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 NATURAL
RESOURCES FOR THE STATE OF OKLAHOMA,

Plaintiffs,

vs. No. 05-CV-0329 GFK-SAJ

TYSON FOODS, INC., TYSON POULTRY, INC.,
TYSON CHICKEN, INC., COBB-VANTRESS, INC.,
AVIAGEN, 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.

VIDEO DEPOSITION OF DANIEL JOSEPH PARRISH
TAKEN ON BEHALF OF THE DEFENDANTS
ON JANUARY 14, 2008, BEGINNING AT 9:37 A.M.
IN OKLAHOMA CITY, OKLAHOMA

Videographer: Stephanie Britton
Reported by: Lana L. Phillips, CSR, RPR

APPEARANCES:

On behalf of the PLAINTIFF STATE OF OKLAHOMA:
Richard T. Garren, Attorney at Law
RIGGS, ABNEY, NEAL, TURPEN, ORBISON & LEWIS
502 West Sixth Street
Tulsa, Oklahoma 74119
(918) 587-3161
rgarren@riggsabney.com

Daniel P. Lennington, Assistant Attorney General
STATE OF OKLAHOMA
313 Northeast 21st Street
Oklahoma City, Oklahoma 73105
(405) 522-4405
daniel.lennington@oag.ok.gov

Teena G. Gunter, Deputy General Counsel
OKLAHOMA DEPARTMENT OF AGRICULTURE
FOOD & FORESTRY
P.O. Box 528804
Oklahoma City, Oklahoma 73152
(405) 522-4576
teena.gunter@oda.state.ok.us

On behalf of the DEFENDANT TYSON ENTITIES:
Stephen L. Jantzen, Attorney at Law
RYAN, WHALEY, COLDIRON, SHANDY
900 Robinson Renaissance
119 North Robinson
Oklahoma City, Oklahoma 73102
(405) 239-6040
sjantzen@ryanwhaley.com

APPEARANCES CONTINUED

On behalf of the DEFENDANT CAL-MAINE:
Robert E. Sanders, Attorney at Law
YOUNG WILLIAMS
2000 AmSouth Plaza
Jackson, Mississippi 39201
(601) 948-6100
rsanders@youngwilliams.com

On behalf of the DEFENDANT GEORGE'S, INC. AND GEORGE'S FARM, INC.:

James M. Graves, Attorney at Law
BASSETT LAW FIRM
P.O. Box 3618
Fayetteville, Arkansas 72702
(479)521-9996
jgraves@bassettlawfirm.com

On behalf of the DEFENDANT PETERSON FARMS:
A.Scott McDaniel, Attorney at Law
McDANIEL, HIXON, LONGWELL & ACORD
320 South Boston Avenue, Suite 700
Tulsa, Oklahoma 74103
(918) 382-9200
smcdaniel@mhla-law.com

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STIPULATIONS

It is stipulated that the deposition of Daniel Joseph Parrish may be taken pursuant to agreement and in accordance with Federal Rules of Civil Procedure, on January 14, 2008, before Lana L. Phillips, Certified Shorthand Reporter.

THE VIDEOGRAPHER: This is a videotaped deposition of Dan Parrish in the matter of State of Oklahoma versus Tyson Foods, et al., filed in the District Court for the Northern District of Oklahoma, case number 05-CV-0329 GKF-SAJ.

This deposition is being held at 119 North Robinson, Suite 900, in Oklahoma City, Oklahoma, on Monday, January 14, 2008. We are on the record at 9:37 a.m.

Will counsel please state your appearances for the record?

MR. GARREN: Richard Garren for the State of Oklahoma.

MR. LENNINGTON: Dan Lennington for the State of Oklahoma.

MS. GUNTER: Teena Gunter with the Oklahoma Department of Agriculture.

MR. JANTZEN: Stephen Jantzen, appearing on behalf of the Tyson entities.

MR. McDANIEL: Scott McDaniel for Defendant Peterson Farms, Inc.

MR. GRAVES: James Graves for the Defendants George's Inc. and George's Farms, Inc.

MR. SANDERS: Bob Sanders for the

Cal-Maine defendants.

MR. TUCKER: John Tucker for Cargill.

MS. GRIFFIN: Jennifer Griffin for Willow Brook Foods.

THE VIDEOGRAPHER: The court reporter will now swear the witness.

DANIEL JOSEPH PARRISH, having been first duly sworn, deposes and says in reply to the questions propounded as follows:

DIRECT-EXAMINATION

BY MR. McDANIEL:

Q Good morning, sir.

A Good morning.

Q Would you state your full name, please.

A Daniel J. Parrish, P-a-r-r-i-s-h.

Q What does the J stand for?

A Joseph.

Q Okay. Sir, what is your employment?

A I'm employed with the Oklahoma Department of Agriculture, Food, and Forestry.

Q What's your title or your position?

A I am title of the Agricultural Environmental Management Services division,

formerly called Water Quality division.

Q And what is the function or jurisdiction of -- can we call it AEMS? Would that be okay with you?

A Yes, please. AEMS or AEMS, yes.

Q You call it AEMS?

A AEMS.

Q Okay. What's the function of AEMS?

A Oversee rules and regulations in Oklahoma for poultry and animals, is a quick synopsis. There's much more to it than that.

Q All right. Thank you.

Mr. Parrish, I know you have given a deposition before because I know you gave one back about a year or so ago related somewhat to poultry sampling in the Illinois watershed.

Have you given any prior depositions?

A Yes, I have.

Q About how many have you given?

A Oh, I've lost track. I couldn't guess. Numbers of them.

Q All right. So you're pretty familiar with how depositions work and the rules of the road?

A Yes. I understand that.

Q I don't want to waste our time going through explaining to you, but let me assure you that if you need a break or anything for your comfort, just let me know and I'll do my best at the next opportunity to go ahead and break the deposition. Okay? This is not meant to be an endurance challenge.

A Thank you.

Q I will try my best to ask clear questions, but if I ask you a question that is in any way confusing or ambiguous or you need clarification, please ask me and I will try to do that. If you don't ask me to clarify the question, I will assume that you understood it if you answered it.

Is that reasonable to you?

A Yes.

Q All right.

MR. GARREN: Object as to form.

MR. McDANIEL: All right.

Q (BY MR. McDANIEL) Now, Mr. Parrish, what brings us here today to take your deposition is a motion for preliminary injunction that's been filed by the Attorney General and the

Secretary of Environment.

Are you aware of that?

A Yes.

Q The filing of that motion.

You are aware of it.

I'm going to try my best to try to deal with issues that I believe are relevant to the motion. There are other issues that you may have some knowledge about, that relate to the Complaint that was filed in the case, that we may not get to today. But I just wanted you to understand that. I'm going to try to focus as much as possible on the preliminary injunction and those issues.

Would it be fair to characterize your position, Mr. Parrish, as the director of AEMS, as being Oklahoma's chief regulator with regard to the practice of land-applying poultry litter within the state of Oklahoma?

MR. GARREN: Object to form.

THE WITNESS: Yes. It probably would need to be a little further explanation of that, but yes, if you're giving an executive summary of it, yes.

Q (BY MR. McDANIEL) Well, I understand

you have a boss and there's a commissioner at the Department of Agriculture.

But as far as the regulatory division, AEMS -- AEMS is in charge or has within its jurisdiction the utilization of poultry litter or poultry waste, and you are the director of that division; correct?

A Yes. That is correct. I have a commissioner who's my boss and a State Board of Agriculture that I report to.

Q All right. I understand.

Is it true that AEMS is charged by the legislature with the responsibility of enforcing the statutes and regulations to protect Oklahomans from the effects of pollution from animal waste?

MR. GARREN: Object as to form.

THE WITNESS: The Agriculture Environmental Management Services division is in charge of enforcement of the Oklahoma Poultry Feeding Operations Act and the permanent rules and the applicators laws, would be my answer to you.

Q (BY MR. McDANIEL) And part of that mission is to protect Oklahomans from potential

adverse effects from the utilization of poultry litter; right?

A Yes. It's specified in Title 2.

Q Sir, are you familiar with the Federal Solid Waste Disposal Act? Some people may call it RCRA.

A I'm familiar in that we have had dealings with it in discussions with EPA, Environmental Protection Agency, who we have an agreement with. But in most cases, the RCRA, if I may call it RCRA, is handled from our standpoint because we're a non-delegated state by Environmental Protection Agency.

So overall knowledge of it -- my answer would be I have a general knowledge of it.

Q You understand what it is, but you're not claiming to be an expert in the Act?

A That would be a correct statement.

Q All right. Within Oklahoma, isn't it correct to say that the Oklahoma Department of Environmental Quality is the environmental agency within Oklahoma that deals with RCRA issues?

A They would not deal with RCRA issues when it comes to animals and poultry. Our division does, through Environmental Protection

Agency, and has a number of times.

Q All right. Could you provide a brief overview of the program to which the land application of poultry litter is controlled in the state of Oklahoma?

A A brief overview of poultry waste application would be that anybody who applies poultry waste are required to have a poultry waste applicator's license with the Oklahoma Department of Agriculture, Food, and Forestry, by law. Then when they submit their document to us for a license, then they are required to adhere to the Poultry Feeding Operations Act, poultry permanent rules, and the Poultry Waste Applicators Act and rules.

And there's numbers of things involved in that, if you want me to go on.

Q We'll go into them in detail. That's what I wanted, was just the basic framework.

So everyone who land-applies poultry litter has to be registered -- and would it be appropriate to say licensed through your division?

A Everyone who land-applies poultry

waste by law is required to receive a poultry license from the Oklahoma Department of Agriculture, Food, and Forestry.

Q All right. And there are rules and -- there are rules in effect in Oklahoma that dictate where, when, and how poultry litter can be land-applied also; correct?

A Yes.

Q And your division is responsible for oversight of the -- of those rules and their implementation; correct?

A The AEMS division at the Department of Agriculture is responsible for oversight, but clearly do not have enough staff and budget to even begin to oversight what we need to.

Q Your division has field inspectors; correct?

A Yes.

Q Now, what are the primary objectives of the litter utilization program that your division administers?

A The primary objectives are, by law, to ensure that poultry waste is applied at agronomic rates, applied so that the crop that is on the field where it's applied to can uptake the

nutrients from the waste.

There's numbers of other documents that are required to be submitted. And at this stage, I'll stop, and I'm assuming we'll get into those -- unless you want me to go further.

Q Is one of the objectives of the regulatory program over poultry litter to protect the state of Oklahoma's waters?

A Yes.

Q Is one of the objectives of the program regulating utilization of poultry litter in Oklahoma to protect the environment?

A Yes.

And by law, it's called "poultry waste." Not to disagree with you, but it's called "poultry waste," so I'll refer to it as "poultry waste." I'm assuming when you're saying "litter," we're talking about one and the same.

Q All right. Fair enough. If I use the term "poultry waste," then we'll assume that I'm referring to the term as defined in the statute and the regulations that your division administers.

Would that avoid any confusion?

A Yes. And in the law it refers to

"poultry waste," but yes.

Q All right. I'm used to saying "poultry litter," so if you want to correct me, that's fine. That's no problem. I want to make sure we are on the same page about that.

Is one of the primary objectives of the program that your division administers for the control of the utilization of poultry waste is the protection of human health in Oklahoma?

A That is one of the primary objectives, based upon the regulations and the rules that they're required to follow, by protecting the waters, the soil, and the air.

Q Sir, let me hand you what I've marked as Exhibit 1 to your deposition and give you a moment to look at that. And when you're ready, identify it for me, please.

A Yes. Exhibit 1 that you have handed to me is what appears to be a copy of the Oklahoma Registered Poultry Feeding Operations Act in Title 2, 10-9.1. And also it appears that the end of it is a copy of the Oklahoma Poultry Waste Applicators Certification Act, Title 2, 10-9.19.

That's the two that I see real

quickly. Appears there might be some others in there, but that's what I see real quickly.

Q All right. Thank you.

Now, the Oklahoma Registered Poultry Feeding Act, do you know when that -- this Act was promulgated by the Oklahoma legislature?

A Yes.

Q Would you tell me when that was?

A Became effective July 1, 1998.

Q All right. And the -- the Oklahoma Registered Poultry Feeding Operations Act and the Oklahoma Poultry Waste Applicator Certification Act, are those the two primary laws that -- that relate to your division's activities in regulating the use of poultry waste in Oklahoma?

A They are two of the laws and rules and regulations. There are others.

Q All right. Look at Section 10-9.3, the registration requirement.

A (Witness complies)

Q Section A.1 says: "It shall be unlawful for any person to construct or operate a new poultry feeding operation without having first registered with the State Board of Agriculture."

Did I read that correct?

A Yes.

Q For what reason, sir, if you can tell me, is it necessary for everybody who operates a poultry feeding operation to have a registration with ODAFF?

A Prior to 1998, there were no rules and regulations that required registration of poultry operations. There were many who didn't even know how many poultry operations there were in Oklahoma.

As I understood it, the legislature approved the law so that poultry operations would be registered for the first time in the state of Oklahoma.

Q Okay. So under the new law, the State, i.e., AEMS, should know where all the -- should know the identity of all the poultry feeding operations in Oklahoma, according to this new law; correct?

A That is correct, for those that apply more than ten tons waste per year I believe is the way it's defined.

Q To your knowledge, sir, are all the poultry growers operating in the Oklahoma portion

of the Illinois River watershed registered with your division?

A To my knowledge, yes, they are. But we do not have enough staff or budget that we've spent time going up and down the road to make sure every one of them is.

Q All right. So there's a possibility there could be one tucked away somewhere you don't know about, but the fact is you just don't know if that's true or not true?

A That is right. And I say that only because last year we found one, not in the Illinois River watershed, but we found one that hadn't been registered since this Act was put into effect. So that's why I would be hesitant.

Q All right. Let's go next over to Section 10-9.5. It's titled Application to Register or Expand Poultry Operation.

A Yes, I'm there.

Q All right. Sub section B says: "The application to register to operate a new or previously unregistered poultry feeding operation or expanding operation shall contain certain information."

And then the statute lists a number

of different types of information that must be provided to your division by an applicant; correct?

A Yes, that is correct.

Q All right. Under B.1, the first thing is the name and address of the owner and operator of the facility; correct?

A That is correct. And those are on our official form that they have to fill out. There's one line for owner, there's one line for operator on this three-page form they're required to submit.

Q All right. Some of these terms are defined terms in the statute, so I want to take a moment and make sure we're clear and the record's clear of the definition.

First off, what is the owner of a facility, sir?

A Well, you just referred some of these terms are defined in the statute, so I'm giving you an answer just off the top of my head without looking at the statute.

The owner is the person who is the owner of the operation, that has the warranty deed in his or her name.

Q All right. In my research, the word "owner" is not defined. That's why I asked you the way your division applies the statute.

The owner would be the titleholder to the land where the operation is physically located; is that correct?

A And has a warranty deed that is in his or her name.

Q All right. Now, "operator." Let's look back at Section 10-9.1, the first section, subsection B.15.

The term "operator" is defined; correct?

A Yes.

Q All right. Would you -- would you read aloud the statutory definition of the operator?

A 15: "'Operator' means the person who performs the daily management functions associated with the poultry feeding operation's operation."

Q All right. So the registrant, if I can use that term, should be either, one, the owner, or two, the operator.

Am I reading the requirement correct

under 10-9.5?

MR. GARREN: Object as to form.

THE WITNESS: The registrant of the three-page registration application that they're required to submit, the registrant should be the owner of the facility that has a warranty deed with his name as the owner of the facility.

Q (BY MR. McDANIEL) All right. Now, the term "contract poultry grower" is also defined in the Act. Let's look at 10-9.1.B.8. What is the definition of a contract poultry grower?

A In the Oklahoma Registered Poultry Feeding Operations Act, as you referred to 10-9.1.B.8, contract poultry grower means "any person engaged in the business of caring for or raising poultry under a contract growing arrangement."

Q All right. In your experience, can a contract poultry grower be the owner of a registered poultry feeding operation?

A Yes. There are some in Oklahoma that are that way.

Q Can a contract poultry grower be the operator of a registered poultry feeding

operation?

A Yes. There are some in Oklahoma that are that way.

Q All right. Is that a fairly common set of circumstances, to your knowledge, in Oklahoma, that the poultry feeding operations are owned or operated by contract poultry growers?

A Records that have been submitted to the Department show that there are many who are operator and/or owner.

Q All right. Let's -- I'm looking back at 10-9.5, continuing on the list of information that your department should receive on an application to register.

I see, under B.2, the name and address of the poultry feeding operation; correct?

A Yes.

Q Number 3, number and type of poultry housed or confined; correct?

A Yes.

Q All right. 4, name and address of the integrator whose poultry will be raised by the poultry feeding operation; correct?

A Yes.

Q All right. "Integrator" is also a defined term in the Act; correct?

Let's look at 10-9.1.B.13, please.

A Yes.

Q Sir, would you kindly read the statutory definition of the term "integrator"?

A The document that you gave me of the Oklahoma Registered Poultry Feeding Operations Act, 10-9.1.B.13, "'Integrator" means an entity which unites the elements associated with the poultry industry, including but not limited to hatching, feeding, processing, and marketing. It includes but is not limited to situations when growing is contracted out to others and when the integrator operates its own growing facilities."

Q All right. Thank you.

Are you aware of circumstances, sir, in Oklahoma where an integrator is also a registrant or the registered owner or operator of a poultry feeding operation?

A Yes. There are circumstances in our records that have been submitted to the AEMS division that are that way, where integrators are listed as owner and/or operator.

Q And in your experience, does that --

what does that mean in practical terms? Does that mean the integrator owns and operates the poultry farm?

A Based upon the records that have been submitted to us, with page 3 being an oath page that they have to have notarized, that is the way it's submitted to us, that the integrator is the owner and/or operator.

Q All right. That circumstance you just described, that is separate and distinct from a situation where the farm is owned and operated by a contract poultry grower; right?

A I wouldn't define it as separate and distinct. We treat it the same as we would any Oklahoma registered poultry feeding operation.

To say it's distinct, it may be distinct from the poultry company's standpoint; but from the Department of Agriculture standpoint, it's not distinct.

Q All right. I understand your answer. You're saying you regulate them and treat them the same.

Is that what your answer meant, sir? I mean, from a regulatory standpoint, you don't see a difference?

A My answer is -- I'm not disagreeing with your words, but I would like to put them in my own words.

My answer is the AEMS division sees no distinction between whether they're owned by a integrator or whether they're owned by a contract operation. Our rules and regulations refer to registered poultry feeding operations.

Q I understand. The set of rules applies equally to both sets of circumstances.

That's what you're telling me?

A Yes. That is correct.

Q All right. My question was not from a regulatory standpoint. It was sort of a practical standpoint. You have one feeding operation owned and operated by a contract grower, is one real world situation, versus a separate farm that is owned and operated by an integrator.

In the real world, those are distinct situations, but in your division's eyes you regulate them both under the same sets of rules; correct?

