1 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
2
STATE OF OKLAHOMA, ex rel.
3 W.A. DREW EDMONDSON, in his capacity as
ATTORNEY GENERAL OF THE STATE OF
4 OKLAHOMA, and OKLAHOMA SECRETARY
OF THE ENVIRONMENT C. MILES TOLBERT,
5 in his capacity as the TRUSTEE FOR NATURAL
RESOURCES FOR THE STATE OF OKLAHOMA,
6
Plaintiffs,
7
8 vs. No. 05-CV-0329 GFK-SAJ
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10 TYSON FOODS, INC., TYSON POULTRY, INC.,
11 TYSON CHICKEN, INC., COBB-VANTRESS, INC.,
AVIAGEN, INC., CAL-MAINE FOODS, INC.,
12 CAL-MAINE FARMS, INC., CARGILL, INC.,
CARGILL TURKEY PRODUCTION, LLC,
13 GEORGE'S, INC., GEORGE'S FARMS, INC.,
PETERSON FARMS, INC., SIMMONS FOODS, INC.,
14 and WILLOW BROOK FOODS, INC.,

15 Defendants.
16
17 VIDEO DEPOSITION OF DANIEL JOSEPH PARRISH
18 TAKEN ON BEHALF OF THE DEFENDANTS
19 ON JANUARY 14, 2008, BEGINNING AT 9:37 A.M.
20 IN OKLAHOMA CITY, OKLAHOMA
21
22
23
24 Videographer: Stephanie Britton
25 Reported by: Lana L. Phillips, CSR, RPR

1 Cal-Maine defendants.
2 MR. TUCKER: John Tucker for
3 Cargill.
4 MS. GRIFFIN: Jennifer Griffin for
5 Willow Brook Foods.
6 THE VIDEOGRAPHER: The court
7 reporter will now swear the witness.
8 DANIEL JOSEPH PARRISH,
9 having been first duly sworn, deposes and says in
10 reply to the questions propounded as follows:
11 DIRECT-EXAMINATION
12 BY MR. McDANIEL:
13 Q Good morning, sir.
14 A Good morning.
15 Q Would you state your full name,
16 please.
17 A Daniel J. Parrish, P-a-r-r-i-s-h.
18 Q What does the J stand for?
19 A Joseph.
20 Q Okay. Sir, what is your employment?
21 A I'm employed with the Oklahoma
22 Department of Agriculture, Food, and Forestry.
23 Q What's your title or your position?
24 A I am title of the Agricultural
25 Environmental Management Services division,

let's move down to Title 35, Section 17-5-5, the specific requirements for animal waste management plans.

According to the regulations, number (1), a plan has to include: "A description of the poultry waste handling procedures and availability of equipment and type of equipment to be used"; correct?

A Yes. That's one of the minimum requirements.

Q All right. Let's -- and just so we haven't lost the context here, every registered poultry feeding operation in the state of Oklahoma is required to either possess an animal waste management plan or be in the process of obtaining one; correct?

A Either have an animal waste management plan or prove that they've applied for an animal waste management plan.

Q All right. And that's what we're going through, the requirements for those plans.

Number (2), the plan must include the "calculations and assumptions used for determining land application rates"; correct?

A Yes. In 35:17-5-5, that you're

reading, (a)(2), yes.

Q All right. Words referring to land application, that's talking about poultry waste; right?

A Yes. Correct.

Q All right. Number (3): "All nutrient analysis data, including soil and poultry waste testing"; correct?

A Yes.

Q All right. So in other words, in layman's terms, you've got to take samples of soil where it's going to be applied and you have to take samples of the poultry wastes that you're intending to apply; correct?

A Yes. That is correct.

Q All right. Number (4): "Legal description of the lands to be used by an operation for land application"; correct?

A Yes, that is correct.

Q All right. Is one of the objectives of this program that your division will know where poultry waste is being land-applied in the state of Oklahoma?

A That is one of the objectives of that. And then we rely upon what is submitted to

us.

Q All right. Next page, Subsection (5), animal waste management plan will include a "soils map with description and type or series."

Did I read that correctly?

A Yes, you did.

Q Can you tell me why that is a relevant issue for a animal waste management plan?

A Different soil types will be beneficial and/or harmful in what happens to that poultry waste as it's applied to that field, so the type of soil is very instrumental in what happened to the waste that is applied to those fields.

Q So an animal waste management plan is developed to be site specific. And what I mean by that, it's developed for that operation, those specific lands included within the scope of the plan; is that right?

A That is correct.

