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

STATE OF OKLAHOMA, ex rel. 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 THE NATURAL RESOURCES FOR THE STATE OF OKLAHOMA, **Plaintiff,** **v.** **TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., CAL-MAINE FOODS, INC., CAL-MAINE FARMS, INC., CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC., and WILLOW BROOK FOODS, INC.,** **Defendants.**	**Case No. 05-CV-00329 GKF-SAJ**

AFFIDAVIT OF JERRY HUNTON

STATE OF OKLAHOMA)
) SS.
COUNTY OF TULSA)

I, Jerry Hunton, being first duly sworn, state and aver the following, of which I have personal knowledge:

1. I make this affidavit in support of the *amicus* brief to be filed by Poultry Partners, Inc. opposing the Oklahoma Attorney General's request for an injunction. Everything in this affidavit is true and correct to the best of my information and belief.

2. I am a member of Poultry Partners, Inc., and serve as its current President. I also serve as Judge of Washington County, Arkansas, the chief executive position of the County.

3. I and my family own a 600 acres farm, located near Prairie Grove, Arkansas, which is within the Illinois River Watershed. My farm was my father's farm before me. I grew up there raising chickens and cattle. This family farm contains approximately 387 acres of pasture land suitable for growing grass to support our cattle.

4. On our family farm, the chicken growing business and the cattle business are inter-dependent. The use of chicken litter to grow grass for cattle forage makes this combination work. Neither can operate profitably without the other. This is something that did not become common knowledge in the farming community until the 1960's but it is well recognized today. Even for those who solely raise chickens, the revenue they receive from sale of their litter to cattle growers is a necessary component of the economic success of their chicken raising operation.

5. At Hunton Farm, we raise both chickens and cattle. In our chicken growing business, we grow about 180,000 chickens per flock and grow out about 5½ flocks per year.

6. Today, our cattle business grazes 150 cow/calf pairs or approximately 300 head of cattle on the pastures of our farm. These pastures are lawfully fertilized with the chicken litter produced from our chicken growing business.

7. My family has always raised chickens to provide economical and effective fertilizer for our nutrient poor soil. Our goal has always been and remains to grow sufficient grass to support our cattle herd without having to purchase supplemental feed or hay from others. Using chicken litter as fertilizer and if we have good rainfall, we can and do have a self-sustaining cattle operation.

8. Subject to the laws and regulations of the State of Arkansas, I am solely responsible for the decision as to what is done with the poultry litter generated in my poultry houses. My family has a real attachment to our farm and I do my best to be responsible in my care of the farm, including responsible use of chicken litter as fertilizer.

9. On average, my cattle business sells about 100 calves per year for an approximate gross profit of $45,000. If I am unable to use chicken litter as fertilizer, within 5 years I will be forced to reduce my cattle herd by 50% in order to continue to have a self-sustaining operation. This is because the pastures will not produce sufficient good quality grass to support the current cattle operation without using fertilizer to enhance grass production and for weed control.

10. Based upon current costs of commercial fertilizer, i.e. nitrogen only, I estimate that my basic cost to replace the nitrogen in chicken litter with commercial nitrogen will be $30,000 per year. This would be a new expense to my bottom line for which there would be no off-setting income. Although not commonly discussed outside of the agricultural community, the average profit margin for agriculture is only about 2 to 4% per year. There is no "margin" from which I can make up the loss of use of chicken litter as fertilizer. I cannot profitably conduct my current cattle operation using commercial fertilizer.

11. If my pastures are not fertilized, the land will quickly revert to weeds and weak forage vegetation, and my cattle operation will not be self-sustaining. Unfortunately, soil erosion will rapidly become a problem as ground cover diminishes.

12. If I am prevented from using chicken litter as fertilizer or selling excess to local farmers as fertilizer and am required to pay to have the chicken litter produced by my chicken growing business transported outside of the Illinois River Watershed, I calculate that will result in a net cost of $31 per ton times the approximately 1400 tons per year of chicken litter we

produce. When you compare this annual cost of $43,000 plus the annual $30,000 cost of inadequate commercial fertilizer versus using my own chicken litter, there is no question that this will be a devastating loss to my family farm. Such a combination of costs without income could lead to our exodus from farming.

13. My family, including my wife and 6 children, have been drinking water from the spring on our family farm for over 25 years. This is a spring completed surrounded by lands upon which we have been lawfully spreading chicken litter for many years. None of us have had any ill effects from the water. My mother lives nearby and has for over 60 years been drinking water from a shallow well on lands to which chicken litter has been lawfully applied. She has had no health problems related to drinking this well water.