MR. GARREN: Object as to form.

THE WITNESS: I would assume from

the poultry company's standpoint, there would be a distinction that you've referred to.

From our standpoint, again, from the rules and regulations, do not see that distinction.

Q (BY MR. McDANIEL) Well -- okay. The -- in the case of a contract grower, if a contract grower owns and operates registered -- excuse me.

If a contract grower owns and operates the poultry feeding operation, it is that contract grower who is required to register with your division, not that contract grower's integrator; right?

A If the contract grower you're referring to is the owner of the operation that produces more than ten tons of waste per year, then they're required to register with the AEMS division at the Oklahoma Department of Agriculture, Food, and Forestry.

Q And as part of that registration process, they're to let your division know who they contract with -- in other words, give the identity of the integrator?

A I believe it's item number 4 on the

three-page registration application they submit to us, on the first page, that integrator is required to be listed.

Q All right. The integrator only has to register with your division, under the Act, if it is the owner or operator of the facility; right?

A Yes. That is correct.

Q All right. Let's look -- continue on the list of items that your division is to receive on an application for registration.

B.5 is: "A diagram or map and legal description showing the geographical location of the facility, on which the perimeters of the facility are designated."

Can you tell me why your division needs that information?

A Well, the quick answer is because that's what the Oklahoma Poultry Feeding Operations Act says.

Q That's a quick answer, but what is the practical reason why you need that information?

A One, so that the Department, in order to enforce rules and regulations, need to

have a legal description as to where the facility is located, and a map that shows the geographical location of it, with the perimeters of the facility, so -- one, the initial visit that we had to do in 1998, so we could find the facility, first of all.

Q Well, also and if your inspectors need to find it, they've got to know where to go; true?

A Yes, sir. And driving directions are also required on the registration application.

Q All right. Next, in that same paragraph, it says: "The location of the waters of the state, including but not limited to drainage from the facility."

What is the practical reason your division needs to know that information for each registered poultry feeding operation?

A Oh, for numbers of issues. Compliance, whether it's a complaint that is received or whether it's the Department performing our annual inspection, so that we can observe, one, from having a map, and then two, observe at the location if there has been any

drainage from the facility of their poultry waste or anything from the poultry operation.

Q All right. The next item on the list is "poultry waste storage facilities."

What use does your division make of that information?

A It helps us, in the application, to determine as to are they storing their poultry waste? We have that in the application.

Then when we do an annual inspection -- that's one of the matters we check on an annual inspection that is done at least yearly.

Q All right. Next is the "land application sites owned or leased by the applicant or which the applicant has contracted with for the application of poultry waste."

Why do you need to know that?

A Again, on this map that it's required where the land application areas are located so we have it as part of the file so that we can inspect those at any time -- whether it's a complaint, whether it's an annual inspection or any other inspection. It assists us in not spending lots of time trying to find the owner/operator and/or trying to find where the

land application sites are.

Q All right. Item number 6 to accompany the application for registration, it says: "A copy of the Animal Waste Management Plan or proof of application for such plan."

Correct?

A Yes. It says that in item number 6.

Q All right. We'll talk about animal waste management plans later. Let's skip down to number 9.

Number 9 -- and I'm not going to read through the long list, but would it be fair to say that, under number 9, the applicant is required to provide your division with information regarding the environmental history and compliance history for that operator?

A That would be an executive summary of it, but it's listed in 9.a, 9.b, and 9.c. There are more items than that listed in 9.

Q And would a practical reason for why your division wants this information is you don't want to be issuing registered feeding permits to people who have a history of being bad environmental actors?

Isn't that true?

A We -- the 9.a, 9.b, and 9.c are so that we can -- the Department can assess if they have had any previous environmental history, and then make a decision based upon what environmental history that they may send to us.

Q If the environmental history, if your department deems it to be sufficiently poor, you could deny the registration; isn't that right?

A If there were red flags in the environmental history that would -- that were submitted to us, then we would take those over to our office of general counsel, would discuss it with them, and then could possibly deny them based upon that.

We have not done so to this point.

Q All right. Let's continue down. Subsection D. It says: "The owner of a poultry feeding operation shall be responsible for sending written notification to the Department upon changing integrators."

Why does your division need to know that, if there's a change of integrators?

A Well, numbers of reasons. We want to know who the integrating company is that's

furnishing the birds and the feed and most all of them to those contract operations. Two, we send copies of our compliance letters to the integrating company when there are compliance letters.

So it would be for both. One, so we could also change the -- who we're sending the letters to; and two, so we could know who's furnishing the birds and feed to the contract growers.

Q You said -- in your answer, you referred to a compliance letter.

Can you tell me what you mean by that?

A Oh, there are numerous things. Any matter that we are able to find either by inspections or by submittals to our office, of where we believe they may not be in compliance to the law, then we can send letters to them to require corrective actions and/or submit it to the office of general counsel to go a step further and do fines.

Q All right. In a case where a contract poultry grower is the owner/operator of the registered feeding operation, if the

compliance issue relates to the operation of that farm, do you send the compliance letter to that contract poultry grower and then send a copy to the integrator? What's the procedure that you use?

A Yes, that is correct. The letter for compliance issues of when a contract grower is the one that's listed as the owner of the facility, the compliance letter is sent to him, with a copy of it sent to the integrating company that is listed in our files that have been submitted by the owner of the poultry operation.

Q And if the -- if the situation you're presented with involves the management of poultry waste at the site of the feeding operation and that's what the compliance issue relates to, the violation, so to speak, is the violation of the owner/operator of the facility.

That's who you're looking to, to correct the noncompliance situation; correct?

A The answer is that's who the letter is addressed.

But the reason why we also send a copy to the integrating company is the integrating company furnishes the birds and the

feed; and if there is a problem with waste, waste is generated from the bird that's furnished by the company -- that puts out the manure or the waste.

So that's why a copy is sent to the integrating company also.

Q Is -- if a contract poultry grower fails to come into compliance when so demanded by your division, is the integrator required to stop delivering flocks of birds to that contract poultry grower?

A There are some matters in the Oklahoma Registered Poultry Feeding Operations Act where that is the case. That deals with education from a standpoint of application that we're referring to of poultry waste.

The answer is no, but we have made phone calls or sent letters asking for assistance in that area that you're referring to.

Q And in your experience, when your division has made that request of an integrator, have you received cooperation from the integrator?

A Some integrators we have; some integrators we have not.

Q All right. Let's look at subsection E: "For a transfer of registration to a new owner, the new owner shall register the operation pursuant to the rules of the Department."

Would I be correct, sir, if I read this to mean, for instance, if a contract poultry grower sells the farm to someone else, then the buyer has to obtain their own registration for that operation?

Is that correct?

A Yes. They're required to submit a transfer and a registration application to the Department.

Q All right. If a poultry farm is sold, would the law -- are there circumstances under which, Mr. Parrish, the law would provide your department grounds to deny re-registration to the new owner of the farm?

A Yes.

Q In other words, if someone sells a poultry farm, he can't guarantee them that they will get a registration from your department.

That's between you and the new owner; correct?

A Until the Department of Agriculture,

AEMS division, receives the transfer form and the registration application and all the supporting documents that must be submitted with that based upon the law and the rules, we cannot even begin to say whether we will or will not approve that until we receive those documents.

Q Let's look at subsection F. Subsection F deals with the educational training that is required for poultry feeding operators; correct?

A Yes.

Q All right. First F.1, the first sentence says: "All operators of poultry feeding operations shall attend educational courses on poultry waste handling."

Did I read that correctly?

A Yes, you did.

Q All right. If the operator is a -- is a contract grower for that operation, it is that contract grower who is required to have the educational courses; correct?

A It is the person who is listed as the operator on the first page of the registration application, which is number 2. Sometimes that is different than the owner;

sometimes it's the same. But whoever is listed as the operator on the registration application is required to receive the required education.

Q All right. Just -- let me give you a -- so I can understand how this works, let me give you a specific example I'd like to ask.

All right. My client is Peterson Farms. I think I said that early on. If in Oklahoma there is a contract grower under contract with Peterson Farms, Peterson Farms is integrator, this contract grower owns -- has the fee simple on the land and operates the registered feeding operation -- and let's call that person Farmer Jones. So we've got Farmer Jones, and Peterson Farms as the integrator.

As it relates to the educational requirements for that farm, it is Farmer Jones that must obtain and maintain the educational training, not Peterson Farms?

A It is Farmer Jones if Farmer Jones is listed, on item number 2 on the first page, as the operator. It's not who's listed as the owner on item number 1, it's who's listed as the operator that is the person that must receive the education.

Q All right. My hypothetical is Farmer Jones is the owner and the operator.

A If Farmer Jones is listed as the operator, then Farmer Jones is the one that's required to obtain the education.

Q All right. Under what circumstances would Peterson Farms, Inc., have to have a representative attend the training classes?

A If Peterson Farms is listed on a registration application, first page, item number 2, as the operator, then they would be required to receive the education, or one of their personnel would.

Q All right. So in the first year, an operator has to have a minimum of nine hours of training; correct?

A Yes. That's required by the statutes.

Q And then every year thereafter, the operator is to obtain an additional three years of training in order to maintain the registration; right?

A That is correct. Training that is the official training that is conducted by the Oklahoma Cooperative Extension Service, OSU.

Q All right. So OSU Cooperative Extension Service is the designated trainer?

A By law.

Q All right. And do they indeed fulfill that function, sir?

A Yes.

Q All right. Let's look under the topics. The very first topic is "environmental process relevant to protecting water quality and poultry production."

Did I read that correctly?

A That is one of the ones that are listed in the law dealing with poultry waste management education courses. It can be one of the subject matters, yes.

Q And wouldn't it be correct, sir, to say that this educational training is primarily focused on protecting water quality and the environment in poultry production?

A It's focused on protecting water quality as is described in the Act, with a number of other topics that are involved with protecting water quality, such as application of waste, handling of carcasses, numerous things.

Q Well, in other words, what I would

like to be clear for the judge or the jury that hear your testimony is that your department, through OSU Extension -- you're not training poultry growers on how to grow better chickens.

You're training them in how to manage poultry waste in order to protect the natural resources, environment, and health of Oklahomans; correct?

A That is one of the subject matters. There are numbers of others that training has been conducted on, that are listed in the Registered Poultry Feeding Operations Act, under the F.1 that you're referring to, and in e of that -- "any other related subjects."

So there have been clearly education that has been done on feeding and what to feed to birds. There has been training done on that.

Q All right. Let's skip down to section G at the bottom of that same page. It says: "No integrator shall enter into a contract with an operator of a poultry feeding operation who is not in compliance with the requirements of subsection F of this section."

Can you tell me what that -- what that means in practical terms? What does it mean

in application?

A From the standpoint of the Department of Agriculture and when we are doing compliance issues, when an operator of a poultry feeding operation has not obtained the required education that we have just previously covered, then a letter is sent to that operator saying they're not in compliance, one.

Two, a copy of that is sent to the integrator, and the integrator is required to stop furnishing birds to that operation.

Q All right. Let's go to the next section, sir, in the statute, which is Section 10-9.7, best management practices requirement of animal waste management plans.

A Yes, I'm there.

Q All right. Thank you.

Section A says: "All poultry feeding operations shall utilize best management practices and shall meet the conditions and requirements established by subsection B of this section and by rules promulgated by the State Board of Agriculture pursuant to the Oklahoma Registered Poultry Feeding Operations Act."

All right. Let's back up. Part of

what I want to do today is help explain for a layperson what the statute means when applied in the field.

It states here: "All poultry feeding operations shall utilize best management practices." Now let's go back to the definitions, the very first page, Section 10-9.12.

And best management practices is defined under the Act; correct?

A Yes.

Q Sir, would you be so kind as to read the definition of best management practices?

A I'm reading from the Oklahoma Registered Poultry Feeding Operations Act, 10-9.1.B.2: "'Best management practices' or 'BMPs' means schedules of activities, prohibition of practices, maintenance procedures, and other management practices which prevent or reduce the pollution of waters of the state, as established by the State Department of Agriculture pursuant to Section 7 of this Act."

Q All right. That last statement you read -- "as established by the State Department of Agriculture."

So if I -- if I refer to the Department as ODAFF, which I tend to do just normally -- I say ODAFF -- is that all right?

Do you understand me when I say ODAFF for Oklahoma Department of Agriculture, Food, and Forestry?

A Yes. I understand. I probably already previously used that and didn't explain myself, so thank you.

Q All right. You're comfortable with that term? Is that a term y'all use?

A ODAFF standing for Oklahoma Department of Agriculture, Food, and Forestry, yes.

Q All right. Again, back to my question.

If -- I read this, ODAFF is the agency that determines what the BMPs are that shall be employed on registered poultry feeding operations; right?

A Based upon what we just read of the definition of best management practices, the answer is yes.

Q All right. And the objective -- or one of the objectives is to protect the waters of

the state.

That's one of the objectives of BMPs?

A Yes. As we just read.

Q And all poultry growers in Oklahoma must follow BMPs, according to the law.

A They are required to, according to the law.

Q All right. Let's go back to 10-9.7, the best management practices section of the Registered Poultry Feeding Operations Act, subsection B: "The criteria for best management practices shall be promulgated by the rules by the Board, and shall include but not be limited to the following" -- then it goes into a list that I want to talk about.

All right. Number 1, it says: "There shall be no discharge of poultry waste into the waters of the state."

Did I read that correctly?

A Yes.

Q All right. You and I have talked about poultry litter, poultry waste. Let's define that term or see what the statutory definition is.

Look at the definition section, 10-9.1.B.21. Would you read what the statutory definition of poultry waste is, please?

A I again am reading from the document that you previously gave to me, of the Oklahoma Registered Poultry Feeding Operations Act, Section 10-9.1.B.21: "'Poultry waste' means poultry excrement, poultry carcasses, feed wastes or any other waste associated with the confinement of poultry from a poultry feeding operation."

Q All right. Thank you.

All right. With that definition of poultry waste, I'm going to look back at the section that says: "There shall be no discharge of poultry waste to the waters of the state."

All right. Now, let's assume I'm a poultry grower and I've called to ask you to help me understand what this means for my operation. In layman's terms on a poultry farm, what typically falls -- what on that farm falls within the statutory definition of poultry waste?

What I mean, for instance, poultry litter falls within the definition of poultry waste.

Would you agree?

A Poultry waste that you call poultry litter falls into the definition of poultry waste. And there are others.

Q All right. What else on that farm would I need to be concerned about would be considered poultry waste, according to your division?

A Any carcasses or remnants or parts of carcasses, any feed waste, and anything else that may be associated, the law says. But those are the main ones.

Q All right. So if I look -- all right. If I look at this -- "There shall be no discharge of poultry waste to waters of the state."

So to me, as the farmer, that tells me, one, I can't discharge poultry litter to the waters of the state.

That's against the law; right?

MR. GARREN: Object as to form.

THE WITNESS: Can't discharge poultry waste to the waters of the state, as required by the law.

Q (BY MR. McDANIEL) All right. Well,

I'm -- let me back up, Mr. Parrish. You're being very faithful to the statute, and I appreciate that. But I'm also asking you what this means to the operator.

So you understand -- you've been on poultry farms; correct?

A Yes.

Q You have a general understanding of how they function; correct?

A Hopefully better than a general understanding.

Q Okay. Fair enough. And I'm glad to hear that.

In a practical definition, what is poultry litter?

A From my standpoint, poultry litter, as defined in the law, is poultry waste. If we want to get to another, it's poultry manure.

Q All right. And what typically -- what does poultry litter constitute in a general sense?

A Poultry litter constitutes all the way from feces to urine and then the combination of what the bedding is that is part of that that comes from the bird. Obviously comes from the

bird, because they eat feed and they generate manure, just as every living being in the world does I believe.

Q All right. And that's what I needed to understand.

So that material that is on the -- typically on the floor of a broiler house -- I call it poultry litter, you call it poultry waste -- according to this section -- "There shall be no discharge of poultry waste to the waters of the state" -- tells me, the poultry grower, I can't allow poultry litter to discharge to the waters of the state.

A In your terms, that is one of the items that is part of the definition of poultry waste, only it is the manure, the urine, the feces that comes from the bird.

Q Okay.

A And I call it waste, again, so we're clear, because that's what the law calls it.

Q All right. Assuming that the term "poultry waste" means multiple things, what I'm trying to do is say the litter is included within your definition of poultry waste, carcasses are within your definition of poultry waste, feed

waste is within your definition of poultry waste. So I'm trying to break that down.

I can't let litter discharge to the waters of the state, and I believe you said that's correct.

I can't let carcasses discharge to the waters of the state under this Act; correct?

A It's not my definition. It's what the law says, what I previously read, what poultry waste is. That means poultry excrement, poultry carcasses, feed waste, or any other waste associated with the poultry operation.

Q Okay. Well, then let's do it -- let me ask the question, then, in a way that may make you more comfortable.

Under this statute, Section 10-9.7.B.1, as a poultry -- registered poultry feeding operation operator, I cannot allow poultry excrement to discharge to the waters of the state.

A Yes. Correct.

Q I cannot allow poultry carcasses to discharge to the waters of the state.

A Yes. Correct.

Q I cannot allow feed wastes to

discharge to the waters of the state.

A Yes. Correct.

Q All right. I have to admit, I don't know what "any other waste" means.

What in your practical knowledge on a farm fits this catchall phrase?

A I can't cite a specific instance.

Q Okay. And that's a -- that's a fair answer.

So I know -- or I believe, sir, that from time to time you do get personal phone calls from poultry growers with questions or concerns, and they're coming to you as a regulatory authority, asking for explanation or clarification.

Is that true?

A Yes, I do receive calls.

Q All right. If I were to call you, as a poultry grower, and say, "Mr. Parrish, I'm trying to make sure I don't run afoul of" -- pardon the pun -- "Oklahoma's law. Tell me what this 'other waste' means so I don't get in trouble," what does that mean?

A My quick answer to them would be that it's anything else that the waste is part of

-- the "waste," and I'm talking about the excrement -- that is part of. Obviously if they're using rice hulls or whatever their bedding might be, and they've got it mixed up with poultry waste, then letting that discharge into waters of the state, and it has waste in it, would be a violation of the law.

So the "other," to me, would be other things that the poultry waste is part of.

Q Okay. All right. Bedding is an example, then, of "other waste"?

A Yes.

Q All right. Thank you.

Continuing on the list of best management practices, under B.2: "Stored poultry waste shall be isolated from outside surface drainage."

Generally speaking, if I'm a registered poultry feeding operator and I take poultry litter out of a poultry house, what am I required to do with it once I take it out of the house, if I need to store it?

A When you take it out of the house, you're required to properly dispose of it.

Q All right. Am I allowed to store

poultry waste on my operation?

A You are allowed to store poultry waste, but you're not allowed to store poultry waste that is uncovered. You're not allowed to store poultry waste that is not protected.