Q And so in order to provide appropriate guidance on waste management, one of the issues is to know the soils that are on those specific lands where the waste may be

land-applied; correct?

A Yes.

Q All right. Let's look at -- continue to Subsection (7): "The procedures documented in the animal waste management plan shall ensure that the handling and utilization of poultry waste complies with the following requirements" -- and then it continues with a list. (A) is: "Adequate poultry waste storage shall be provided."

We've -- I think we've already talked about the basic issue there, that you can't store it exposed to rainfall or surface water; is that correct?

A Yes. In the second sentence of (A) you're reading: "Poultry waste shall not be stored without adequate protection from rainfall and runoff" addresses that.

Q All right. Let's go to (B): "Poultry waste shall not be applied to land where the ground is saturated or during rainfall events. Poultry waste shall not be applied to land when the ground is frozen or snow-covered, except in conformance with animal waste management plan."

Did I read that correctly?

A Yes, sir.

Q All right. Next requirement: "Poultry waste shall only be applied to suitable land at appropriate times and rates as specified by the animal waste management plan. Runoff from poultry waste from the application site is prohibited."

Did I read that correctly?

A Yes, sir, you did.

Q All right. So am I correct, sir, that I read this to state that, for me as the operator, my animal waste management plan will tell me -- will specify the land application rate -- and this rule says I cannot exceed that rate.

Is that -- am I right?

A That would be your interpretation. That would be correct.

Q All right. Next, (D), the plan shall also include the following requirements: "All practices necessary to minimize movement of poultry waste to watercourses shall be utilized and documented within the animal waste management plan."

This item here, is this something

that the plan writer determines by going to the actual farm and evaluating what these practices are that will minimize movement of poultry waste to a watercourse?

A I can only speak to the two contract Department of Agriculture soil scientists that write plans. The answer is yes, I believe NRCS personnel do, but I have not accompanied them.

Q All right. Subsection (E): "Edge of field, grassed strips shall separate watercourses from runoff which may be carrying eroded soil and poultry waste."

Can you explain in layman's term what this means -- "edge of field, grassed strips"? What is that?

A If the edge of the field where they're applying poultry waste is close to a body of water, then there needs to be some type of vegetation -- in this case, it refers to grassed strips -- that will do some filtering out, and hopefully if there's runoff, that will not get to waters of the state. Grassed strips can reduce that, not always eliminate that.

Q Will the plan, itself, describe this grassed strip, as far as the width that has to be

maintained or the setback that is required?

A In some of the plans, it does specify the width. In some of the plans, it does not specify the width.

Q Have you heard the -- ever heard the term "buffer strip" before?

A Yes, sir.

Q Is a buffer strip equivalent to what we're talking about here -- these grassed strips?

A Sure. In my opinion, a buffer strip is a vegetative strip that will serve as a buffer to hopefully reduce the amount of runoff that could get to waters of the state.

Q All right. Let's look at (E) -- excuse me -- (F): "Poultry waste application shall be prohibited on land subject to excessive erosion."

You agree that's a requirement of an animal waste management plan?

A That's a requirement, and it is as you read it, yes.

Q All right. (G): "Land application rates of poultry waste shall provide controls for runoff as appropriate for site conditions."

You agree that that's a requirement

of animal waste plans?

A Yes. As you read it, it is.

Q The animal waste management plan that provides the land application rates is also supposed to identify what controls to prevent runoff are to be utilized by the operator; correct?

A It lists that in the plan, that is correct.

Q All right. And those criteria for management of the poultry waste are based upon what is appropriate for that specific site; correct?

A There -- yes, they are site specific.

Q All right. Let's look at -- well, excuse me. We just went through this list here, (A) through (G).

Would you agree that (A) through (G) are best management practices?

A I would agree those are some best management practices that can be utilized.

Q (A) through (G) are best management practices that ODAFF has established and placed in its rules; correct?

A Yes. They are some of the best management practices.

Q Are there other best management practices that ODAFF has placed in its rules?

A There are other best management practices that are part of the -- some of the animal waste management plans, that are even beyond what is here. This is an executive summary of what's in the rules, but there are -- even it goes a little bit further I believe in some cases.

Q Some are actually in the NRCS Code 590.

Agree?

A Yes. Another -- another source. I believe there's others, but another source, yes.

Q So by the reference we talked about a moment ago, those BMPs in the NRCS 590 are also in the rules by incorporation?

A Most of them are, yes.

Q All right. Subsection (b): "The animal waste management plan shall also include a method for the disposal of carcasses."

You agree with that?

A Yes. The way you read it is the way

Plus two more sentences are there, about wetness, and mentions highly vulnerable groundwater again.

