.
5 Q There's a mid-year reporting requirement on 10:52AM
6 this form, isn't there?
7 A Yes.
8 Q I wanted to clarify that. So you are relying
9 on Mr. Partain with regard to '03 numbers, aren't
10 you? 10:52AM
11 A Yes, I am.
12 Q Was he operating all of these complexes in
13 advance of you acquiring them?
14 A Yes, he was. Well, to the best of my
15 knowledge. That's what I was told. 10:53AM
16 Q All right. When you took over these
17 complexes, did you in fact sell 100 percent of all
18 the litter or waste that's produced from the barns
19 from the sixteen complexes?
20 A Yes. 10:53AM
21 Q Did you ever keep back any poultry waste for
22 your use for Green Country Farms or any land owned
23 by you or Green Country Farms?
24 A No, sir.
25 Q So every time you do a clean-out -- how often 10:53AM

do you do a clean-out in your complexes?
A It's going to depend.
Q I probably need to know all of why then if you would tell me.
A Bird health, amount building up, weather conditions. 10:53AM
Q Generally how often -- I didn't mean to interrupt you.
A You've got to have the right weather conditions to be able to clean and especially if you're applicating. When we were selling local, that would really play a role, but it's kind of a management decision. Do I think it will improve my performance by cleaning out? Then, yes. 10:53AM
Q Let me ask it this way then: Do you cake-out after every flock? 10:54AM
A 90 percent plus.
Q Okay, and on average how often do you do a full clean-out?
A At Green Country Farms we cleaned the farms as we were retrofitting them in '04 and we are just now really cleaning out again. 10:54AM
Q So you did a clean-out in '04?
A Yes.
Q And you're now beginning clean-outs again is 10:54AM

what you are saying?
A Yes. We've done some partial -- I don't know if you understand a partial clean-out.
Q Go ahead and tell me what it is.
A It's where you go in and take some litter, and 10:54AM
bedding is very expensive, so we save some of our -- if we've had good bird health, we save some of our litter, so just take some out in order to get the levels lower.
Q You're referring to that as a partial 10:55AM
clean-out?
A Yes.
Q Is that also a term referred to as cake-out?
A No. That would be a different one.
Q Explain to me the difference between a partial 10:55AM
clean-out and your understanding of a cake-out.
A Cake-out, there's a machine that goes through the house and has a sifter and will pick up -- if you've had water lines too high pressure or
something, it will kind of get wet, damp in that 10:55AM
area, which causes ammonia, and this machine will come through and sift that and let the good dry go back down for our bedding and it puts it into a hopper that we then take to our stacking sheds and
unload. 10:55AM

Q On a partial clean-out you take it to the floor?
A No.
Q Or do you try to save the litter, too?
A Partial clean-out we may take it to the floor in an area of the house and then move litter to keep -- try to keep it looking like a carpet if you can. 10:56AM
Q So you are moving litter around -- you're moving good litter into areas where bad litter may be removed? 10:56AM
A I wouldn't say bad litter. It's just built up.
Q Used? Well, do you remove the other litter? I'm talking about bedding material. Do you remove part of the bedding material when you do a partial clean-out? 10:56AM
A I would say yes.
Q You remove part of the waste and excrement that's in it on a partial clean-out? 10:56AM
A On a partial clean-out, I mean your bedding and your litter is mixed, and you can really just go through a certain area with a loader. So you take some bedding, some litter.
Q The litter you are referring to is the poultry 10:56AM

1 waste?
2 A I don't refer to it as poultry waste.
3 Q Well, if you look at the definition of litter,
4 it refers to bedding material, and I'm trying to
5 distinguish that. The bedding material I refer to 10:57AM
6 as litter. Added to that litter is the excrement
7 which comes from the chickens; would you agree?
8 A Say that again.
9 Q When you put new bedding material in there,
10 you buy it fresh and it's not been exposed to any 10:57AM
11 chickens; correct?
12 A That's correct.
13 Q And you put it in there because it absorbs the
14 moisture from the urine and excrement that the birds
15 excrete? 10:57AM
16 A That's correct.
17 Q So at some point in time it gets mixed
18 together into a combination of bedding material and
19 the waste excreted from the birds; correct?
20 A That would be correct. 10:57AM
21 Q And I refer -- and you're referring to that as
22 litter; is that right?
23 A That's correct.
24 Q Both of them combined?
25 A The combination. 10:57AM

1 Q All right. So you're removing both of them
2 when you are doing a partial cleaning to some
3 extent; is that correct?
4 A That's correct.
5 MR. ELROD: I congratulate you on getting 10:58AM
6 through all of those questions without using the
7 word poop. It's very well done.
8 MR. GARREN: Thank you, thank you.
9 Q Let's change subjects a little bit. We've
10 talked about sixteen complexes. Is there another 10:58AM
11 complex number seventeen that you're aware of?
12 A Do you want the explanation?
13 Q Yes, sir. I've seen a reference and I'm going
14 to try and pull the document.
15 A It would be -- 10:58AM
16 Q Let me finish my question.
17 A Okay.
18 Q I'll hand you Exhibit No. 4. This I believe,
19 as I recall, is a three-page document and it
20 references complex seventeen. 10:58AM
21 A Uh-huh.
22 Q And I will represent to you also that Tyson
23 entities in their responses to some discovery
24 requests have identified a complex seventeen but it
25 also gives the same driving directions that you 10:59AM