Q All right. Is the primary issue there we don't want rain -- we don't want it to rain on the poultry waste and create a problem with that running -- running off?

A I believe that would be one of the interpretations of the reasons why the poultry waste should be protected, is so that there is not more runoff than normal.

Q All right. Number 3: "No waters of the state shall come into direct contact with the poultry confined on the poultry feeding operation."

So I can't take my chickens for a swim, in other words. I'm just trying to be flippant to loosen things up a little bit.

But that's true. I have to keep -- I have to keep the birds out of streams or waters of the state; right?

A First of all, I'd like to take my tie off and loosen up a little bit also. But

since I can't do that, I have to go by what the law says, then you're going to have to bear with me in leaving my tie on.

"No waters of the state shall come into direct contact with the poultry confined" -- obviously, the poultry confined cannot have any -- waters of the state, which is -- a number of things are involved in waters of the state. Specific areas are involved in waters of the state.

Q I can't have my poultry houses in a flood prone location.

Would that fall within that prohibition?

A That would be one of many. There's many others.

Q All right. Let's go down to number 4: "Poultry waste handling, treatment, management, and removal shall" -- and then there's a list: A says "not create an environmental or public health hazard"; correct?

A Yes. 4.A does say that.

Q All right. So in order to be compliant with Oklahoma's law, as a registered poultry feeding operation, I must handle my

waste, manage it, treatment, and remove it in a manner that does not create an environmental hazard; correct?

A That is one of the requirements, yes.

Q I must do all of those things in a manner that does not create a public health hazard; correct?

A That is one of those that are listed in the Registered Poultry Feeding Operations Act, yes.

Q All right. And under B, I must do those in a way that does not result in the contamination of the waters of the state; correct?

A Based upon the law, that -- what you're reading is correct.

Q When I -- the reason I went through those three statements in particular, it appears to me, sir, the legislation directed towards regulating poultry feeding operations is primarily directed towards achieving these goals that I just set forth, and that is to protect against an environmental hazard, a public health hazard, and protect against contamination of the

waters of the state.

Would you agree those are the top overarching objectives of the entire program?

MR. GARREN: Object as to form.

THE WITNESS: Those that you listed are some of the requirements of the law, but certainly doesn't come anywhere near of all of the requirements of the law.

Q (BY MR. McDANIEL) Okay. My question wasn't "requirement."

My question was: They are the overarching objectives of the entire program that includes many more requirements than just those three?

Those are the primary objectives: To protect against environmental hazard, public hazard, and contamination of waters of the state?

A Those are some of the objectives of the law.

Q You don't agree that they're the primary objectives?

A They're some of the objectives of the law.

Q You don't agree that they're the primary objectives?

MR. GARREN: Asked and answered. Object to form.

MR. McDANIEL: No, he didn't answer.

Q (BY MR. McDANIEL) I don't want to -- I don't want to argue with you, Mr. Parrish. I'm just trying to get answers to my questions.

A There are numerous objectives of the law. The three that you read are some of the objectives of the law. There are numerous other objectives that I could spend the next 15 minutes referring to in the Act, and we haven't even referred to the Oklahoma Poultry Feeding Operations Permanent Rules, that go hand in hand with the Act, that is not even in my hand.

Q All right. Let's look at the rules then.

Let me hand you what I've marked as Exhibit 2, sir. When you're ready, tell me what Exhibit 2 is.

A Exhibit 2 that has been handed to me is Title 35, Chapter 17, Subchapter 5, the Oklahoma Poultry Feeding Operations Permanent Rules, and also attached to the -- this document is 35:17-7-1, Poultry Waste Applicators Certification.

Q All right.

A That is Exhibit Number 2. Excuse me.

Q Thank you.

All right. The first page of Exhibit 2 -- first off, these -- does your division -- do you regularly call these rules or do you call them regulations?

A I've used both terminologies in letters of compliance that I've sent. They're regulations. I refer to them -- just as you refer to poultry waste as litter, I refer to them as rules from time to time. They are regulations. They're part of the Oklahoma statutes.

Q So for purposes of our discussion, there is no difference between the word "rule" and "regulations" when we're talking about Title 35?

A Purpose of our discussion, there's not. From the lawyers' standpoint that represent me, they would probably say different than that.

Q Okay. All right. These are the rules or regulations issued by the Oklahoma Department of Agriculture, Food, and Forestry, to

implement the Registered Poultry Feeding Operations Act.

Do you agree?

A Yes. But both documents have to be used.

Q Understood.

In other words, if you're -- if you're part of the regulated community, you have to ensure compliance with the rules and the compliance with the statute.

That's what you're saying?

A With the Oklahoma Poultry Registration -- Poultry Feeding Operations Act and the registered poultry feeding operations rules, regulations that are Title 35:17-5-1.

Q All right. These regulations in Exhibit 2 are the regulations within the jurisdiction of your division to administer; correct?

A Part of the regulations within the jurisdiction of the ODAFF, AEMS division, yes.

Q Okay. Before we picked up this exhibit, what we were talking about is what's the purpose or primary purpose was the -- or objective was the term that I used.

Well, Section 35 -- or Title 35, Section 17-5-1, is titled Purpose; correct?

A Yes.

Q All right. It says: "These rules shall serve to control nonpoint source runoff and discharges from poultry waste application of poultry feeding operations. The rules allow for the monitoring of poultry waste application to land or removal from these operations and assist in ensuring beneficial use of poultry waste while preventing adverse effects to the waters of the state of Oklahoma." Period.

You agree with that statement, sir, that I just read?

A Yes. That statement is the Purpose of 35:17-5-1.

Q All right. So these rules applicable to these poultry growers serve to, one, control nonpoint source runoff from -- of poultry waste.

Agreed?

A Yes.

Q Two, they ensure the beneficial use of poultry waste while preventing adverse effects.

Agree?

A Yes. That is part of the Purpose of 35:17-5-1.

Q All right. And also per the statutory mandate that we were looking at, these rules were issued by ODAFF to prevent the use of poultry waste from causing environmental or public health hazards; correct?

A Yes. I'm comfortable with it, now that we've added the Permanent Rules to the Act.

Q All right. Thank you.

How about if we take a brief break and allow everyone to have a drink and a rest room break if they need it.

(Short break from 10:44 a.m. to 10:57 a.m.)

MR. GARREN: Mr. McDaniel, before you ask another question, I'd like to clear up a statement you made at the first part of the deposition. You framed -- you tried to frame the area of your questions as limited to the injunctive relief.

If it's your position that you're going to have another opportunity to depose this witness, the State wants to enter its objection to that, just so it's clear on the record.

I understood you to say it was for purpose of framing it so he'd understand what you're talking about, not that you're trying to reserve some right to resume at a later date.

MR. McDANIEL: Well, we're certainly not waiving the right to take another deposition of this gentleman. Clearly this is what prompted the need to take this deposition, was the State's filing of the preliminary injunction.

And clearly plaintiffs and defendants are not going to agree on that point today, but we both made a record. So if you're satisfied with that, we'll move on.

MR. GARREN: My objection has been made.

MR. McDANIEL: Okay.

Q (BY MR. McDANIEL) And I appreciate you bearing with me, Mr. Parrish, because we're going to spend a little more time on the statutes, and it's a little tedious to do in a deposition, and I appreciate you bearing with me.

All right. Let's go back, sir -- now that we've looked at the Purpose section of the rules, let's go back to the statute again, Exhibit 1. And we're continuing in Section

10-9.7, on the best management plans or practices.

A Yes, I'm there.

Q Thank you.

Now, Subsection C says: "Every poultry feeding operation shall have an Animal Waste Management Plan which shall include at a minimum" -- and then it begins a list.

If we could, sir, let's look at how the statute defines an animal waste management plan. And that's on the first page of the exhibit.

Would you please read the statutory definition of an animal waste management plan?

A I'm looking at Exhibit 2 -- or you want it from the statute, Exhibit 1?

Q The statute, sir, Exhibit 1.

A Exhibit 1, Oklahoma Registered Poultry Feeding Operations Act, Section 10-9.1.B.1: "'Animal waste management plan' or 'AWMP" means a written plan that includes a combination of conservation and management practices designed to protect the natural resources of the state, as required by the State Department of Agriculture pursuant to the

provisions of Section 7 of this Act."

Q All right, sir. You would agree, according to the legislative statement in the Registered Poultry Feeding Operations Act, an animal waste management plan must be designed to protect the natural resources of the state; right?

A Yes.

Q All right. Now, let's go back, sir, to Section 10-9.7.

Generally speaking, sir, what is the purpose of an animal waste management plan?

A Executive summary purposes of an animal waste management plan is to identify and spell out specifically how the wastes are going to be handled from that specific operation.

Q All right. Let's go to the regulations, Exhibit 2, and the second page of that exhibit. So that would be Title 35, Section 17-5-3, Subsection (b), on Animal Waste Management Plan.

Are you there with me, sir?

A Yes, I am.

Q All right. I want to look down to Subsection (3), where it says: "The Animal Waste

Management Plan shall be prepared by USDA NRCS or an entity approved by the State Department of Agriculture."

Did I read that correctly?

A Yes, you did.

Q Can you tell us, sir, what USDA NRCS stands for?

A United States Department of Agriculture, Natural Resources Conservation Service.

Q What is the Natural Resources Conservation Service?

A It is a division of the United States Department of Agriculture that is involved in conservation practices mainly for agriculture, to my knowledge.

Q And within the broad term "conservation practices," the NRCS also involves itself in environmental practices related to agricultural operations as well; correct?

A NRCS involves itself in environmental practices, but makes it very clear that they're not involved in any of the regulatory issues.

Q All right. But one -- what I meant,

sir, so let me clarify this question, is, one of the areas that the NRCS is involved in is helping to minimize or prevent adverse environmental impacts from agricultural operations?

A In my discussions with NRCS personnel and looking at their documents, I would agree with that statement.

Q All right. Now, the rules require that these animal waste management plans be prepared by NRCS or an entity approved by the State Department of Agriculture.

In the practical sense, who is in fact writing these plans?

A Plans have been written by USDA Natural Resources Conservation Services personnel in each county. They've also been written by two part-time soil scientists that the Department has under contract.

Q Okay. So those are the two primary resources for a poultry operator: Either come to your division and have one of the soil scientists prepare a plan, or go to the county NRCS office and have someone prepare the plan.

Is that what I'm understanding?

A To my knowledge, that has been the

common practice that has been used since the law went into effect July 1 of 1998.

Q Now, the people that -- the individuals who prepare the plans, what sort of qualifications do they have to have?

A I do not know the definitions that are required in the NRCS regulations. I do know that the two that are contracted with the Department of Agriculture are soil scientists.

Q Well, you do have to be a qualified individual. You can't get your favorite transmission mechanic to write you an animal waste management plan; right?

A That is correct. NRCS qualifies their rules and regulations. And I do not know what the requirements are, but they qualify their personnel that can write the plans.

Q All right. The next subsection says: "Plans shall be reviewed and updated at least every six years from the date the animal waste management plan was obtained."

Is that -- that's correct? Six-year review?

A Yes. What you have read is correct.

Q Now, my understanding is that the

revised plans are being primarily prepared through your department; is that correct?

A A majority of the revised plans for the last two years have been prepared by the two soil scientists that are under contract -- a majority of them have been.

Q All right. That section continues, and it says: "Plans shall also be reviewed and updated in the following circumstances," and it says (A) when there's a change in the waste utilization standards, and then "(B) upon recommendation of the State Department of Agriculture."

All right. So do I read this correctly, sir, that ODAFF has the power to change the standards for waste utilization that are incorporated within waste animal management plans?

A The waste utilization standards could be changed, but I do not believe ODAFF would go out and do that by themselves, and have not ever been in discussions where they've thought about doing that without having discussions with Natural Resources Conservation Service or discussions with Oklahoma State

University.

Q But according to the regulations, ODAFF has that power.

You agree?

MR. GARREN: Object as to form.

THE WITNESS: Plans can be reviewed, updated, upon recommendation of the State Department of Agriculture, is what it says. I think that's self-explanatory.

Q (BY MR. McDANIEL) Well, is the answer to my question yes?

MR. GARREN: Object to the form.

Q (BY MR. McDANIEL) ODAFF has the power to change the waste utilization standards utilized in animal waste management plans?

MR. GARREN: Objection. It misstates the statute.

THE WITNESS: ODAFF can make recommendations.

Q (BY MR. McDANIEL) Now, Subsection (7): "Implementation of the animal waste management plan shall occur within 90 days of receipt of the AWMP." It says: "In no event shall the poultry feeding operation land-apply poultry waste in excess of the current USDA NRCS

Waste Utilization Standards unless the State Department of Agriculture approves other standards."

What is -- what is this, sir, where it says "USDA NRCS Waste Utilization Standards"? What is that?

A That is a set of waste utilization standards that the United States Department of Agriculture, Natural Resource Conservation Services have had in effect for a number of years.

Q Is that what we commonly call the Code 590?

A Currently called the Code 590 is correct.

Q All right. So trying to connect the dots, sir, then, the Code 590, the NRCS Code 590 is incorporated into Oklahoma law by virtue of that statement we just read in the regulations; do you agree?

MR. GARREN: Object as to form.

THE WITNESS: NRCS 590 waste utilization standards are incorporated in the law, based upon what we have just read.

Q (BY MR. McDANIEL) All right. Now,

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

it is stated.

Q All right. It's pretty much an understood fact that at a -- that at a poultry feeding operation, some percentage of the poultry die during the course of the flock -- the flock's time on the farm; right?

A Yes.

Q All right. So this provision is to address what the operator is to do with those carcasses -- or some people may call it mortality?

A Yes.

Q All right. This section, by heading, it refers to -- it appears to be four primary alternatives or methods for dealing with carcasses. I see Rendering, Burial, Composting, and Incineration.

Would you agree that those are the four primary methods through which carcasses are dealt with?

A I would agree with that that are listed in these CAFO Permanent Rules that we're looking at. There's one additional one, but I would agree.

Q In the event of -- I'll call it a

catastrophic loss, a disease or, you know, a power outage and a heat spike, or something like that, that would cause a major loss in the house or houses, does your division get involved with that operator to address how to deal with the mortality or the carcass?

A Yes.

Q Tell me how that process works.

A They -- the poultry operation is required to notify the Department of Agriculture of their catastrophic loss, which is losses more than normal daily losses.

We fill out a document to that. Then we ask them -- in many animal waste management plans, part of it is how they dispose of their catastrophic losses. So the first question is asked, after they give us a report, What caused it?

We fill out a sheet, then we ask them what their plan says. A large percent of them don't have a clue. So if we have a copy of their plan in our file, we look at the copy that we have in our file. In all cases we don't have copies.

Then we can give them one of the

methods, but discuss with them the alternatives of what they do with those carcasses -- which are these four; plus taking to a landfill that will take carcasses, is the fifth one.

Q Is it -- are there circumstances where one of your field inspectors may go to the operation to get involved in dealing with the catastrophic loss?

A Yes.

Q Is the objective that each time there's a catastrophic loss, that the field inspector should get by the farm?

A No.

Q Okay. Under some circumstances, catastrophic losses can be properly disposed of by burial under -- excuse me -- on the property, under the supervision of one of your inspectors; right?

A Has to be approved by the Department. And as of two years ago, because of lack of staff, the poultry inspectors were given a letter from me that they could make that decision -- because they had been trained enough on it that they could make -- all of it does not have to flow through me now, so they can do that

at site, yes.

Q All right. Now, stepping away from a catastrophic loss scenario. We'll call it the normal operational mortality.

In your experience for poultry growers in Eastern Oklahoma, what are the primary mechanisms they utilize to address carcass disposal?

A Closed incinerators and/or a composting area, are the two main methods that have been utilized.

Q All right. Let's go to the next page, Subsection (c). And again, we're talking about the requirements of animal waste management plans. Subsection (c), it says: "Storage" -- the regulation says: "Storage and land application of poultry waste shall not cause a discharge or runoff of significant pollutants to the waters of the state or cause a water quality violation to the waters of the state."

Do you agree with that statement?

A Yes. The way you have read it, it's stated that way.

Q And the way it's drafted by ODAFF, it says: "Shall not cause a discharge or runoff

of significant pollutants."

It does not say zero pollutants, does it?

A The word "zero" is not in that line you're referring to.

Q It does not have the word "any pollutants."

It says "significant"; correct?

A Yes.

Q All right.

A May I go back to that line before you start another line, and make one further comment?

Q I don't think there's a question pending.

A Okay. My only comment is the ending of the sentence: "Or cause a water quality violation to the water of the state."

The end of the sentence is my only comment.

Q I'm handing you what I marked as Exhibit 3 to your deposition. When you're ready, please identify it for the record.

A Exhibit Number 3 that you have handed me is what appears to be a copy of the

Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Acre, Code 590, dated February 2004.

Q All right. Is this the current applicable version of the Code 590?

A No.

Q All right. What is the current version?

A To my knowledge, March of 2007.

Q All right. Not that you care to hear me whine, but I looked all over the Internet, including your agency's website, for a copy of it, and can't find it.

Is it available on your agency's website -- or a link to it?

A I don't believe the 590 standards is. And our division would be wrong for not doing that.

Q The -- are you familiar with the February 2004 version of the standard?

A I'm familiar --

Q Generally.

A -- in that it is generally some of the contents in March of 2007. But I haven't referred to it. There's been a number of copies

between February 2004 and March of 2007. I don't remember how many.

So what the changes are -- I didn't make those, NRCS did -- I can't tell you that.

Q All right. If we discuss something, sir, and your belief is that the -- this current version is different, please point that out to me. If you recognize it as being different between the February '04 version and the March '07 version, I'd like for you to point it out to me.

A I will try to do that. That would be difficult for me to do, to say that I've got 590 standards memorized line item by line item. I'm not going to sit here and profess to that.

Q I didn't say that. I said if you recognize it as being different, please tell me. If you don't, I'm not implying anything from the fact that you don't.

Are we understanding each other?

A I'm looking at February 2004 as we're going on and you're asking questions on it. The only thing I'm saying is there is a more current version of March 2007.

Q Okay. The -- let's look at the

Definition on page 1 of the exhibit. It says: "Managing the amount, source, placement, form, and timing of the application of nutrients and soil amendments."

Did I read that correctly?

A Your definition you just read is correct.

Q Would you agree that the Code from, as you say, an executive summary standpoint, provides specifics for what someone applying poultry waste can and cannot do with the waste in Oklahoma?

A Yes. But it is one of the standards that we go by in the way of enforcement. But yes, that is correct.

Q All right. Let's go -- let's go through the Purposes, as stated on the Code 590. The first purpose: "To budget and supply nutrients for plant production"; correct?

A Yes. You read that correct.

Q Second purpose: "To properly utilize manure or organic byproducts as a plant nutrient source"; correct?

A Yes. You read that correctly.

Q Third purpose: "To minimize

agricultural nonpoint source pollution of surface and groundwater resources"; correct?