14. It was not until the 1960's, when poultry growing operations came to northwest Arkansas and poultry litter become available, that family farms in this area had a chance of being economically successful. For the first time, family farms could be self-sustaining through a combined poultry growing/cattle growing operation. Use of poultry litter as an economical and effective fertilizer allowed cattle herds to be grown in sufficient numbers to be profitable on small farms. Before the 1960's, commercial fertilizer was not economical and it is not economical now. Commercial fertilizer has doubled in cost in the last 5 years. Family farms cannot succeed using commercial fertilizer at these prices.

Further the Affiant sayeth not.

Jerry Hunton

Subscribed and sworn to before me this 14th day of February, 2008.

Notary Public

My Commission Expires:

August 25, 2011

(SEAL)

Notary Public
State of Oklahoma
JOANNE LEE SPRING
OKMULGEE COUNTY
COMMISSION #03011200
Comm. Exp. 08-25-2011

823492.1:712304:00550

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

STATE OF OKLAHOMA, ex rel. 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 THE NATURAL RESOURCES FOR THE STATE OF OKLAHOMA, **Plaintiff,** **v.** **TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., CAL-MAINE FOODS, INC., CAL-MAINE FARMS, INC., CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC., and WILLOW BROOK FOODS, INC.,** **Defendants.**	**Case No. 05-CV-00329 GKF-SAJ**

AFFIDAVIT OF JIM PIGEON

STATE OF OKLAHOMA)
) SS.
COUNTY OF TULSA)

I, Jim Pigeon, also known as Jim L. Pigeon, being first duly sworn, state and aver the following, of which I have personal knowledge:

1. I make this affidavit in support of the *amicus* brief to be filed by Poultry Partners, Inc. opposing the Attorney General's request for an injunction. Everything in this affidavit is true and correct to the best of my information and belief.

2. I am a member of Poultry Partners, Inc.

3. Following in the steps of my father, I own Pigeon Family Farms, a combined poultry growing and beef cattle raising farm, located near Siloam Springs, Arkansas but in Oklahoma. My farm, which is in the Illinois River Watershed, contains approximately 82 acres, of which approximately 40 acres are suitable for growing grass for cattle.

4. My poultry business grows 42,000 chickens per flock with about 5½ flocks growing out per year. My cattle business currently consists of a herd of 27 cows and 13 calves, where my goal is to produce and sell 1 calf per cow each year.

5. As a result of fertilization of my pasture lands with chicken litter produced from the poultry business, my pasture is able to support 1 cow and 1 calf per every 1½ acre.

6. I learned from my father that the only hope for an economically successful small family farm is one that combines raising poultry and cattle, because the poultry litter provides economical fertilizer that is far superior to any commercial fertilizer that can be purchased. Only with knowledgeable fertilization will the nutrient poor soil of this part of Oklahoma support an adequate number of cattle per acre to allow a small farm a chance to succeed. It was always my intention and goal to be able to use chicken litter as fertilizer in support of my cattle business and as a revenue stream from the sale of excess chicken litter to other farmers. Sale of the excess chicken litter helps to off-set the cost of replacement bedding in my poultry barns.

7. Subject to the laws of Oklahoma and Oklahoma Department of Agriculture regulations, I am solely responsible for the decision as to what is done with the poultry litter generated in my poultry houses. I have a deep regard for my land and try to be responsible in my use of it, including my use of chicken litter.

8. When I purchased Pigeon Family Farms in 1994, the pastures had not been fertilized with chicken litter. As a result, the grass could only support approximately 18 cows. Under my stewardship and using poultry litter to fertilize my pastures, my grass supports now 50% more cows and their calves.

9. Last year, I sold 24 head of cattle. Based upon my experience at the time of my original purchase of my farm, if my grass is not enhanced by litter, I cannot reasonably expect to have annual sales of more than 16 head of cattle, resulting in 1/3rd reduction in my gross sales.

10. Commercial fertilizer, containing only nitrogen and with none of the other soil enhancements my soil needs, such as lime, organics and potassium, costs approximately $540 per ton. My cattle business cannot operate profitably using commercial fertilizer.