Q Do you know whether or not BMP would know?
A That's truck driver talk, but there would be other paperwork supporting this that would probably say the name of the owner of the sod farm.
Q Okay. 11:43AM
MR. WILLIAMS: When you get to a convenient point, another break would probably be helpful.
MR. GARREN: I was thinking we might just push us into lunch.
MR. WILLIAMS: If that's what you want to do. 11:43AM
Q Do you know what the eligibility requirements are for you to participate in the project grant money?
A My understanding is to be in the Illinois River watershed or I think you might can even be in Eucha-Spavinaw. I'm not sure. I know if you are in the Illinois River watershed and ship it to a watershed that's not nutrient limited. 11:44AM
Q Do you know whether or not company-owned farms can participate? 11:44AM
A I do not believe company-owned farms can.
Q Do you consider yourself an independent contractor doing the work for Tyson; is that what --
MR. WILLIAMS: Objection to form. 11:44AM

1 A I'm definitely an independent. I mean I
2 contract, raise broilers for Tyson.
3 Q Okay. What, if any, encouragement or --
4 that's fine -- encouragement did you receive from
5 Tyson to participate in the grant projects for 11:45AM
6 litter transport?
7 A Encouragement? Define what you mean by
8 encouragement.
9 Q We'll start back a little bit then. You
10 indicated your first contact on this was seeing the 11:45AM
11 ads of BMP and you made a phone call?
12 A Uh-huh.
13 Q Did Tyson or any of its representatives
14 explain to you that that project is out there, that
15 grant money is available and you need to get into 11:45AM
16 it?
17 A Shortly after that I did have a conversation
18 with some folks from Tyson that said, yes, it's
19 there and that would be great.
20 Q Who was it you talked to? 11:45AM
21 A It would be -- I know Steve Patrick. Steve
22 Patrick is who I talked to about that.
23 Q What's his position with Tyson?
24 A I couldn't tell you his title. I know he's in
25 the environmental end of things. 11:46AM

1 A That's correct.
2 Q You also purchase some of the supplies that
3 are used, such as bedding material?
4 A Correct.
5 Q And you have bills that you have to pay like 04:02PM
6 all other businesses, such as utility bills and gas
7 bills and things of that nature; is that correct?
8 A That's correct.
9 Q So is it true then in this setting as a
10 business, like any other setting, that you have an 04:02PM
11 opportunity to either make money or lose money?
12 A Very much so.
13 MR. GARREN: Objection to the form of the
14 question as to another setting.
15 Q Are there indeed instances if you looked at 04:02PM
16 the operations of a particular complex over a period
17 of time where you might have lost money as opposed
18 to made money?
19 A Repeat that again.
20 Q Sure. Are there indeed instances since you've 04:03PM
21 owned and operated this business where if you looked
22 at a particular complex and you factored in the
23 expenses associated with that complex where you
24 might have lost money as opposed to made money?
25 A Yes. 04:03PM

1 not the entire time they owned it, and that
2 impressed me.
3 Q Now, for a period of time after you purchased
4 the farm in -- was it February or March of 2004?
5 A February. 04:06PM
6 Q For a period of time after that, about a year,
7 the litter that was taken out of those 154 houses,
8 if I understand correctly, you sold that to litter
9 haulers or contract haulers; is that correct?
10 A That's correct. 04:06PM
11 Q And I assume you received money for the sale
12 of that litter?
13 A Yes, I did.
14 Q And I assume you kept that money and used it
15 in the business as opposed to sending it back to 04:06PM
16 Tyson Foods; is that right?
17 A That's correct. It helps offset bedding.
18 Q Exactly. Now, beginning in May of 2005 and
19 continuing on to the present, am I correct in
20 understanding that all of the litter from the 154 04:07PM
21 houses at Green Country Farms has gone out of the
22 watershed?
23 A Best of my knowledge 100 percent has gone out
24 of the watershed.
25 Q Now, are you required by law to the best of 04:07PM

your knowledge to ship that litter out of the watershed?

A No.

Q So is that an instance, sir, where you believe you've gone above and beyond requirements of Oklahoma law? 04:07PM

MR. GARREN: Objection to the form.

A Yes. I believe we've gone above and beyond.

Q You were asked some questions. I don't know if you still have Exhibit No. 9 in front of you, 04:07PM which is the animal waste management plan or at least the first page of various animal waste management plans. Do you see in -- the first paragraph of these are all the same. Do you see down about six lines down the sentence that begins 04:08PM with the law requires?

A Yes.

Q Just for the Record that sentence reads, the law requires that the Natural Resource Conservation Service recommendations for litter application rates 04:08PM be followed. You're familiar with the NRCS?

A I am.

Q And if you go on and read that paragraph, it's telling you -- this animal waste management plan is telling you what that law would require in terms of 04:08PM