A Yes. The document you're reading from, that's correct.

Q The fourth purpose: "To protect air quality by reducing nitrogen and/or particulate admissions to the atmosphere."

Do you agree?

A Yes, that's what it says.

Q And fifth purpose: "To maintain or improve the physical, chemical, and biological condition of the soil."

Do you agree with that?

A Yes.

Q All right. I think we've established every registered poultry grower must have an animal waste management plan.

A The law requires every registered poultry feeding operation to possess an animal waste management plan or have proof that they've applied for an animal waste management plan.

Q Which suggests at some point in the future they must have one?

A Yes. Hopefully.

Q Right.

You can't go your whole career having just applied?

A Hopefully correct.

Q Okay. And every animal waste management plan must be written to comply with the NRCS Code 590.

Do you agree with that?

A That and other standards.

Q All right. So you agree, sir, that the NRCS Code 590 is the law of Oklahoma?

MR. GARREN: Object as to form.

THE WITNESS: NRCS Code 590 are one of the set of standards and best management practices that are used and utilized for animal waste management plans and poultry feeding operations and application of poultry waste.

Q (BY MR. McDANIEL) All right. The NRCS Code 590 is one element of the law of Oklahoma?

A One element. Fine, I have no problem with that.

Q Let's go to the next page of Exhibit 3. Under the heading Soil Sampling and Laboratory Analysis Testing, it says: "Nutrient planning shall be based on current soil tests

developed in accordance with Oklahoma State University's guidance."

Do you see that?

A Yes, I do.

Q All right. This -- what this is stating, sir, is that the individual animal waste management plan, one of the criteria is going to be the soil test from a specific farm location; correct?

A Yes.

Q I mean, wouldn't you agree that throughout this Code, there are a number of site-specific criteria that dictate where and when poultry waste can be utilized?

A Yes. There are a number of criteria that dictates that.

Q All right. Continuing down that same column, the last paragraph in the left column begins: "Soil samples shall be collected at the zero- to six-inch depth"; correct?

Do you see that?

A Yes, I do.

Q To your knowledge, has that requirement changed in the more current version of the NRCS 590?

A The March 2007 version, that I do not have in front of me, of the NRCS 590 Waste Utilization Standards I believe continues to say soil samples shall be collected zero- to six-inch depths.

Q All right. Let's go to the next column, sir, the right-hand column on the same page, and you'll see where it's highlighted -- or excuse me -- bolded. It says: "Additional information concerning soil sampling can be found in the OSU Extension Fact Sheet F-2207, 'How to Get A Good Soil Sample.'"

Do you see that?

A Yes, I do.

Q Sir, does your division rely on OSU's -- OSU Extension's standards for methods for taking soil samples for compliance with the Code?

A It is -- OSU Fact Sheets are one of the methods that we refer to, not the only one. There are others.

Q All right. For taking soil samples for compliance under the Code, what is the standard that should be employed?

A There's numbers of standards. Are

you talking about depth of soil sample?

Q Yes, sir.

A Depth of soil sample is zero to six inches, is what is recommended to poultry growers when they take a soil sample of the land application field that they're going to apply waste to.

Q The criteria as to how to geographically space your samples and how to prepare a composite sample, what is the criteria?

A The OSU Fact Sheets that go into -- plus this 590 standards that refers to it also -- that 20 cores should be taken -- I believe the OSU Fact Sheet says in 40-acre fields.

Q All right. Let's turn over a couple pages, and you'll see a page with the heading 590-4 as the page number.

A Yes.

Q All right. Right-hand column, midway down, you see a paragraph that says, in bold text: "Do not apply manure or organic byproducts in the following situations, as described in the published county soil survey or Section 2 of the local NRCS field office technical guide."

Are you with me, sir?

A Yes, I see it.

Q All right. First bullet point says: "Do not apply manure to areas within 100 feet of a perennial stream, pond, well, or sinkhole, unless an established buffer strip is present"; correct?

A Yes, it does say that in this copy of the 590.

Q Now, would I be right in trying to understand, sir, that one of the reasons you want to maintain this setback of a hundred feet is to prevent lateral runoff that would reach a stream, a pond, a well, or vertical infiltration into a sinkhole?

A You would not be right.

Q All right. Tell me why I'm not right.

A It would not prevent; it would reduce.

Q Well, to address the issue, is what I mean. I'm trying to get to what is the potential loss mechanism that this criteria is intending to address.

And it would be runoff or surface

infiltration through a sinkhole or at a well?

A Yes. And by sticking to the hundred feet of a perennial stream, pond, well, or sinkhole, it would -- by sticking to that and not applying manure, it would help reduce the problem of what you just referred to.

Q I mean, don't we need to -- don't we need to acknowledge that there is virtually no way to set up a zero loss scenario in agriculture?

A It would be especially challenging in Eastern Oklahoma, where there are lots of rocks and lots of hills and lots of other problems. It would be very challenging.

Q All right. The next bullet point: "To areas within 50 feet of an intermittent stream, unless an established buffer strip is present." It says: "The width of the buffer strip will be used as a setback distance for application purposes. The buffer strip must meet the requirements for design and maintenance established in the appropriate NRCS buffer standard and specification."

All right. Help me understand. In practical terms, what does that mean?

A If there is a buffer strip there of vegetation, grass, and that buffer strip's width is 50 feet, then based upon these 590 standards of NRCS only, based upon their recommendations, then that would reduce the hundred feet of where you apply waste to a water -- it's spelled out -- streams, ponds, or wells by 50 feet, depending on the width of the buffer strip.

Q All right. Next page, we're continuing these bullet points. All right. The next bullet point: "Pursuant to the Code 590, you cannot apply poultry waste to fields with a slope greater than 15 percent"; correct?

A Yes, it does say that.

Q All right. The next: "You cannot apply poultry waste to soils less than ten inches in depth to parent material"; correct?

A Yes, it does say that.

Q All right. For people -- let's assume we're all laypeople here.

What is soil ten inches in depth to parent material? What does that mean?

A Well, the best example I could use is, I have personally, myself, and/or been with inspectors when we've been trying to take soil

samples to six-inch depth with our six-inch bucket on our soil testing equipment. And because of rocks and because of lack of ten inches of dirt there, we can only get down two inches, three inches. We can't even get down to six inches, let alone getting down to ten inches.

The 590 standards say that there should be ten inches of some type of soil there.

Q Is the -- by having a minimum soil depth criteria in the Code 590, is one of the issues that addresses is the risk of direct infiltration of contaminants?

A Direct infiltration. But I think just as much or more would be also runoff off the top. If it's a field that is covered with rocks and it only has one inch of soil and you're hitting rocks, as I have done up at Miami, Oklahoma, and other places, then you're also going to have runoff that's also going to run off the top of the ground.

Q All right. Continuing on, you cannot put poultry litter on soils that are frequently flooded; correct?

A Yes. It does say that.

Q And I said "poultry litter." I'm

trying to be good about my language here.

"You cannot apply poultry waste on soils that are frozen, snow-covered, or water saturated"; correct?

A Yes.

Q "You cannot apply poultry waste on soils where rock fragments in the surface layer are three to ten inches in diameter and exceed 50 percent by weight"; correct?

A Yes, it says that.

Q All right. These next few kind of refer to the situation that you described where you had had extremely rocky soil?

A Yes.

Q All right. The next one: "You cannot apply poultry waste on soils where the rock fragments in the soil surface layer are greater than ten inches in diameter and exceed 25 percent by weight"; right?

A Yes, it does say that.

Q Next point: "You cannot apply poultry waste on soils where the rock fragments are greater than ten inches in diameter which covers greater than 3 percent of the soil surface and the slope is greater than 8 percent";

correct?

A Yes. It does say that.

Q "You cannot apply poultry waste on areas eroding at levels greater than the soil loss tolerance, T, from water erosion or active gullies, unless following a conservation plan that will reduce soil erosion below T."

That's what it says.

Did I read that --

A Yes, you read that correctly.

Q Now, I'm not too concerned about us getting into what T means, but can you explain in laymen's term what that criteria is?

A No. Our soil scientist would have to explain that in technical terms. I would explain it in lay terms, but I don't think that would be correct.

To interpret this, it would have to be expressed by a professional, and that's why we have soil scientists on staff.

Q All right. Very good.

And those soil scientists are the ones that would make the decision whether there is an erosion circumstance such that they would identify that in the animal waste management plan

so that the operator knew they couldn't apply poultry waste at that specific location?

A If we have an issue with a specific area, then I would take it to the soil scientist to get a technical person to give me their opinion.

Q All right. That's their job.

They know how to do that and that's what they do; correct?

A We have the best soil scientists in the state of Oklahoma on our staff.

Q Now, the last bullet point: "You cannot apply poultry waste on soils that are occasionally flooded; however, waste may be applied between June 20th and September 20th on soils classified as occasionally flooding."

Then it has other criteria.

Is this bullet point here also something that's -- a qualified technician would need to evaluate and spell out in the animal waste management plan?

A That would be correct. That is one of the reasons why we have two soil scientists who are the ones that write plans for the Department of Agriculture.

Q All right. This list of bullet points that I just went through that -- I'll call them a list of "thou shalt nots" -- all the things that an operator should not do and when they cannot apply poultry wastes.

Would you agree that these also are best management practices?

A Yes. These are some of the best management practices for when they do not apply manure or organic byproducts.

Q All right. Let's go to the right-hand column, same page. And there's a bullet point that says Phosphorus Application in bold.

Do you see that?

A Yes.

Q All right. It says: "The maximum planned rates of phosphorus application shall be determined using the Oklahoma Phosphorus Assessment Worksheet, Tables 8 and 9."

Did I read that correctly?

A Yes, you did.

Q All right. So a plan -- an animal waste plan writer, in order to determine application rates based upon phosphorus, is

directed to refer to Tables 8 and 9 in the Code; correct?

A That is correct. As long as we're only referring to the Code. There are others besides the Code that we -- also are rules and regulations.

Q Okay. All right. There's another statement at the end of that page. It says Field Risk Assessment. It says: "When manure or other organic byproducts are applied, a field-specific assessment of a potential for phosphorous transport from the field shall be completed. This assessment shall be done using the Oklahoma Phosphorus Assessment" -- and again refers to Table 8 and 9.

Did I read that correctly?

A Yes, you did.

Q All right. So the question of risk is a -- is a field-specific determination; correct?

A Yes, it is, according to these 590. I again reiterate that we have others besides 590, in the laws and rules, of agronomic rates and crop uptake, that do not go into the details in the 590, that are also part of the law.

Q It says: "This risk assessment must be done, and then the results of the assessment and recommendations shall be discussed with the producer and documented in the plan."

Do you see that?

A Yes, I do.

Q Under the Code, who is the producer?

A The producer is the Oklahoma poultry feeding operation owner/operator or their designee.

When we deliver the plans, we -- our staff delivers the plans to their farms, to discuss the plans with them.

Q All right. The registrant or the operator of the farm?

A Or their designee.

Q All right. The same column on page 6: "Additional criteria to minimize agricultural nonpoint source pollution of surface water and groundwater resources" -- and it continues: "For water bodies and watersheds identified by the Oklahoma Water Resources Board as nutrient-limited waters in Appendix A of the Oklahoma standards. An assessment shall be completed for the potential transport of

phosphorus when manure or organic byproducts are to be applied to a field. The Oklahoma Phosphorus Assessment will be used to make the assessment. The result of the assessment and recommendations shall be discussed with the producer and included in the plan."

Did I read that correctly?

A Yes, you did.

Q All right. Obviously this matter involves the Illinois River watershed.

Is the Illinois River watershed a nutrient-limited watershed?

A No. It is not. It's a scenic river.

Q So the plan -- according to this provision here, the plan writer is required to make this assessment of risk to surface and groundwater contamination, and then communicate that to the registrant or his designee in the plan; correct?

A Yes. Along with the potential transport of the phosphorus when application occurs.

Q All right. Let's move along, over to page 8.

All right. On the left-hand column, you see where it says Plans and Specifications?

A Yes, I do.

Q Would you read that brief paragraph into the record, please?

A Again, we're referring to February 2004 NRCS 590 Waste Utilization Standards. 590, page 8: "Plans and specifications shall be in keeping with this standard and shall describe the requirements for applying the practice to achieve its intended purpose or purposes, using nutrients to achieve production goals and to prevent or minimize water quality impairment." Then it goes on and says: "The following component" -- and goes on.

Do you want me to read further?

Q No, sir. Thank you.

It does say: "The following component shall be included in the nutrient management plan" -- and this includes some of the same information -- some of the same information that are required upon registration of the poultry operation, and also included by statute and regulation as components of an animal waste management plan.

Would you agree?

A Yes. A number of those items that are listed in the Plans and Specifications areas are in the Poultry Feeding Operations Act and rules and applicators rules.

Q All right. The fifth bullet point down, it says the Requirement of the Plan: "It shall include recommended nutrient rates, timing, form, and method of application and incorporation"; correct?

A Yes, it does say that.

Q The next bullet point: "Location of designated sensitive areas or resources and the associated nutrient management restriction"; correct?

A Yes, it does say that.

Q When it says a "designated sensitive area," what does it mean -- "sensitive"? Does that mean environmentally sensitive?

A Designated sensitive areas could be all the way from, based upon soil results, based upon areas that are sensitive to causing some problems of pollution and contamination of waters of the state.

Q All right. So any of those

sensitive areas are to be identified in the plan, and any associated special management restrictions for those sensitive areas are to be included in the plan as well; correct?

A 590 standards spell that out, that that should be done.

Q All right, sir. Flip back. We're going to be within just a few pages of the back of the exhibit. You'll see the one -- looks like a table, and it says Oklahoma Phosphorus Assessment Worksheet. I believe it's page 27.

A Yes, I'm there.

Q Are you familiar with this form?

A I'm familiar with the form, yes.

Q And what -- what's it for?

A The form is, as referred to, a number of the matters that you have read from this where it refers to the assessment worksheet. And when the writers of the animal waste management plans -- when they do those plans, they use this Oklahoma Phosphorus Assessment Worksheet in assisting and doing the plans.

One, this worksheet is also used by some of our technical staff in the office when we are contemplating compliance issues.

Q All right. So for all the animal waste management plans for registered poultry feeding operations in the Illinois River watershed, this worksheet is one component of the animal waste plan development?

A I could only say that of the Oklahoma Department of Agriculture soil scientists. I have not stood and watched all the NRCS writers write that.

It is recommended. I believe NRCS people do, but I have not seen that, so I can't say all.

Q All right. Let's look very briefly at some of the elements of this assessment. It says Client Name.

Is that typically the facility owner or operator?

A That's the registered poultry feeding operation name that is required to have the animal waste management plan.

Q All right. It's to be designated on here whether it is or is not in a nutrient-limited watershed; correct?

A Yes.

Q Some of the site characteristics

that the planner is to identify: The soil test phosphorus pursuant to the Mehlich 3 process; correct?

A Yes. In pounds per acre.

Q All right. Then the application method -- this is -- this form is hard to read because it's photocopied -- whether it's surface-applied and incorporated within seven days, or injected or surface-applied and not incorporated within seven days, and/or surface-applied on frozen or snow-covered ground.

Do you see that?

A Yes. You read all that, what the document says.

Q All right. Then land slope is an element the planner is to determine; correct?

A Yes.

Q This erosion rate greater than T -- that's a matter of soil science that neither you or I are apparently comfortable explaining; right?

A In technical terms, I cannot. That is correct.

Q But would you agree that that is a characteristic of the soils identified at the

land application area?

A Yes. Based upon this Oklahoma Phosphorus Assessment Worksheet.

Q All right. The planner is to determine flooding frequency?

A Yes. That's part of it.

Q All right. The planner is to determine distance of manure application to perennial stream, pond, well, or sinkhole; correct?

A Yes, that is part of it.

Q And then to determine whether or not buffer strips are established?

A Yes.

Q He's to -- he or she is to determine the distance of manure application to intermittent stream, and again whether a buffer strip is established; correct?

A Yes. That's part of it.

Q The potential for surface soil loss; correct?

A Yes. That's part of this document.

Q The planner should determine the depth of soil; correct?

A If they utilize this worksheet, yes.

Q All right. The planner should determine whether any of these criteria related to rock fragments are implicated; correct?

A If they use this worksheet, yes.

Q And I think that covers the next two.

You keep saying, "If they use this worksheet."

The planners that work for you do use the worksheet; correct?

A Yes. They are asked to use this worksheet to say that every one of those items -- that they complete it. I cannot say that, but I know they utilize it in their assessment before they write their plan.

Q All right. Thank you.

All right. Now, Tables 8 and 9 follow after that -- after the worksheet.

In the Illinois -- for animal waste management plans in the Illinois River watershed, which table applies -- 8 or 9?

A Table 8 is for non-nutrient-limited watershed. So based upon only using the 590 standards -- which we do not, we use other documents also -- then the non-nutrient-limited

watershed, Table 8.

And you earlier said that I should suggest if there's changes. I know March of NRCS 590 standards don't have it laid out on. Table 8 and Table 9 like this is laid out on three pages. I had to go back to page number 3 to find Table 9, so I know they aren't laid out the same way.

Q To your knowledge, when the NRCS updated the Code 590, did they make any changes to Tables 8 and 9, that spell out the poultry waste application rates?

A I do not know the answer to that question. I refer to the March 2007 whenever I'm looking at Table 8 and Table 9. I cannot answer that question.

Did they make a typo change or something else of substance? I cannot answer that question.

Q Well, have you been advised that NRCS is recommending, through the Code 590, a change in poultry waste application rates in Oklahoma?

A Based upon Table 8 and 9, they have not notified me that they -- NRCS has not notified me that they made changes in that.

Q All right. Thank you.

Now, sir, you said twice that the Illinois River watershed is not a nutrient-limited water source.

Isn't it true that the status of the Illinois River watershed changed from non-nutrient-limited to nutrient-limited by the Oklahoma Water Resources Board in the last year?

A If it did, my testimony is wrong and I'd have to look at the map that I don't have in front of me. I have a map in front of my desk that there's a number of nutrient-limited watersheds in the state of Oklahoma, and that's why I have a map in front of my desk that identifies all of them.

And I did not look at the map before I came here today. I had other things that I was doing.

Q Okay. We will end up taking a lunch break and continuing after lunch, and you may want to talk with -- your department's counsel is here. If you wish to change that testimony --

A Thank you.

Q -- you just tell me after lunch.

A Thank you.

Q I'm not playing games. I'd rather have the opportunity for you to tell me what you believe to be --

A Thank you.

Q -- correct testimony.

A Thank you.

Q Why don't we do that now -- okay? -- before we get into the tables. Because if there's any question about what table we should be reviewing, I'd rather resolve it than spend time.

(Lunch break from 11:59 a.m. to 12:57 p.m.)

Q (BY MR. McDANIEL) Mr. Parrish, before we broke for lunch, we were spending some time in NRCS Code 590, and I was just ready to take up the issue of Tables 8 and 9.