11. If my pastures are not fertilized, weed control will be impossible because of the cost of chemicals and because the beneficial grasses will weaken. As a result, the land will quickly revert to native vegetation, and I will once again only be able to raise a total of 18 cows instead of the 27 cows that I can now raise using litter fertilizer to enhance the grass.

12. If forced to, it would cost me $14 per ton to truck my approximately 250 tons per year of chicken litter out of the Illinois River Watershed. In addition to this guaranteed $3,500 annual deduction to my bottom line, I would lose the partial reimbursement of the replacement cost of bedding for my poultry houses which I now receive from sale of excess litter.

13. I have heard that the Attorney General claims that use of chicken litter is harming the water of my land. My family has been drinking our well water for more than 12 years. No one has gotten sick from drinking the water from wells that are located on lands upon which litter has been applied since the mid-1990's.

Further the Affiant sayeth not.

Jim Pigeon

Subscribed and sworn to before me this 14th day of February, 2008.

Notary Public

My Commission Expires:

August 25, 2011

(SEAL)

Notary Public
State of Oklahoma
JOANNE LEE SPRING
OKMULGEE COUNTY
COMMISSION #03011200
Comm. Exp. 08-25-2011

823493.1:712304:00550

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

STATE OF OKLAHOMA, ex rel. 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 THE NATURAL RESOURCES FOR THE STATE OF OKLAHOMA, **Plaintiff,** **v.** **TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., CAL-MAINE FOODS, INC., CAL-MAINE FARMS, INC., CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC., and WILLOW BROOK FOODS, INC.,** **Defendants.**	**Case No. 05-CV-00329 GKF-SAJ**

AFFIDAVIT OF RICKY REED

STATE OF OKLAHOMA)
) SS.
COUNTY OF TULSA)

I, Ricky Reed, being first duly sworn, state and aver the following, of which I have personal knowledge:

1. I make this affidavit in support of the *amicus* brief to be filed by Poultry Partners, Inc. opposing the Attorney General's request for an injunction. Everything in this affidavit is true and correct to the best of my information and belief.

2. I am a member of Poultry Partners, Inc.

3. I own R&R Farms, a combined poultry growing and cattle raising business located in Colcord, Oklahoma, and within the Illinois River Watershed. R&R Farms has a total of 120 acres of land, of which about 80 acres are usable for hay growing for our cattle business.

4. My farm was my father's before me. I purchased it in 1984. In addition to the cattle herd at that time, my father had built one chicken house. Since 1984, I have built an additional chicken house.

5. In my poultry growing business, we grow about 30,000 birds per flock and grow out about 7 flocks per year of small broilers.

6. In my cattle raising business, we run 45 mama cow/calf pairs and 2 bulls.

7. As learned from my father, my poultry growing and cattle raising businesses are dependent upon each other. We raised chickens to have access to economical and effective fertilizer through use of the chicken litter generated by the chickens. By using chicken litter as fertilizer, our small family farm is self-sustaining for our cattle population. Using litter for fertilizer, we grow and cut enough hay each year to feed our cattle throughout the year. Litter is critical and necessary to the economic success of our family farm.

8. Subject to the laws of Oklahoma and the regulations of the Department of Agriculture, I am solely responsible for the decision as to what is done with the poultry litter generated in my poultry houses. This family farm is my home and I try to obey all laws and regulations in all that I do, specifically including use of chicken litter as fertilizer.

9. Last year, I sold about 45 head of cattle for about $480 per head. Based upon my early experience with my farm, if I am prevented from using chicken litter as fertilizer, my farm cannot support a cattle growing operation as large as mine. Without litter as fertilizer, I will be

forced to downsize my herd by at least one-third and hope that the grass will be sufficient to feed that number. This will at a minimum result in a one-third reduction in my gross profits.

10. Commercial fertilizer, for nitrogen only, costs approximately $540 per ton. I estimate that 9 tons of such fertilizer will approximate the nitrogen benefit of the chicken litter fertilizer I currently use. At a cost of $4,860 per year and without any additional increase in income, I simply cannot afford to use commercial fertilizer. I cannot profitably conduct my cattle raising business using commercial fertilizer. If I cannot use chicken litter, I will be forced to abandon the cattle raising business.

11. If I cannot sell my excess chicken litter to other cattle farmers, my poultry business will be affected by loss of this revenue which I rely upon to off-set the cost of replacement bedding. If I am also forced to bear the cost of transporting the litter outside of the Illinois River Watershed, I have great concern that my poultry business cannot be operated profitably.