Q Okay. So for Mr. Saunders, I have -- in this animal waste management plan, I have some criteria that address all of my fields, that address areas near streams, ponds, water wells, and I have criteria here that address my steep sloping land, and to address my land that is seasonally wet.

I have something to refer to in this plan, as far as telling me how to handle my poultry waste related to those lands; correct?

A That is correct.

But it's only based upon this animal waste management plan document. There are more regulations than just the plan.

Q Under the statutory program, as well as the plan, the registered poultry feeding operators are required to maintain records of the disposition of the poultry waste generated on their farms; correct?

A Yes.

Q And if they land-apply it on their own land, they're supposed to record that;

correct?

A Yes.

Q Is that one of the items that your inspectors check when they come out to the farm?

MR. GARREN: Object to the form.

Q (BY MR. McDANIEL) To see that it's been documented?

A During a annual inspection, and possibly on other inspections, our inspectors, when they fill out their annual inspection checklist, that's one of the items there they should check, and are furnished that by the poultry operation.

Q All right, sir. Let me ask you to turn back to the soil test reporting. If you want to look at the Bates number at the bottom of the page in the Saunders packet, the last three digits are 192.

A I'm there.

Q All right. And this is an OSU soil test report for field number 3 for Al Saunders.

Do you agree?

A I agree with that, yes.

Q And if I'm reading this correctly, it shows the phosphorus tested to be 65; correct?

of waste per year, that is correct.

Q All right. Now, if the -- if the violation is by a facility owner and that owner is a contract poultry grower, it is that contract poultry grower that's subject to the fine or penalty, not that grower's integrator; correct?

MR. GARREN: Objection. Calls for a legal conclusion or opinion.

THE WITNESS: Our practice is compliance issues pertaining to registered poultry operations. There are others that we haven't talked about -- applicators -- but registered poultry operations is your question.

The letter goes to the registered poultry operation, with a compliance copy of the letter going to the integrator.

Q (BY MR. McDANIEL) All right. If the circumstance was that -- let's say there was an administrative penalty assessed, a financial penalty for a violation at that facility, and that facility is owned and operated by a contract poultry grower.

ODAFF looks to that contract poultry grower to pay that penalty, not the integrator with whom they contract.

Is that a true statement?

A Yes. Based upon your scenario you just laid out.

Q All right. Does ODAFF have the power under its rule -- excuse me.

Does ODAFF have the power, under its rule-making powers, to change the litter utilization standards in the Oklahoma portion of the Illinois River watershed?

A Yes.

MR. GARREN: Object to form. The term "use litter."

MR. McDANIEL: Let me rephrase.

Q (BY MR. McDANIEL) Does ODAFF have the power, under its rule-making power, to change the poultry Waste Utilization Standards within the Oklahoma portion of the Illinois River watershed?

A Yes.

Q Now, the Oklahoma legislature has amended the statutes to provide for different standards for land application of poultry waste applicable to a specific watershed in the past; right?

A Yes.

ultimately gets land-applied?

A For a livestock auction, the answer is no.

Q How about for a dairy?

A Dairy -- if it's a licensed concentrated animal feeding operation, then yes. What they do with it and how they do with it and where they put it, then they are required, if they're a licensed concentrated animal feeding operation.

Q Swine LMFO?

A LMFO.

Q LMFO.

A There are swine CAFOs, concentrated feeding animal operations, that are smaller than 2,500 head or 55 pounds. There are LMFOs, licensed management feeding operations, that are swine over 2,500 head, over 55 pounds. They are required to track it also. Both sets, whether they're CAFO or LMFO.

Q And each of those has a waste management criteria applicable to that type of operation; is that right?

A Yes. They're required -- if they're a licensed CAFO or licensed LMFO, required to

have an animal waste management plan that is part of the guidance and regulations that they have to adhere to.

Q Okay.

MR. McDANIEL: Do you mind sitting put and letting her change the tape?

(Off the record from 3:50 p.m. to 3:52 p.m.)

Q (BY MR. McDANIEL) Mr. Parrish, I've handed you Exhibit 14, which are some documents I can represent to you we copied out of ODAFF's records, related to an operation owned by an Oscar L. Swepston in Adair County, Oklahoma.

Are you familiar with this operation?

A I am familiar with this operation because of the documents that you have given to me that -- the latter pages of it are our division. The beginning pages of it has nothing to do with our division.

But the complaint statement, WQC-04248, comes to our division, and our division then is involved in conducting inspections and doing enforcement.

But the first parts of it deals with the dairy and has to do with the dairy inspectors