Table 8 is labeled that it's applicable to non-nutrient-limited watersheds, and Table 9 is annual waste application rates for nutrient-limited watersheds.

Sir, which of these tables applies to the Illinois River watershed?

A The Illinois River is part of the Tenkiller watershed. The Tenkiller watershed is identified by the Oklahoma Water Resources Board

as being a nutrient-limited watershed, so it would be Table 9.

Q Okay. In our discussion going forward, in your opinion is the Tenkiller watershed a different geographic area than the Illinois River watershed?

A The Oklahoma Water Resources Board designates the nutrient-limited watersheds. The Illinois River is part of the Tenkiller watershed, and the Tenkiller watershed is identified by the Water Board as a nutrient-limited watershed.

Q Okay. So then, following that next step, then the Illinois River watershed is a nutrient-limited area, according to OWRB?

A Because the Illinois River is a part of the Tenkiller watershed, it is a nutrient-limited watershed, by OWRB.

Q Okay. Do you know when that designation for the Tenkiller watershed was made?

A I do not. I have, again, a map in front of my office, that has what year. There was some changes in 2006. I cannot sit here and guess. I do not.

Q Okay. All right. Then if you would

look at Exhibit 3, the Code 590, page 30, Table 9.

A Yes, I'm there. Thank you.

Q All right. Now, so for poultry waste land-applied within the Illinois River watershed, this is the appropriate table to use out of the Code 590; right?

A That is right.

Explain again, if I can, because Illinois is part of the Tenkiller watershed, and Tenkiller watershed is part of the nutrient-limited watershed, as designated by the Water Resources Board, so Table 9 is applicable.

Q Okay. Can you please explain, what is Table 9?

A Table 9 is based upon soil test phosphorus index -- based upon soil test phosphorous index. And NRCS recommends a rating of low, moderate, high, or severe.

Also deals with percent slopes, and then they say what the soil test P index is that should be used for application of poultry waste to ground in nutrient-limited watersheds.

Q And it has a smaller table below that --

(Off the record from 1:01 p.m. to 1:02 p.m.)

Q (BY MR. McDANIEL) Let's try to get back on track. Sorry for the interruption.

I see below the primary table, there's a secondary table where the criteria includes these issues involving the size and number of rocks within the soil as affecting litter application rates as well; is that right?

A Yes. Thank you.

And I didn't include that. And it actually goes on over to the next page, page 31, also.

Q Okay. So in a nutrient-limited watershed, according to Table 9, the absolute soil test P cutoff is 300 STP; correct?

MR. GARREN: Object to the form of the question.

THE WITNESS: Based upon the NRC -- USDA NRCS 590 standards, Table 9, it is recommended by NRCS that, at 300 soil test phosphorus index or higher, that no application occur.

Q (BY MR. McDANIEL) All right. Back on Table 8, back two pages, for a non-nutrient-limited watershed, once you exceed

400 soil test P index, then poultry waste application must be based on what it calls plant removal.

Am I reading that correctly?

A Based upon the 590 standards in Table 8, in a non-nutrient-limited watershed, if the soil test P index is 400 or greater, it's plant removal. But it's also a severe, and no application can occur of a soil test P index above 400 in a non-nutrient-limited watershed.

Q All right. So I understand that you can't tell me when the transition occurred for the area we're calling the Illinois River watershed from being non-nutrient-limited to now being designated within the nutrient-limited Tenkiller watershed.

But it is true to say, Mr. Parrish, that before that nutrient-limited watershed designation was given to the Tenkiller watershed -- prior to that occurring, Table 8 would have been the applicable table to the land within the Illinois River watershed?

A Based only utilizing the 590 NRCS standards, that is a correct statement. There are other matters that have to be utilized in

addition to 590.

Q All right. Let's -- again, further discussion regarding the components of Table 9. So turn to page 31 of the 590.

A Yes, I'm there.

Q The Table 9 makes reference to full rate and half rate, and then page 31 explains what full rate and half rate means; correct?

A That is a correct statement.

Q So full rate means using poultry waste at a rate not to exceed the nitrogen requirement of a crop, and the following -- it's called P-205.

What is P-205?

A P-205 is a form of phosphorus that is what is applied -- potash. It's applied per acre to fields.

Q All right. So under Full Rate, there are two elements to the requirement. Number one, you can't exceed the nitrogen requirement for the crop, and you must also satisfy one of these criteria numbered 1, 2, or 3.

That's the way the table is set up; correct?

A That is correct.

But you have to refer back to the table also on the previous page, page 30, and there is a full rate and half rate figure there, under soil test P index, also, you have to refer to, besides 1, 2, and 3 that you're referring to on 31.

Q Okay. Excuse me. If I -- I'm trying to understand how to use Table 9.

If I look at Table 9 and I have a field that the soil test P index is 65 and if it -- the slope is from zero to 8 percent and the soil is greater than 20 inches deep, then Table 9 tells me that I can apply the full rate as defined on the next page?

A That is correct, based upon 590 standards only, and not including the laws and other things.

Q The -- so the full rate on the next page says I can apply poultry waste as long as I don't exceed the nitrogen requirement of the crop and I don't exceed 200 pounds of P-205 per acre when surface-applied.

Did I read that correctly?

A Yes, you did.

Q All right. Items number 2 and 3 refer to sprinkler irrigation and injection below the surface.

But isn't it true, Mr. Parrish, that, by and large, poultry litter is surface-applied by broadcast equipment?

A By and large, that is correct. This year, for the first time, I had two calls from individuals whom I sent letters to, and I made them send letters back to me, saying that they had actually went in and disked it within seven days after they applied it.

But up until now, what -- your statement is correct.

Q All right. Now, when I look at Table 9 and the criteria says that I can apply half rate, if I look back at page 30 for the definition of half rate, I could apply poultry waste, provided -- I could surface-apply poultry waste, provided that it did not exceed the nitrogen requirement for the crop and it did not exceed 100 pounds of P-205 per acre.

Am I reading that correctly?

A That would be correct, what the 590 standards say, as you specified.

Q As you continue down the page where it says "Severe rating, no application," and there's several bullet points that continue on to the next page, this provides specific circumstances where the land application of poultry litter is prohibited; is that correct?

A Yes, by the 590 standards.

Q Okay. And I'm not going to ask you to read all those, because I think we've been through a number of them multiple times -- because to some extent, they appear in the Code and in the regulations as well.

A That is correct.

Q All right. Let me hand you what I marked as Exhibit 4 to your deposition and give you a moment to look at that.

Are you ready to identify the document?

A I'm ready.

Q What is Exhibit 4?

A Appears to be -- Exhibit 4 that you have handed to me is a animal waste management plan for W.A. Saunders.

Q It says it was prepared on August 2005.

That's what it states; correct?

A Correct.

Q And it says it's to be revised by August 2011.

That is consistent with the six-year requirement to update a plan; correct?

A That is consistent with the six-year requirement of the -- both the Act and rules, correct.

Q Sir, can you tell by looking at this plan whether it was written by a plan writer for the Natural Resources Conservation Service or whether it was written by one of the scientists at the Department of Agriculture?

A I cannot tell based upon the document you handed to me.

Q The -- on -- it's labeled as page 5, but the Bates number at the bottom is 184. It says at the end: "If further assistance is needed, call Ed Abernathy."

Does that assist you in determining who prepared the plan?

A Yes. I saw that when I was looking at the document. So that would indicate that it would be one of the soil scientists that are

under contract with the Department of Agriculture.

But this cannot be a complete document, because all of the complete documents that we write have a cover on it that clearly identifies Oklahoma Department of Agriculture, Food, and Forestry. So this cannot be the complete document, because it would have a cover page on it.

Q Well, granted the first page of the exhibit says "page 2" on it, so -- you think that at least the cover page is missing off this?

A Appears at least a cover page is missing.

And yes, in the reference to Ed Abernathy, it would indicate that it is a document that was written by one of the soil scientists that work for the Department of Agriculture. But it's not a complete document.

Q Does Mr. Abernathy still write animal waste management plans for ODAFF?

A Yes.

Q Is he a regular employee or an independent contractor? Tell me his status.

A He is an independent contractor.

Q All right. This animal waste management plan -- this is an example of one of the plans that is required under the Registered Poultry Feeding Operations Act; correct?

A Yes. It appears to be so.

Q All right. From the perspective of the operator, W.A. Saunders, would you agree that this animal waste management plan is the tool that brings the requirement of the statute, the regulations, and the Code 590 down to the level of the person actually managing the poultry waste?

A This document fulfills the requirement of having an animal waste management plan or proof of an animal waste management plan.

Q Well, but that didn't answer my question.

Did you understand my question?

A I understood your question. Yes, sir.

Q Okay. From the perspective of the person managing the poultry waste, does this document bring together the poultry waste management requirements applicable to that specific operation?

A It brings together the listings that are in the law and rules and the 590 standards to be placed in an animal waste management plan.

But the best example I can use, when I get a driver's license, it does not say I can go 85 miles an hour from here to Tulsa.

Q No. But that white sign on the side of the road, that the Oklahoma Department of Transportation put up, that says speed limit is 75, tells you that, doesn't it?

A Yes. But if it's icing or snowing, it doesn't tell me that I should slow down below 75 mile an hour.

Q Right.

But in sunshine, you should be able to drive 75 miles an hour without getting a ticket; right?

MR. GARREN: Objection to the form.

MR. McDANIEL: He started it.

MR. GARREN: You don't have to finish it.

Q (BY MR. McDANIEL) Go ahead. Answer my question, please.

MR. GARREN: We'll follow you on the way home.

THE WITNESS: The answer to your question is that this document is an animal waste management plan that follows what is specified in 590 standards and what is specified in the Oklahoma Poultry Feeding Operation Act and rules, that should be part of an animal waste management plan.

Q (BY MR. McDANIEL) All right. And this was prepared and issued by the Oklahoma Department of Agriculture, Food, and Forestry, to Mr. W.A. Saunders; correct?

A Appears so. Because NRCS would not have Abernathy's name on it, but if it had the front page on it, that had "ODAFF" on it, then I could say 100 percent. But it appears so.

Q All right. Now, let's look at this first paragraph where it says Introduction. Middle of the paragraph, it says: "The law requires that the Natural Resources Conservation Service, NRCS, recommendations for litter application rates be followed. NRCS recommends the application of a maximum of 200 pounds of phosphorus per acre per year if the soil test shows a phosphorus index below 250. If the soil test phosphorus index is between 250 and 400,

then the rate applications are reduced by one-half. If the phosphorus index is above 400, then no litter is to be applied."

Did I read that correctly?

A Yes.

Q All right. The -- do you believe, sir, that with the subsequent designation of the Tenkiller watershed as being nutrient-limited, that the limit changed from 400 to 300 STP?

A Based upon what I have testified to previously with the Illinois River water -- Illinois River being part of the Tenkiller watershed, then Oklahoma Water Resources Board has identified Tenkiller as a nutrient-limited watershed, and the NRCS 590 standards recommend that 300 be the cutoff for phosphorus.

Q Then assuming that Mr. Abernathy was correct when he prepared the Saunders plan in 2005, is it reasonable to conclude that at this time in 2005, this area in the Illinois River watershed was not a designated nutrient-limited watershed?

A I can only assume that, based upon this plan.

But again, I do not have in front of

me what year Water Board designated the Tenkiller as a nutrient-limited watershed.

Q All right. Let's go -- when the water -- when a watershed designation changes from non-nutrient-limited to nutrient-limited, how is that information communicated to the regulated parties -- i.e., the farm owners and operators?

A The Water Resources Board identifies -- notifies the Department of Agriculture. In this case, the Department of Agriculture puts that nutrient-limited watershed either on our database and/or identifies referral to Oklahoma Water Resources Board to see what has been identified then as nutrient-limited watersheds.

I know it's on Water Resources Board's database. I do not know for sure it's on the Department's database, but I think it is.

Q If I'm Mr. W.A. Saunders and I've got a -- I have in my hands an animal waste management plan issued by ODAFF, with the 400 STP cutoff, and the Water Resources Board changes the designation of the watershed in which I operate, which would in turn mean the litter cutoff went from 400 to 300, how do I find out about that?

A I would have to check our records. 100 percent sure all of our poultry inspectors were notified with maps of it. I believe that the Department notified when those changes were made -- notified the operations. But I would have to look at our records to see that.

Q Do you think that you do it like a mass mailing to the registered operators?

A I believe that I did, yes, when the changes were made. I know I did in 2006 when the changes were made. I cannot speak back previously when a couple other changes were made. I do know I did in 2006.

Q What was the change in 2006?

A There were a number of them -- a number of nutrient-limited watersheds that were added by the Oklahoma Water Resources Board. There was a number of them, and I can't tell you how many of them or which ones.

Q All right. Let's go down to Description Of operation. The first sentence says: "This farm is located in an area of highly vulnerable groundwater."

Do you see that?

A Yes, I do.

Q Now, how does ODAFF know this?

A There is also a map that is generated by the Oklahoma Water Resources Board, identifying vulnerable groundwater areas in the state of Oklahoma.

Q So the fact that the farming -- the poultry farm is located in an area of highly vulnerable groundwater is a factor considered in the development -- or the plan by the plan writer?

A Yes, it is.

Q All right. If you look in the next couple sentences, it makes a statement there that tells me that there's five broiler houses on this operation.

Do you agree?

A Yes.

Q And you continue down and it tells me that he's estimated the total average yearly waste and litter production to be 500 tons.

Do you see that?

A Yes.

Q All right. Just by simple math, that appears to be 100 tons per year per house.

Would you agree with that?

A Based upon your simple math statement, I would agree with that -- based upon when this plan was written in August of 2005.

Q Does ODAFF have any standard or rule of thumb or written rule that it uses to estimate litter production from a broiler house -- annual litter production from a broiler house?

MR. GARREN: Object to term.

THE WITNESS: The Department of Agriculture has a thumbnail sketch of a number that is used.

Q (BY MR. McDANIEL) Okay. Please tell me what that is.

A 120 to 125 --

Q All right.

A -- tons per house per year, on the average.

Q All right. You get to the bottom of that first paragraph on the first page, it says about 400 acres are suitable for receiving litter, according to the owner's estimate.

Do you see that?

A Yes, I do.

Q All right. Let's flip over to the next page, please.

Section C is -- what is the heading for Section C?

A Application Rates.

Q All right. It appears here that the plan writer has -- based upon sampling of the Saunders litter, has determined that each ton of litter contains about 79 pounds of P-205.

Am I reading that correctly?

A Yes. Based upon this plan that was written August of 2005.

Q All right. Then there's a table here that says Soil Test Results From -- I'm guessing that means May of '05.

Would you agree with me on that?

A Based what is written on this document, Soil Test Results (505), it would appear that. But normally those documents are attached as part of the plan, and I would have to refer back to the plan to look to see if those dates are on there.

Just a minute, please.

Q Sure.

A The soil test lab results from OSU that are part of this document, that are identified as fields 1, 2, 3, 4, and 7, were

received at OSU on 5/3/2005, and report date was 5/11/2005.

So yes, that in parenthesis is correct.

Q Okay. Back to what is labeled as page 3, it's actually Bates number -- ends 182, the soil test table.

Would you agree that there are seven fields at the Saunders facility that were sampled, and that the table shows what the phosphorus index was for each of those fields?

A I would not.

Q You would not?

Did I misspeak?

A Either I'm counting wrong or you're counting wrong. It appears to me there's six fields, and there's only five fields that have soil test results as part of this plan. So there's really only five that have soil test results, and one of them no soil test.

Q You're right. You're absolutely right.

The chart does show what the P index was as determined by the OSU lab for the soil samples taken from those five fields; correct?

A That is correct, that were delivered to the Oklahoma State University Soil and Water and Forage Analytical Lab on May 3rd, 2005.

Q All right. Let's look at the text below the table. It says: "Soil test P index is below 250 in all fields tested. Litter can be applied at the full rate of 200 pounds of P-205 per acre."

Do you agree that's what the plan writer stated?

A That is what the plan writer stated, yes.

Q All right. Now, would that statement be different now that this is a nutrient-limited watershed?

A Yes, it would be.

Q How so?

A Would have to refer to table number -- a different table would have to be referred to. And just a minute, please.

Table 9 would have to be referred to, in the 590 standards, instead of Table 8, as one of the places that they would look at to write animal waste management plan.

Q All right. Back to the Saunders

plan.

A Yes.

Q The plan writer continues, and it says: "200 pounds of P-205, divided by the 75 pounds per ton, equals 2.5 tons of litter per acre per year maximum application rate."

Do you agree that that's what it states?

A Everything except you said "75," and it's 79 pounds of P-205. Then I agree with it.

Q Thank you.

The nutrient plan writer is telling this poultry grower that he can put two and a half tons per acre of poultry waste on each field; correct?

A That is the recommendation of this plan, correct.

Q All right. And you would agree, in the case of field number 3, where the phosphorus index of 65, this plan writer is indicating that Mr. Saunders can put two and a half tons of poultry waste per acre on that field.

Do you agree that's what the plan communicates?

A I agree that -- based upon the

information that was submitted to our plan writer.

Q All right. Now, let's continue to the end of that same paragraph. It says: "500 tons of litter is available, divided by two and a half tons per acre, equals 200 acres that can be covered at the full rate."

Do you see that?

A Yes, I do.

Q All right. Let's turn over to the next page.

A (Witness complies)

Q See where it says Application Summary?

A Yes, I do.

Q Would you read what the plan writer wrote under Application Summary?

A "400 acres can receive litter at the rate of 2.5 tons per acre, equals 1,000 tons that could be used on this property. This far exceed the litter production on this farm."

Q Now, sir, is the practical explanation for what this plan writer is saying is that not only can Mr. Saunders' farm use all the poultry litter generated on that farm, but it

could use additional litter from other locations as well?

Is that one way to read that?

A That summary could be read that way, based upon the documents that were furnished by the registered poultry operation to the animal waste management plan writer.

Q Well, it's also based on the plan writer's evaluation of the site-specific criteria for the Saunders operation; true?

A Yes. Because they do an on-site visit also.

Q All right. Continue on that page. See where it says Waste Utilization Guidelines?

A Yes.

Q All right. That list below Waste Utilization Guidelines provides the instructions to this operator, that includes these critical criteria from the regs and the Code 590 as well. It includes the list of prohibited practices.

Do you agree?

A If that's a question, some of those from the documents referred to are listed there on page 4, under Waste Utilization Guidelines, yes.

Q All right. Let's go under Best Management Practices.

Number 1: Applied litter not to exceed amounts given in the waste management plan or revised recommendation based upon new soil and litter tests.

Can you tell me what that means to the -- to the operator?

A Says: "Based upon this animal waste management plan, you should apply poultry waste not to exceed the amounts given in this plan or a revised recommendation based upon new soil or litter tests."