12. If my hay fields are not fertilized, the land will quickly revert to weeds and less effective forage grasses. Weed control will become impossible because of the high cost of chemicals and the loss of healthy grasses to depress the weed growth. With loss of good cover, erosion will be a challenging problem for my farm.

Further the Affiant sayeth not.

Ricky Reed

Ricky Reed

Subscribed and sworn to before me this 14th day of February, 2008.

Joanne Lee Spring

Notary Public

My Commission Expires:

August 25, 2011

(SEAL)

Notary Public
State of Oklahoma
JOANNE LEE SPRING
OKMULGEE COUNTY
COMMISSION #03011200
Comm. Exp. 08-25-2011

823500.1:712304:00550

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

STATE OF OKLAHOMA, ex rel. 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 THE NATURAL RESOURCES FOR THE STATE OF OKLAHOMA, **Plaintiff,** **v.** **TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., CAL-MAINE FOODS, INC., CAL-MAINE FARMS, INC., CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC., and WILLOW BROOK FOODS, INC.,** **Defendants.**	**Case No. 05-CV-00329 GKF-SAJ**

AFFIDAVIT OF AL SAUNDERS

STATE OF OKLAHOMA)
) SS.
COUNTY OF TULSA)

I, Al Saunders, also known as W. A. Saunders, being first duly sworn, state and aver the following, of which I have personal knowledge:

1. I make this affidavit in support of the *amicus* brief to be filed by Poultry Partners, Inc. opposing the Attorney General's request for an injunction. Everything in this affidavit is true and correct to the best of my information and belief.

2. I am a member of Poultry Partners, Inc.

3. I own 2 farms, both located near Colcord, Oklahoma. They both are in the Illinois River Watershed. My cattle growing business is located on a farm that consists of approximately 543 acres, on which I use chicken litter as fertilizer to enhance the grass. At the present time, my pastures can support my 200 head of cattle. Based upon my experience with my pastures before enhancing them with chicken litter as fertilizer, without chicken litter as fertilizer my pastures can only support 50% or approximately 100 head of cattle.

4. My poultry growing business is located on a farm of approximately 18½ acres. We grow about 93,000 chickens per flock and typically grow out about 5½ flocks per year.

5. My sole reason for entering the poultry business was to obtain access to economical fertilizer, i.e. chicken litter, to allow me to grow sufficient grass to support a larger cattle population on the land I own. My goal is to make the cattle business self-sustaining in the sense of maintaining the largest cattle population that can be supported by the grass growing on the available pastures.

6. Subject to the laws of Oklahoma and the regulations of Oklahoma Department of Agriculture, I am solely responsible for the decision as to what is done with the poultry litter generated in my poultry houses. I do my best to comply with all laws and regulations.

7. Last year, I sold 60 head of calves for a gross profit of $30,000. Absent fertilized pastures, my gross profits would have been less than half of that amount.

8. Commercial fertilizer now costs approximately $540 per ton. This is for urea or ammonia nitrate, which only provides nitrogen to enhance my pastures. Commercial fertilizer cannot be purchased that replaces all of the benefits of chicken litter. In addition to the organic materials and potassium and phosphorus contained in chicken litter, there is also lime. Although

not commonly recognized outside of the farming community, one of the great benefits of chicken litter is its lime content, which provides pH adjustments to the soil which are beneficial to growing grass in this part of Oklahoma.

9. If I cannot apply chicken litter it will cost my cattle operation approximately $13,000 per year to purchase commercial fertilizer that will still not grow sufficient grass to sustain my cattle operation at its current size. I cannot profitably conduct my cattle business using commercial fertilizer.

10. If my pastures are not fertilized, the good grass will weaken and weeds will re-establish in place of the good grass. The land will quickly revert to native vegetation, and I will once again only be able to raise a total of 100 cattle, down from the 200 that I can currently raise using chicken litter as fertilizer.

11. People living on our cattle farm have been drinking water from our well located there for more than 15 years. No one has gotten sick from drinking the water from wells that are on land on which litter has been applied.

Further the Affiant sayeth not.

Al Saunders

Subscribed and sworn to before me this 14th day of February, 2008.

Notary Public

My Commission Expires:

August 25, 2011

(SEAL)

Notary Public
State of Oklahoma
JOANNE LEE SPRING
OKMULGEE COUNTY
COMMISSION #03011200
Comm. Exp. 08-25-2011

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