It's self-explanatory. They should apply based upon this plan -- based upon this plan only.

Q All right. The next point: "You should obtain new soil and litter tests every year"; correct?

A Yes, it states that.

Q All right. Let's go to the next page. Item number 7, it says: "Do not apply litter within 50 to 100 feet of streams, ponds, and water wells. Buffer strips should be maintained in these areas."

Do you see that criteria?

A Yes, I do.

Q All right. Look down under Environmental Statement. It says: "There are ponds and intermittent streams on this property that require special precautions when spreading litter."

Do you see that?

A Yes, I do.

Q And it makes reference to the statement that I just read; correct?

A Yes.

Q In other words, there are sensitive areas on this property, and you should follow this criteria?

In other words, do not apply litter within 50 to 100 feet, and buffer strips should be maintained in these areas.

Is that how I can read those two paragraphs together?

A Well, but it goes on and refers to, additionally, too, there are some steep slopes that do not need to receive litter, and slopes of 8 to 15 percent receive litter at one-half rate. That's all part of the environmental statement.

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?

A Yes. That's the soil test index, Mehlich 3 method. Phosphorus is 65. That is correct.

Q All right. If I come down under the Agronomic Recommendations for Phosphorus, this says that "For this field, the phosphorus level in the soil is adequate for Bermuda grass. No additional phosphorus is recommended for Bermuda grass."

Am I reading that correctly?

A That is the interpretation of the Oklahoma State University lab, not necessarily what the law and rules say.

Q Well, I'm just asking you if that's what OSU is saying.

A I'm saying that's the interpretation of the Oklahoma State University lab.

Q All right. Now, look wherever you need to in this plan, sir, but isn't it true that the plan writer working for ODAFF indicates that this field 3, even though the STP soil test index Mehlich 3, is 65, which OSU Forage says is adequate for Bermuda grass without additional phosphorus, the plan writer has indicated to Mr. Saunders that he can apply two and a half

tons of poultry waste per acre to this field?

A That is correct, based upon the date of the plan, August 2005.

Q All right. You can set that one aside, sir.

Let me hand you what I've marked as Exhibit 5 to your deposition, sir. When you're ready to identify it, let me know.

A Yes, I've looked at the document.

Q Can you identify it, please?

A It appears that the Exhibit 5 that you handed me is an animal waste management plan for Jeff Andrews. Date on it is March 18th, 2005.

Q In the upper right-hand corner of the document, is that a stamp that reflects this document was received by your division on April 6th, 2005?

A It does reflect that. But it does not have a cover page on it, does not have my initials on. We received it, but I don't believe the document is complete. It would have my initials on it, and it does not.

Again, it appears to me that whoever wrote it, the cover page is missing, which would

probably have my initials on it.

Q I see -- on the front page, I see another stamp that says "Entered by" and it says "April 7th, 2005," and I don't know that I can read the first part of it, but it says "Ming Lee."

Do you know who that is?

A Yes, I do.

Q Who is that?

A She Ming Le (phonetic) was one of our data entry persons as of that date.

Q Okay. You would agree with me at least the format for this animal waste management plan is different than the one we looked at for the Saunders.

Would you agree?

A Yes.

Q Can you tell me why?

A Well, there are a number of things different in it than the previous one we looked at. There are copies of Table 9 and Table 8 from the NRCS 590 standards in here. There are copies of an Oklahoma Phosphorus Assessment Worksheet in here, a Nutrient Budget Worksheet.

Those are some of the ones that

stand out as the differences between the two.

Q Can you tell whether this plan was written by an ODAFF soil scientist or an NRCS plan writer?

A Based upon wording that is used in here, it would be a guess -- and I'd rather not guess under testimony. So because the cover page is not on it, it would be a guess, and I can't testify to it.

Q All right. The very first sentence under the date, would you read that aloud, sir?

A On page 1, Bates 556; correct?

Q Yes, sir.

A "This animal waste management plan includes the production, handling, and distribution of animal waste in a manner that prevents or minimize degradation of soil, water, air, plants, and animal resources."

Q Thank you.

Now, when I look at the Description of Operations, that paragraph, and I look at the next paragraph, what I see is four poultry houses and 600 tons per year.

Do you see those two references?

A Yes, I see those two references.

Q Okay. That's -- that is 125 tons a year.

So that's within this rule-of-thumb range that you identified a moment ago; right?

A Based on what you just read from this, that's in this plan, yes, that's correct.

Q Do you know what criteria a plan writer would use to determine whether he or she should make the estimate based on 100 tons a year or 125 tons a year?

A Ask your question again, please.

Q Well, we've looked at two plans written in 2005; one used 100 tons per year, one used 125 tons a year, and both being broilers.

So I was wondering if you could tell me what criteria the plan writer might utilize in order to adjust that estimate.

A The plan writer would refer to the NRCS 590 standards as some of the criteria that he would use in making that decision.

Q Okay. And you knew -- did you appreciate my question was about estimating the volume of litter produced per house?

A Yes.

Q Okay. I just wanted to make sure

we're on the same page.

Would you agree also, sir, looking at that Application paragraph, that this Andrews operation could make use of all of the poultry waste generated by that operation in one year, according to this plan?

A According to this plan, yes.

Q Through land application on the available lands owned by Mr. Andrews?

A According to this plan that we're looking at for Jeff Andrews, March 18th, 2005, written date, that is what it says.

Q All right. Turn over two more pages, until you get to the one that's Bates-numbered 558.

A (Witness complies)

Q Are you there?

A Yes, I am.

Q Can you tell me how -- can you tell me what this table is?

A That appears to be a poultry litter application data sheet that breaks down the field numbers and gives a great deal of information about laboratory results and pounds of available plant nutrients -- is a quick summary of it.

Q There's three fields that have been sampled; correct?

A Yes.

Q Would you agree that in all three of those fields, the soil test phosphorus is relatively low in all three?

A According to this document, field 5, 6, and 7, the soil test index results, pounds per acre for phosphorus, are 29, 29, and 21, respectively.

Q Okay. All below 30?

A Based upon this document, yes.

Q And would you agree that the plan writer has indicated that Mr. Andrews can apply 3.1 tons of poultry litter per acre per field?

A I would agree with that statement.

Q All right. Let's look at -- flip over to the Nutrient Budget Worksheet, Bates number 562.

A Yes, I'm there.

Q All right. The plan writer has indicated that this nutrient budget for the Andrews operation is intended to, one, budget and supply nutrients for plant production.

Do you see that at the top?

A Yes.

Q Two, it's intended to minimize agricultural nonpoint source pollution; true?

A Based upon this document, under Purpose, that is checked, yes.

Q All right. The plan writer's indicated that it is also intended to utilize organic material as a nutrient source.

Agree?

A Based upon this document, yes.

Q And the last purpose, to maintain or improve soil condition.

A Yes. Again, based on this document.

Q All right. Would you agree, Mr. Parrish, that utilizing organic material as a nutrient source and maintaining or improving soil condition are the primary motivations for one to make use of poultry litter on your land?

A It would certainly be some of the motivations.

Q Okay. And again, as you work down through the document, it indicates the phosphorus content of the poultry manure that was sampled; correct?

A It does, but let's -- I need to add

something. This refers to field number 5 and 6. If I was looking at this document, it would concern me greatly, because there's supposed to be a soil sample for each field, and there's not a soil sample for each field.

So I'm not sure if this is a great example for us to be using, but you can go ahead.

Q Well, let's use it to understand the form.

A Okay.

Q And your point is noted.

It shows soil test at 29 -- soil test P at 29.

Well, sir, if you look back at page number 558, it just so happens that both fields 5 and 6 tested at 29.

Would you agree?

A I would agree. But my concern is the law says there should be a laboratory test result for each field, and they have put the two fields together.

Q But --

A I'm talking about the laboratory soil test result that you're referring to and this document is based upon.

Q Okay.

A We do not have a soil test lab result for each one of the fields, as required by the law.

Q Okay. But let's show how the planner used this worksheet.

When he gets down to the actually developing the nutrient budget under -- under P-205, the phosphorus, is the proper way to read this is that if the grower does apply 200 pounds of phosphate per acre to the pasture, it will result in a phosphorus excess of 169 pounds?

A That would be the interpretation of this Nutrient Budget Worksheet that is part of this plan.

Q All right. And applying that 200 pounds per acre is permitted for this grower on this piece of land?

A Based on this document only, yes.

Q All right. Mr. Parrish, do you agree, sir, that for the poultry growers who make use of poultry waste on their farms, these animal waste management plans provide Oklahoma's regular -- regulatory guides to tell them when, where, and how they can make use of their poultry waste?

A These plans provide guidance of how they should use their poultry waste, and then there are other guidance they should also refer to besides these plans.

Q But you agree that trained authorized personnel either for -- working for NRCS or working for ODAFF, have prepared a document that specifically tells them what the allowable rate of litter application is on any field upon which they intend to use poultry waste?

You agree?

A These documents tell that poultry operation the guidelines they should use in applying their waste. But just as me with my driver's license, it doesn't give me everything that I am required to do when I'm driving my car.

Q But you expect poultry growers to follow these animal waste management plans?

That's what the law says, doesn't it?

A Follow those waste management plans, to follow the Oklahoma water quality standards. I can give you a whole list of things that they have to -- in addition to that, that they have to

adhere to, just as I have to do with my driver's license.

Q Now, the regulated persons who are required to have animal waste management plans, those are the owners and operators of the registered feeding operations; correct?

A The law requires that the owners of a Oklahoma registered poultry feeding operation have an animal waste management plan or proof that they've applied for an animal waste management plan.

Q Has ODAFF ever required a poultry integrator to obtain an animal waste management plan?

A Yes.

Q Has ODAFF ever required a poultry integrator to obtain an animal waste management plan in the Illinois River watershed?

A I don't have memorized anybody that's a registered poultry operation in the Illinois River watershed would have to get that plan -- whether there are poultry integrators who have operations owned by them in the Illinois River watershed, I don't have that list memorized.

Q Okay. So the circumstances under which a poultry integrator would have to have an animal waste management plan is if that poultry integrator was the registered owner of the operation?

A Based upon the law, that would be correct.

Q Now, Oklahoma requires applicators -- land applicators of poultry litter to have licenses as well; correct?

A Anyone who applies poultry waste must have a poultry waste applicator's license from the Department.

Q All right. Look back at Exhibit 1, which is the grouping of statutes, and find Title 2, Section 10-9.18.

A I'm at that location in your Exhibit 1.

Q Thank you.

Now, these are some sections from what is referred to as the Oklahoma Poultry Waste Applicators Certification Act; correct?

A That is correct, yes.

Q All right. Rather than us spending a lot of time going through the statute, can you

give me, as you say, the executive summary of the applicators licensing program?

A Anyone who desires to apply poultry waste in Oklahoma must submit an official document to us, requesting that they receive an applicator's license from the Department.

The Department sends that license to them. Then one of many things -- I can only give an executive summary, and I'm sure I will miss some. But one of the many things they have to do is submit an annual report to the Department, of waste that they applied for a certain year.

For instance, July 1 of '06 to June 30th of '07, all those applicator annual reports were due December 31, and they have lots of documents on it that are required, that are on this page you just referred to.

In addition, there are many rules and regulations that I can't begin to tell you. Before they apply waste, they have to have a soil sample from each individual field, they have to have poultry waste sample. There are numerous things that I couldn't even begin to touch without referring to every document that is required of a applicator.

Q All right. Fair enough.

Is one element of the -- one additional element of the program is that, to become a certified applicator, you have to have educational training?

A Yes. Educational training is required for poultry waste applicators.

Q And is there an annual requirement to maintain -- or to attain additional educational credits?

A Yes. The law says nine hours originally, and three hours each year thereafter.

Q Similar -- similar sort of requirement as the registered feeding operation owner?

A Almost exactly the same requirement.

Q All right. So -- so if I understand the program correctly, everyone who puts -- who land-applies poultry litter should be registered and licensed through your division?

A All applicators of poultry waste in Oklahoma are required to receive a license from the Department, and are required to obtain the applicable education that I just previously referred to.

Q All right. So even a poultry grower who wants to make use of poultry waste on his or her own land, if they're going to be the one to spread it, they have to have a certification through your office; right?

A That is correct, yes.

Q So if a poultry grower wants to make use of the poultry waste on his or her own land, and is not certified, they would need to hire the services of someone who is certified in order to land-apply that poultry litter; correct?

A Based upon -- your scenario is correct, because the law says anybody applying poultry waste must have an applicator's license from the Department.

Q Okay. When -- when a licensed commercial applicator is hired to apply poultry waste, how does it work? Does that applicator then review the animal waste management plan and review the sampling results prior to putting the poultry waste on the ground?

A The poultry waste applicator that applies that waste, if he's a commercial applicator, is required to see -- because he has to fill out an annual report, he's required to

see that soil samples -- current soil samples are taken of each field, that there's a poultry waste sample, in order for him to complete his annual report that he must submit to us.

I would think in the beginning it would be desirable for him to look at the animal waste management plan. We don't have near enough staff and/or budget to determine that each one of them do that.

Q Well, I'm asking you what the law provides for. That was my question.

A The law provides for him to submit an applicator's annual report to the Department.

Q And a licensed commercial litter applicator has a duty, under Oklahoma law, to put that poultry litter down in compliance with an existing animal waste management plan; correct?

A An existing animal waste management plan and a number of other things that are in our laws and rules.

Q All right. Then let me ask you the broader question.

A licensed commercial applicator is under a duty to comply with all of Oklahoma's environmental laws, as well as those laws

specifically applying to the application of poultry waste, anytime that person land-applies poultry waste in the state of Oklahoma; correct?

A That general statement you just said would be correct.

Q I know that you know a number of poultry growers in the Illinois River watershed sell their litter to someone else for use.

A Yes. I am told that by them.

Q Is it true that generally this litter that's sold is being land-applied by these licensed commercial applicators?

A Based upon annual reports that we receive at the Department of Agriculture, that would be correct.

Q Is that commercial litter applicator required to obtain the most recent litter tests from the grower for the litter?

A Anybody that sells or give away poultry waste is required to give a poultry waste laboratory result to that individual they sell it, give it away.

Q All right. Now, let's say that this commercial applicator makes a deal with, say, a cattle rancher in order to acquire some poultry

waste, bring it out and put it on the cattleman's pasture.

That's a fairly common scenario; wouldn't you agree?

A Based on what I have been told and am aware of, yes.

Q All right. At that point that that land application of poultry waste is being done for this cattleman by this licensed commercial poultry waste applicator, who does the State look to to ensure that that application complies with the law?

A Based upon legal advice -- many times that I went to our legal staff of general counsel and asked that question, it's both parties that are involved. If a commercial applicator is applying it, it's the individual also that they're applying it on. Both parties are responsible.

Q Okay. In my hypothetical I gave you, that would be the commercial applicator and the cattleman upon whose land the poultry waste is being applied; is that correct?

A Based upon your scenario you gave, yes, that is correct -- of what legal advice has

been given to me.

Q If the poultry grower -- if the poultry operator conveys the poultry waste to the commercial applicator, provides the sampling information you suggested is required or you stated is required, then that commercial applicator makes a -- enters a transaction with the cattleman, whether it's two miles down the road or five miles down the road, but makes his own deal to sell and land-apply that litter, your statement is that that commercial applicator and that landowner are under the obligation to make sure that Oklahoma's laws are complied with.

Is that a correct statement, sir?

A That is a correct statement, with only one clarification. That registered poultry operation that sells or gives that waste away has to be in adherence with all rules and regulations dealing with poultry waste and the handling of poultry waste.

Q All right. But let's assume that within the poultry -- registered poultry operation, that operator is in compliance, but that commercial operator who land-applies that poultry waste violates Oklahoma law because he

spreads it at too high of a rate or he spreads it and allows it to be cast directly into a water body or fails to adhere to the NRCS standards, you would agree that that poultry operator that sold it is not really the person involved at that point?

Do you agree?

MR. GARREN: Objection to the form of the question. Calls for a legal conclusion.

THE WITNESS: There's only one significant issue you and I have, and that is, you said I should assume that that poultry operation is in compliance to everything.

I would assume they're going to be somehow putting that on the trucks. I would assume they're going to be taken somehow out of that operation. To assume that everything is going to be handled correctly at that operation before it gets over to your cattle scenario, no, I cannot assume that.

Q (BY MR. McDANIEL) The question is simply this, Mr. Parrish -- and I don't understand why it's so difficult.

If the -- if there is a problem in an incorrect utilization of poultry waste on, for

instance, a cattleman's property, and the poultry grower from where the litter was obtained is not involved in the logistics of actually putting that poultry waste on that cattleman's land, if there is a problem associated with that application on that cattleman's land, your division looks to the commercial applicator and the receiving landowner?

A I previously testified to that, sir.

Q Okay. Then maybe this wasn't necessary to go through again. But -- all right. We'll leave it at that.

Do you know how many licensed commercial applicators operate in the Illinois River watershed area?

A I do not.

Q Are you capable of providing a range? Are there a couple dozen or two or three or --

A I cannot break that down. I do not know how many are in the Illinois River watershed. For me to break down and tell you the thousands of pieces of paperwork that we're required to -- based upon our rules and regulations -- I can't tell you that, and am not

going to start memorizing that tomorrow.

Q Has there ever been a circumstance where ODAFF has required a poultry integrator to obtain a license to land-apply poultry litter in the Illinois River watershed?

A I, again, can't break that down.

The scenario would be, if there is a poultry integrator that has an operation or desires to apply in the Illinois River watershed, then they would have to get a license.

For me to tell you did I sit down and spend the last week getting ready for the Illinois River watershed and memorize everything, I did not.

Q Okay. But our -- all I'm asking you to do is, based upon your knowledge that you brought with you into the deposition today -- that's all I can ask -- are you aware of any circumstance where ODAFF has required a poultry integrator to obtain a license from ODAFF to spread poultry waste?

A I'm not aware of that.

But anyone -- an integrator wanted to apply waste, then he would have to get an applicator's license, is my only clarification.

Q Okay. Has ODAFF developed any information to show what percentage of the poultry waste is sold off the poultry farm versus the amount that's used on land by the poultry growers in the Illinois River watershed?

A No. The Department has not.

But I can take you a step further, if you would like.

Q Go ahead.

A That's not required by the Department to do. That's required by the Conservation Commission to do, by law.

Q Has it come to your attention that anyone has prepared such an estimate applicable to the Illinois River watershed?

A Yes.

Q All right. Explain, please.

A The Conservation Commission breaks it down by county when they report it to the legislature every year. They're required by the law to do that by county. And counties obviously can make up -- even though I realize parts of counties can make up the Illinois River watershed.

Q Have you seen any attempt to

calculate the amount of litter used on the farm versus traded to third parties specifically for the Illinois River watershed?

A I personally have not seen any information, no.

Q Let me hand you what I've marked as Exhibit 6 to your deposition, sir.

A Thank you.

Q Do you recognize this?

A Yes, I do.

Q What is it?

A It is a document that was submitted to me from Stacey Day of the Oklahoma Conservation Commission, regarding Illinois River numbers, is what the subject matter says.

Q It's transmitted by e-mail to you?

A Yes. That is correct.

Q On June 22nd, 2007; correct?

A That is correct.

Q All right. Ms. Day sent the e-mail to you, and then it appears that you forwarded it to a Janet Burns; correct?

A Yes.

Q Who is Janet Burns?

A Janet Burns is a executive secretary

for the Agriculture Environmental Management Services Division.

Q All right. What was the purpose of this data-gathering performed by Ms. Day?

A As my memory serves, Ms. Day of the Conservation -- Oklahoma Conservation Commission, contacted me, said she was going to put this document together; when she did, she would like to have -- she would send me a copy of it.

She sent me a copy of it, and I forwarded it to Janet Burns, because in this format, it wasn't in a format that I could decipher it without taking tape and putting a bunch of pages together.

Q Do you know what the circumstances were that gave rise to Ms. Day undertaking this project?

A She requested from us, from our database, a list of what we had in our database in regards to the Illinois River watershed and applications, and then she converted over into what she called a cleaned-up list that the Conservation Commission would use.

I do not know why the Conservation Commission was doing this.

Q All right. You don't know what her objective was in this project?

A She never told me and I never asked her.

Q Okay. Let me see if I can get your help, nonetheless, trying to understand some of the pages of the attachment.

If you would turn back several pages -- as a matter of fact, just about four pages from the back, you'll see across the headings it includes -- it appears to say Minimum Flocks and Maximum Flocks.

Do you see that?

A I do see that.

Q These tables -- is it your understanding that this is the registered poultry feeding operations in the Illinois River watershed in Oklahoma? Is that what you understand these serial lists are?

A What we sent to her was -- from our computer, she requested for us to submit to her the list of poultry operations in the Illinois River watershed. Then this she took and did whatever she wanted to with it.

Her cover letter says this is her

cleaned-up list that she took our database and she cleaned it up. What "cleaned-up" means, I don't know. I did not request her to do this.

Q Okay. The -- starting with the first page, I see a number of operation names and poultry ID.

Do you believe that that is the list of the -- as of the time this report was generated, a list of registered poultry feeding operations in the Oklahoma portion of the Illinois River watershed?

A We would have submitted to her a document that would have had it on. Now, what she did when she cleaned it up, and is that the same exact document with every one of the locations, I can't testify to that. I do not know what she did when she cleaned it up.

Q Okay. Back to this sheet that has, on the heading, Minimum Flocks and Maximum Flocks -- did you find that?

A Yes, I did.

Q Is that information that your division keeps track of -- how many flocks a year a particular operation has or is expected to have?

A Yes.

Q So I see there is a range for the number of operations that could have five or six or four or five or --

A That's based upon submittals that the registered operation submits to us on their renewals every year, is what that is based upon.

Q If I were to look at the poultry growers in the Oklahoma portion of the watershed as a whole, there could be a considerable variation in the number of flocks that are raised in that watershed in that year.

You agree?

A Yes.

Q And because of the considerable variation in the number of flocks, there could be a considerable variation in the amount of poultry manure that's generated from those birds in a year.

Would you agree with that?

MR. GARREN: Object to form. Assumes facts.

THE WITNESS: I would assume, based upon the way you stated it, assumptionwise, yes, that would probably be correct.

Q (BY MR. McDANIEL) Has ODAFF undertaken any efforts to calculate the amount of poultry waste that is generated in the Illinois River watershed in a year, for any year?

A I am not aware of an exercise that has been undertaken by me or directed for that to be done.

Do I know that there has not been one done just as this document that you have presented to me that she has done? I do not know that.

Q All right. Just for clarification purposes, because you answered the question a little differently than I asked it, are you aware that ODAFF has generated any estimate of the amount of litter generated in the -- excuse me -- the amount of poultry waste generated in the Illinois River watershed per year?

A I'm not aware of it. But we generate thousands of documents a year.

Q Have you been made aware of such an estimate prepared by someone else?

A I earlier testified I have not been made aware of it, except for the Conservation Commission -- of their annual document they

submit.

But are there documents that could come across my desk with that information on it? Of course. I wouldn't begin to identify every document that's come across my desk.

Q But you don't have any specific recollection of seeing such an estimate of poultry waste production in the Illinois River watershed?

A I don't have any specific recollection, especially that I could give you numbers here today, no.

Q Has ODAFF undertaken to determine how much poultry waste is imported into the Illinois River watershed each year?

A Not to my knowledge.

Q Do you know whether or not poultry waste is imported into the Illinois River watershed?

A I can't answer that question directly. I've heard stories, but I cannot answer that question directly.

Q Okay. You don't know?

A That is correct.

Q Sir, have you -- are you aware of

anyone else who has prepared an estimate regarding poultry waste that has been imported into the Illinois River watershed?

A I, again, would testify I'm not aware of that, and not remember seeing anything that has come across my desk.

Q All right. Let's talk just a second about importing of poultry waste. And what I mean by that, just so we're clear, is, let's say poultry waste that originated at a registered feeding operation in the Fort Gibson watershed that someone may land-apply on a pasture in the Illinois River watershed. That's what I'm calling "import."

Are you and I on the same page on that?

A Yes, sir.

Q All right. The idea, the practice -- excuse me -- the practice of importing litter into the Illinois River watershed is not, itself, a violation of Oklahoma law, provided the applicator follows the law with regard to the application.

Do you agree with that statement?

MR. GARREN: Object as to form.

THE WITNESS: Importation of poultry waste into the Illinois River watershed, if they were in adherence to the law and rules and regulations and all the things we've discussed, 590 standards and many other documentations that we've talked about here today -- and some we haven't talked about -- to my knowledge, then, there would not be a violation.

MR. McDANIEL: We probably need to change tapes. If you want to -- we can go ahead and go off the record.

(Off the record from 2:16 p.m. to 2:31 p.m.)

Q (BY MR. McDANIEL) Mr. Parrish, we were looking at Exhibit 6 to your deposition -- the attachment. If you'd go about five pages into the attachment, one of the charts has a heading -- says Inspector and Type.

Do you see that page?

A Page that says Inspector and what? I'm sorry.

Q Type.

A Yes.

Q What does this information under Type mean?

A Well, in our original submittal to

Conservation Commission, assuming that they -- when they did their revision, has the same on it, in our computer, we receive from the registered operation, they have to check and write in what type of birds they raise. And then the -- that's what the Type is.

Q All right. And under Inspector, I see two gentlemen's name: Dave Berry and John Littlefield; and one or other of their names is associated with the each of the operations listed.

Who are these people?

A David Berry and John Littlefield are two of the poultry inspectors that are on contract with the Oklahoma Department of Agriculture, Food, and Forestry, Agriculture and Environmental Management Services Division.

Q All right. What are their duties, sir?

A Their duties are to assist in enforcing rules and regulations for poultry operations and to offer technical assistance and guidance.

Q Are they in essence your eyes and ears in the watershed?

A In the case of the Illinois River watershed, I'm assuming you're referring to, they are two poultry inspectors that are out there on a daily basis. And Dan Parrish is not.

So do I rely upon them to submit information to me? Yes. Are --

Q Okay. If you'll flip maybe two pages further into the table, the heading -- and actually we looked at this sheet, because it has the Min Flocks and the Max Flocks on it.

I see there's a heading that says L-a-s-t I-n-s-p as a heading.

Do you see that?

A Yes, I do.

Q Would it be reasonable for me to read that column as the last date this operation was inspected?

A In the Department of Agriculture database -- realizing that she has reworked this sheet, so for me to testify that every one of those is correct, I cannot do that.

In our database, L-a-s-t I-n-s-p stands for last inspection that was performed by the Agriculture Environmental Management Services division at that specific operation.

Q All right. So assuming that this is a correct printout of the data that's reflected in your database, of the last inspection, then as of the date this report was generated, every one of these operations had been inspected in the prior year.

Would you agree with that statement?

A When you say "within a prior year" -- I see some 2006 dates down through there, and I'm just looking at one page. So I'm not sure of that. Because I see some 2006 dates.

So I can't testify to that. I haven't had time to look. I'd have to look at every one of them to answer that question. I have not done so.

Q Okay. Well, the e-mail was dated June 22nd, 2007. The 2006 dates I see here, sir, are in December of 2006. So that's a little over six months prior to the reported generation date.

Would you agree?

A In those specific cases, yes.

Q Okay.

A But have I looked at every one of them to tell you they're all in one year? I can't.

It would make sense.

Q Let me hand you what I've marked as Exhibit 7, sir. Tell me if you recognize that.

A Exhibit 7 I do recognize, yes.

Q Sir, at the top of the page, where it says DJP, is that your initials and your handwriting?

A Yes, it is.

Q Okay. All right. State for the record what Exhibit 7 is, please.

A Exhibit 7 is a document of e-mails and attachments that was an e-mail from Roger Olsen to myself.

Q All right. Who is Roger Olsen?

MR. GARREN: Counsel, before we go any further, can you tell me the source of this document?

MR. McDANIEL: Yes, sir. ODAFF's files. That's what the Bates number reflects from our document review at ODAFF.

MR. GARREN: Okay. And I notice it's got a "Confidential Attorney Work Product" on it. Do you see that in the attachment? I'm questioning it because it may have been an inadvertant production. And as such, we may be

exerting or claiming a call-back on this document.

MR. McDANIEL: Well, you can claim whatever you feel the need to claim, but go ahead.

MR. GARREN: I made a record so that, in the event it needs to be removed or returned, we're not waiving it.

Q (BY MR. McDANIEL) All right, sir. I believe the question to you is: Who is Roger Olsen?

A As I recall, Roger Olsen was a person who is identified on here as being with CDM, as part of his e-mail address.

Q CDM stands for Camp, Dresser, and McKee, an environmental consulting firm; true?

A I believe that is correct. As I remember, may have been a laboratory also.

Q All right. What involvement does Mr. Olsen or CDM have in the Illinois River poultry issues, if you know?

A I was contacted by Mr. Olsen to set up a meeting with him and his people to be involved in a training session with some -- our staff -- the AEMS staff.

Q What kind of training session? Were they training you or you training them?

A They were going to give the Department some training for some soil sampling.

Q All right. Mr. -- Mr. Olsen and Camp, Dresser, and McKee is in fact an engineering firm that has been retained by counsel working with the Attorney General's Office, associated with the lawsuit we're here about today.

Is that not correct?

I had you nodding with me, then I lost you somewhere along the line.

How did I lose you?

A I can't testify --

MR. GARREN: Objection to that statement. It's not a question.

Q (BY MR. McDANIEL) Go ahead, sir.

A I can't testify other than to what he told me when his original contact was and said that he had been placed under contract with the AG's Office.

All the details you just said, he didn't give me those details.

Q Okay. But you were informed he had

been placed under contact with the Attorney General's Office?

A That is the way our discussion the first time he ever talked to me began, either e-mail or phone call.

Q How did you obtain his bona fides? In other words, how did you know it was okay to talk to and work with Mr. Olsen and CDM?

A I'm not sure at this stage. My quick answer would be that I believe there's some confidential matters here that gets into legal counsels, that I'm not sure I need to answer that question.

I need to have a break, would be my quick answer, before I give that answer.

Q Well, all I -- then let's clarify the question. Let me ask a different question that maybe won't be so problematic for you.

Someone had to direct you to work with Mr. Olsen. You don't just take phone calls out of the blue and start talking to engineers. You've got to know if they have some authority or some relationship with the State.

Who directed you to work with Mr. Olsen? That's not a privileged matter.

That's just a fact.

A It was either legal --

MR. GARREN: Object to the form, to the extent that it calls for communication with legal counsel.

Q (BY MR. McDANIEL) I asked for who.

A It was either legal counsel at our office or other legal counsel, and I believe it was legal counsel at our office -- at the Department of Agriculture office. And it could have been other legal counsel directly -- but it was one or the other.

Q All right. The first two pages are e-mail, and the balance of the document is the attachment that I would call a set of sampling protocols.

Would you agree with that characterization?

A Yes.

Q And this attachment -- who prepared this, if you know?

A That attachment -- and I testified to it before -- in 2006. That attachment was prepared and furnished to me by Roger Olsen. Who prepared that before that, I can't tell you. It

came from Roger Olsen.

Q All right. This specific attachment here, sir, you had no involvement in preparing the content of that document; is that true?

A Please give me a minute to look at each one of the 20 pages.

I did not prepare any part of this document that you have handed to me as Exhibit 7.

Q The circumstances giving rise to this communication between you and Mr. Olsen was related to an effort to sample some poultry growers' operations in the Illinois watershed in 2005; right?

A The year I don't remember, but all the rest of it is correct.

Q Now, wasn't the original plan, sir, that the field inspectors, the ODAFF field inspectors, would be involved in the actual sampling?

MR. GARREN: Object to form. Assumes facts.

MR. McDANIEL: I asked him if it's true.

Q (BY MR. McDANIEL) Is that true?

A The -- yes.

Q But that's not -- that's not what actually occurred; correct?

A Correct.

Q Why is that?

A There were meetings held -- some I was to and some I was not to -- held where decisions were made not to use the AEMS division and the AEMS inspectors in collecting soil samples.

Q Who made the decision?

A Well, the ultimate decision I believe was met -- made by the Commissioner of Agriculture -- Terry Peach, my boss.

Q Did you play a role in that decision?

A There were times that I was asked for advice and there was times where I was in those meetings. The final meeting where that decision was made, I was not in that meeting and didn't need to be in that meeting.

Q Who selected the poultry farms to be sampled?

A I'd previously say --

MR. GARREN: Object to the form, as to date, time.

Q (BY MR. McDANIEL) Do you know what I'm talking about, sir? The poultry farms that were going to be sampled as part of this warrant process?

A I do know, because I previously testified to it, in 2006.

Q All right. Who selected the farms?

A Myself and another gentleman -- and you've got to let me search here for ten seconds to come up with a name here.

Q If I told you David Page, would that cut the time down?

A Thank you.

Q All right. Who made the ultimate decision as to which farms to sample?

A That was a combination of the two of us together. The final decision was a joint decision with me giving recommendations, and then I think the very final one might have been David Page. But it was pretty much jointly through us looking at animal waste management plans and looking at Department files.

Q All right. Let's look at -- let's look at Bates number 528.

A I'm there. Yes.

MR. GARREN: 528?

MR. McDANIEL: Yeah.

I'm not, so...

Q (BY MR. McDANIEL) 528, 4-B, makes some reference to how soil samples were to be taken.

Do you see that?

A Yes. I see what you're referring to.

Q Read that and see if you don't agree that what this protocol was, that you've set a triangle down at your sample location, and at one corner of the triangle you take a six-inch sample, one corner of the triangle you take a four-inch sample, and at one corner of the sample you take a two-inch sample.

Isn't that what the protocol requires?

A That, the way you just stated, is what is listed on page 6 of this Exhibit 7, yes.

Q Now, is that how ODAFF requires soil samples to be taken for compliance with the Act?

A No. But the law says -- and we can do any additional testing that we decide to do. And we have done that other than that -- but no,

not on a general average basis.

Q Do you know, sir, whether, in practice, when Camp, Dresser, and McKee went to these poultry farms to take soil samples, whether they took soil samples in this way or not?

A I have no knowledge of what took place there, no.

Q All right. Go to Bates number 439, please.

A (Witness complies)

Q Excuse me. 539. I misspoke.

A Thank you.

Q 539 and 540.

Those two pages include a Table 1 and Table 2 that list the parameters to be analyzed for soil and manure sampling.

Am I correct?

MR. GARREN: What page again, Counsel?

MR. McDANIEL: 539 and 540.

THE WITNESS: It appears your statement of what Table 1 and Table 2 of your handout, Exhibit 7, would appear to be parameters for soil and also for manure.

Q (BY MR. McDANIEL) Now, sometime in

the not too distant past, there were certain poultry growers raised a question or challenge as to whether ODAFF had the authority to test for all these parameters, and you were involved in those discussions.

Do you remember that, sir?

A Yes, I do.

Q And ODAFF and you took the position that it was within ODAFF's statutory authority to test for all of these parameters, to fulfill its duty of protecting the environment and human health; true?

A ODAFF's stance was along that line, and has been. Whenever we want to, the law allows us to take samples or anything else we want to, when it deals with compliance. And many times we have more than just what's allowed in the law.

Q All right. And on Table 2, it includes bacteria, including total coliform, enterococcus, fecal coliform, E-coli, staphylococcus, campylobacter, and salmonella.

Agree?

A The document in Table 2 states that, yes.

Q All right. So ODAFF's position is that testing for these substances is within its power and jurisdiction?

A The law states that we can test and/or request any information we desire, to enforce the law and compliance.

Q So is the answer to my question yes?

A The Poultry Feeding Act law and rules and applicators rules allow us to sample and request anything from operations, based upon what we want to do in order to enforce compliance.

Q If I could make a request, Mr. Parrish. If I ask a question that is capable of being answered with a yes or no, I believe that you are obliged to answer with a yes or no, and then if you need to supplement that, clarify, qualify, I'm fine with you doing that. I'm not trying to keep you from testifying.

But if I ask a question, if it could be answered yes or no, I would appreciate it. If you would give me that yes or no, and then if you need to state further --

A I'll attempt to do that every time that I can.

Q All right. Thank you.

Let me hand you what I marked as Exhibit 8 to your deposition.

MR. McDANIEL: One of them may not be a good copy, folks, because I see this one in my hand is not properly stapled. You should have a two-page document.

You only have one? Okay. Here's the second page.

Q (BY MR. McDANIEL) Do you recognize Exhibit 8, Mr. Parrish?

A Yes, I do.

Q I believe you previously testified about this in the Reed case, the warrant case?

A Yes.

Q All right. What is this document?

A That is a document that was put together by the Office of General Counsel at the Department of Agriculture, in combination with me, of summarizing the -- some of the Department's authority for soil and litter sampling, and what the poultry laws of the State of Oklahoma and the water quality standards specifically state.

Q Was this document prepared to

respond to the poultry growers' concern that ODAFF was exceeding its authority in sampling?

A You're testing my memory. My memory is that there was a meeting that was held, and that was one of the requests that came from those poultry growers that we submit back to them, yes.

Q All right. Just to make sure I'm clear, this two-page document, Exhibit 8, was prepared by Oklahoma Department of Agriculture, Food, and Forestry?

A That is correct.

Q All right. I note under your discussion on -- not your -- the document's discussion on the first page, under Section 10-9.7, it's ODAFF's position that, if the land application of poultry litter threatens to create an environmental or public health hazard or threatens to contaminate the waters of the state, ODAFF has the authority to enter property, take samples, and if a problem exists, to take corrective actions.

Do you agree with that?

A Yes.

Q You can set that aside.

Hand you what I've marked as Exhibit

9 to your deposition. Ask you to identify that document, please.

A Yes, I can.

Q Please do.

A This is a portion of a document -- the exhibits are missing -- which are as significant or more significant than the document, since they're lab results -- dated December 16th, 2004, to myself from Dr. Jim Shirazi, who is a hydrologist soil scientist and geologist for the Department, and it pertains to a complaint investigation that was conducted.

As part of that complaint investigation was some lab samples or some samples that were collected and then were submitted to the laboratory to get results. And it's the -- Dr. Shirazi's analysis of what his interpretation is of the data, and his recommendations to me.

Q All right. Do you recall what the complaint was that initiated this process?

A You've got to give me a minute to read further, please.

(Witness reviews document)

Yes, I'm ready now. Thank you for

letting me read it.

Q Do you remember the question?

A Yes, I do.

Q Go ahead.

A This was a complaint that was filed with the AEMS division at the Department, where a citizen was saying that they had contamination from a poultry operation.

Q All right. So some Oklahoma citizen was at -- call her Mrs. V, for the sake of the video.

Ms. V contacts your office, believes her water well is contaminated by a neighboring poultry operation.

Is that a correct statement?

A That is correct in generalities. I would have to have the complaint form that we fill out, that state exactly everything. But looking at the analysis from our soil scientist and hydrologist I asked them to do, that would be a general summary of it.

Q So in response to this, part of the action that was taken, reflected in the documents before you, is Mr. Dave Berry, one of your division poultry inspectors, took two groundwater

samples; correct?

A At least two. I would have to read it. Again, since I don't have the soil lab results with this, that are exhibits, I would have to read it again.

But it appears at least two, and then two separate ones were taken to also test for bacteria.

So it appears -- in my first reading of this for the first time in a long time, it appears maybe four samples were taken.

Q All right. Samples were taken at the grower's facility or the grower's water well?

A It appears that samples were taken at both places. Again, I'm at a disadvantage that we don't have the lab result attachments there. But in looking at the summary of what was said here, it was taken downgradient and upgradient, so both taken at the complainant's and at the poultry operation, it appears.

Q On the second page, the bacterial analysis, it appears that at least among the criteria tested in this groundwater was fecal coliform bacteria.

Would you agree?

A Based upon Dr. Shirazi's analysis, yes, I would agree.

Q Again, based on what's in front of you, Dr. Shirazi recommends that the complaint be closed, that the source of contamination he did not believe was the poultry operation.

Does that appear to be right, based upon what's in front of you?

A Based on this complaint document we are looking at, Exhibit 9, that is what his recommendation was. And I did agree with it, because we had the science to back it up in this case.

Q All right. So if you had conducted this fieldwork and taken these samples and the conclusion had been that the poultry operation was the cause of Mrs. V's bacteria in Ms. V's water well, what action could you have taken under the law?

A One, we would go back and we would take more samples and probably test for more parameters and would take more virgin samples -- v-i-r-g-i-n samples -- so that we could compare it and what we call fingerprinting with the help of our technical staff, to ensure that

contamination was coming from the poultry operation.

Then at that time, we would require corrective actions to be done, if it's a first-time offense. Probably if it was that serious, we would also send it to Office of General Counsel, and would assess a fine -- or would recommend assessment of a fine.

Q Is it potential, sir, if the problem is of sufficient magnitude, that that poultry operation could be compelled to shut down?

A The law allows for that. That would have to be taken to the State Board of Agriculture for approval before that was done.

Q But there is a mechanism one could get to that -- let's call it maybe the most extreme remedy, but it is an available remedy, isn't it?

A It is allowed by the law, yes.

Q In the case of a confined animal feeding operation, and I mean a statutory CAFO, does your division require CAFOs to sample their water wells for bacteria on a regular basis?

A L-M-F-Os, which are licensed management feeding operations, which are large

swine operations -- I can tell you what it is specifically, if you want to know the numbers -- which are also CAFOs -- are definitely required to test for bacteria.

CAFOs that are not LMFOs are required to test for bacteria when -- assuming they have lagoons, which most of them do, then they are required to test for that from their lagoons, not as often as LMFOs.

Q Are there any LMFOs in the Illinois River watershed?

A Yes.

Q Those well sampling data comes back to your division? Is that correct?

A That is correct.

Q Are you aware of any currently pending complaints of water well contamination in the Illinois River watershed from animal manure?

A Please clarify for me. When you say "animal manure," are you including animal and poultry manure or only animal manure?

Q Well, I included poultry as an animal.

A Okay. I'm not aware of. But we get in complaints every day, so -- then do I break

them down by watersheds? No. I'm not aware of, but I do not know that for a fact.

Q Are you aware of any current citizen complaints of bacterial contamination of water from poultry litter in the Illinois River watershed?

A I'm not aware of any on recent days or weeks. I cannot go back to 1997 when our division was formed.

Q I understand. My question was current.

So your answer is you're not aware of any?

A On a current basis in the last couple of weeks, I am not aware of any.

Q The statutory provisions, which is Exhibit 1 to your deposition, Section 10-9.10, I think it's labeled Investigation of Complaints, your AEMS -- your division of ODAFF has both the mechanism and the ability to receive citizen complaints and to investigate those complaints related to animal operations; correct?

A We have the mechanism, and required by the law to do so.

Q All right. And the jurisdictional

scope of your group would include complaints related to the use of poultry litter; correct?

A Yes.

Q Now, I think you covered this to a certain degree when we were talking about the water well hypothetical.

But if a registered poultry feeding operator is violating the Act, what steps are available to you and ODAFF to take corrective action?

A When it is determined by our assessment that they are in violation of the law, then we can take actions, including corrective actions, including fines. Those are our general that we can do.

However, we have four and a half -- "half" because that person is a half CAFO, half poultry -- four and a half inspectors to inspect and investigate, for many registered poultry operations, anything dealing with poultry, whether it's applicators. And we do not begin to have enough staff or enough budget to even begin to enforce the rules and the regulations.

Q All right. Well, I'm -- I have to move to strike that last part of your answer, as

nonresponsive.

I was asking you, under the Act, what the avenues are that are available to ODAFF.

Under the Act, ODAFF has the power to seek administrative penalties against a registrant or a poultry grower; correct?

A I testified to that just a few minutes ago.

Q Okay. Well, bear with me.

There can also be -- there can be a directive that the poultry grower take some action related to their operation to clean up something or to change some circumstance that doesn't comply with the law; is that correct?

A Yes.

Q And up to and including terminating the registration for the poultry operation; correct?

A Yes.

Q All right. And in Oklahoma, withdrawing that registration or pulling that registration, that's equivalent to a shutdown order, isn't it? Because you have to be registered to operate in this state?

A If they're producing over ten tons

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.

Q And in particular, I'm thinking of the Eucha-Spavinaw Act in the last session.

You're familiar with that?

A Yes.

Q Let me hand you what I've marked as Exhibit 10. Tell me what that is.

What I tried to do, sir, if this helps, is, I tried to put Eucha-Spavinaw Management Act, the statute, as the first part of the document, then ODAFF's regulations implementing that statute as the second part of the document.

Does it appear that I properly assembled the Act and the regulations?

A It appears that the document you've given me, Exhibit 10, is the Title 2, 10-10.1, the Eucha-Spavinaw Management Act, and 35:17-11, the Eucha-Spavinaw Management Act rules.

Q All right. The Eucha-Spavinaw watershed is a distinct geographic area spanning portions of Eastern Oklahoma and Western Arkansas, generally north of where the Illinois River watershed is.

Would you agree to that?

A I would agree with that overall

statement, yes.

Q All right. So during this last legislative session, the Oklahoma legislature adopted a new phosphorus standard to be utilized for all the land application of poultry waste in the Oklahoma portion of the Eucha-Spavinaw watershed, by virtue of this statute.

Agree?

A Yes.

Q And once the legislature passed the Act directing ODAFF to promulgate regulations, then ODAFF did just that, in Title 35 of the -- of the Oklahoma regulations; right? For ODAFF?

A Correct. 35:17-11, as part of the document, Exhibit 10, you gave to me, yes.

Q Now, you would agree that neither this Eucha-Spavinaw Management Act, nor ODAFF's new regulations under the Act, completely eliminated the use of poultry waste on agricultural lands in the Eucha-Spavinaw watershed?

A Please ask that question again.

Q Let me rephrase it if I was confused -- if I created confusion.

This Eucha-Spavinaw Management Act

and the regulations pursuant to the Act changed the poultry waste management protocols, but it did not ban the use of poultry waste in the Eucha-Spavinaw watershed?

A That statement is correct, yes.

Q Is there any process within ODAFF underway to revise the poultry waste application standards within the Illinois River watershed?

A By the Oklahoma Department of Agriculture, Food, and Forestry? Was that your question?

Q Yes.

A Not that I am aware of. That would not come from me, but not that I'm aware of.

Q Today -- it is permissible today -- and it is, what, January 14th, 2008 -- it's permissible to land-apply poultry waste in the Illinois River watershed, provided it's done in compliance with the statutes and regulations; correct?

MR. GARREN: Did you mean to say "Illinois"?

MR. McDANIEL: Let me reask it if I misspoke. Sounds like I must have.

Q (BY MR. McDANIEL) Today it's

permissible to land-apply poultry waste within the Illinois River watershed, provided it's done in conformance -- done in compliance with the statutes and regulations in effect; correct?

A Yes.

Q Does ODAFF have a role in setting Oklahoma's water quality standards?

A Yes.

Q Explain what that role is.

A Every year, the Secretary of Environment requests us -- by law, requests the Department of Agriculture, along with other environmental agencies, to submit to them an update of the water quality standards -- in our case, that affects agricultural activities -- and then we have staff that does that -- helps in that revision every year.

Q Among those water quality standards, is bacteria one of the contaminants of concern that you address?

A Bacteria is addressed I believe in the dialogue that is in there. The dialogue that's in there, I believe bacteria is referred to by our staff that does that.

I don't do that. I've got staff

people that do that.

Q Can you give me a brief definition of what a "total maximum daily load" is?

A Total maximum daily load is a load that can get into any water bodies of the state, of nutrients that can cause problems to those water bodies -- TMDLs. However, jurisdiction is -- the Oklahoma Department of Environmental Quality has the overall jurisdiction over those.

Q But ODAFF does have a role related to the development of total maximum daily loads; correct?

A Has a role in the water quality standards, but those -- all of the testing and sampling is jurisdictionalwise of ODEQ -- the Department of Environmental Quality.

Q All right. If -- does ODAFF have the power to change poultry Waste Utilization Standards in response to a TMDL issued by the Oklahoma Department of Environmental Quality?

A The law allows for the Department of Agriculture to change the standards, yes.

Q So -- so in trying to meet a total maximum daily load, ODAFF definitely has a role in that process?

A Could have a role in that process. Has not utilized that, to this time period, to my knowledge.

Q Sir, if you know, what's the status of the total maximum daily loads for the impaired stream segments within the Illinois River watershed?

A I cannot answer that question.

Q You can't answer it why?

A I do not know the answer to that question.

Q You don't know the answer to that question.

I was afraid Mr. Garren might be stepping on your feet.

A I don't think he has -- my shoes are still polished. I'd be in trouble if he had done that.

Q Okay. In 2005, ODAFF undertook a program to sample a number of poultry farms in the Illinois watershed.

Do you remember -- remember that?

A I would assume you're referring to 2004, if you're referring to a number of operations that we did random soil sampling at.

Q Yes, sir.
A I believe it was 2004.
Q All right. You want to correct me and say that's '04, and not '05?
A Yes.
Q All right. How many farms were sampled?
A Something around 64 to 65, give or take one or two.
Q How many samples were taken?
A 108 or 109, give or take one or two.
Q And what was the reason for the sampling?
A Because the laws and the rules and regulations allow us to take samples when we want to and/or other matters, to ensure that compliance is going on.
Q All right. So this sampling was for compliance purposes?
A Yes, it was.
Q Okay. Let me -- I want to try to recap and make sure what I understand here.
ODAFF is the Oklahoma environmental agency with jurisdiction over poultry feeding operations and their waste management; right?

MR. GARREN: Objection as to form.

THE WITNESS: Oklahoma registered poultry feeding operations, yes, along with other standards.

Q (BY MR. McDANIEL) All right. ODAFF has regulations in place governing where, when, and how poultry waste may be land-applied in the Illinois River watershed; correct?

A Yes. In part. There's other regulations referred to.

Q ODAFF has the statutory duty to implement Oklahoma statutes to protect the water, environment, and health of Oklahomans, with regard to animal waste within Oklahoma.

Do you agree?

A As long as we're calling animal waste including poultry waste. I usually keep them separate, because there's two different sets of laws for animals and poultry.

Q All right. ODAFF has a statutory duty to implement Oklahoma's statutes to protect the water, environment, and health of Oklahomans, with regard to poultry waste within the state?

MR. GARREN: Object as to form.

THE WITNESS: Yes. Along with other

standards that we utilize also.

Q (BY MR. McDANIEL) ODAFF is involved in Oklahoma's water quality standards, including the standards for bacteria?

A Involved with, yes.

Q ODAFF asserts that it has the power to investigate complaints and to enter properties where poultry waste is being managed, to verify compliance with the law; right?

A Yes.

Q ODAFF asserts that its jurisdiction extends over all substances contained within poultry waste that may affect the water, environment, or human health?

A Repeat that again, please.

Q ODAFF asserts that its jurisdiction extends over all substances contained within poultry waste that may affect the water, environment, or human health.

A Yes.

Q Including bacteria.

A Yes.

Q ODAFF has inspectors in the field who inspect poultry operations and investigate complaints.

A Yes.

Q ODAFF has the power to compel violators to comply with the law, including the power to shut down registered poultry feeding operations.

A Yes.

Q ODAFF receives sampling data from the Illinois River watershed.

A Yes. Much of that sampling data comes from the operations or the applicators.

Q ODAFF has the power to change the animal waste management guidelines, if it deems it necessary, to protect the water, environment, and human health.

A By statute, yes.

Q Has ODAFF made any finding or determination that the land application of poultry waste in the Illinois River watershed is presenting an imminent and substantial risk of harm to the environment?

A The answer to that is no. But I cannot stop at no. We do not have staff or time -- by the time we get done doing our daily required activities, we don't have staff or time to make those determinations.

Q But no such determination has been made by ODAFF; correct?

A That is correct.

Q Has ODAFF made a finding or determination that the land application of poultry waste in the Illinois River watershed is presenting an imminent and substantial risk of harm to human health?

A No. The Department of Agriculture has not, but -- do not have staff, budget, or time to be able to even think about doing that.

Q Has ODAFF made any finding or determination that the practice of land application of poultry waste in the Illinois River watershed should be stopped?

A One more time, please.

Q Has ODAFF made a finding or determination that the practice of land-applying poultry waste in the Illinois River watershed should be stopped?

A A determination has not been made, but I believe there have been instances where there have been individuals who have been made to stop, because of soil samples we've collected or they've submitted to us.

Q But there -- but ODAFF has not made a finding or recommendation that the practice in total should be prohibited in the Illinois River watershed?

A No. Based upon that question you just asked.

Q To your knowledge, was anyone at ODAFF consulted about this lawsuit before it was filed?

MR. GARREN: Objection.

THE WITNESS: I can only speak of myself -- that I was told after it was filed. Whether anyone else in the agency -- I'm a peon. There's lots of people way above me. I do not know whether there were other people that were consulted.

Q (BY MR. McDANIEL) The question was: To your knowledge, was anyone at ODAFF consulted about this lawsuit before it was filed?

If I understand your answer, it is, to your knowledge, no.

Is that an accurate answer?

A No. To my knowledge, I am not aware of it.

Q To your knowledge, was anyone at

ODAFF consulted before this motion for preliminary injunction was filed?

A To my knowledge, I am not aware of that.

Q Have you -- sir, have you personally seen the motion for preliminary injunction?

A Yes, I have.

Q Have you seen the affidavits, submitted with the motion for preliminary injunction, by the so-called experts?

MR. GARREN: Object as to form.

THE WITNESS: If I've seen the affidavits, I have not read them.

Q (BY MR. McDANIEL) Have they been provided to you, to your knowledge?

A I'm not aware that the affidavits have been provided to me, but I am not sure of that. I've certainly not read them.

Q Have you been provided any data, Mr. Parrish, that underlie the experts' affidavits submitted in support of the motion for preliminary injunction?

MR. GARREN: Object as to form.

THE WITNESS: Please ask that again.

Q (BY MR. McDANIEL) Have you been

provided any of the data underlying the experts' affidavits submitted in support of the motion for preliminary injunction?

MR. GARREN: Same objection.

THE WITNESS: No, I have not.

MR. GARREN: Same objection.

MR. McDANIEL: I'm sorry, Rick. I didn't hear what you said.

MR. GARREN: Same objection.

MR. McDANIEL: Oh, "same objection."

MR. GARREN: Yeah.

Q (BY MR. McDANIEL) Let me hand you what I've marked as Exhibit 11. I believe that is a shot from one of the ODAFF's web pages.

Tell me if you agree with that.

A This -- yes, I am ready.

Q All right. Do you agree this is a web page -- or a page from ODAFF's website?

A Yes, it is.

There's more of an answer to that. Originally started by our division, and now in conjunction with Oklahoma State University.

Q All right. You're -- I think you're answering a question I haven't asked, but that's okay.

The title of this page is Poultry Litter Transfer.

Do you see that?

A Yes.

Q Tell me what -- tell me what this is about.

Is there a program administered by ODAFF, related to transferring of poultry litter?

A Yes.

Q Explain it, please.

A Years ago, the division was receiving calls, and I personally was receiving calls, from either citizens or farmers wanting to buy poultry waste and did not know how to obtain it, and also from those who were producing poultry waste, that did not have enough people to be able to sell all their waste to.

So the Department set up, put together a program and a hotline, with the 800 number being at the Tulsa Department of Agriculture office, and then we maintained a website in the beginning.

Because of lack of staff, we could not do that. That's how Oklahoma State came into the picture.

Q All right. Looking at this Exhibit 11, in the last sentence of the first paragraph, it says: "Outside of watershed areas, however, there are soils which can greatly benefit from the application of this material which helps build soil with nutrients and organic matter."

Did I read that correctly?

A Yes, you did.

Q Do you agree that sentence describes benefits of the use of the poultry waste?

A Yeah. In some specific areas. Because I'm the one that wrote that sentence, so yes, I do believe --

Q Oh, you wrote the sentence?

A Yes, sir.

Q Okay. Did you write all this text on this page?

A I believe so. It might have been updated by Oklahoma State University when they came on board, but most of it, yes, I did.

Q The -- well, since you wrote that, you would agree, then, that poultry waste serves not -- can serve not only as a fertilizer, but also as a valuable soil amendment.

You agree with that?

MR. GARREN: Objection as to form.

Q (BY MR. McDANIEL) I'm sorry. There was two objections -- or an objection of your answer.

Your answer was?

A Yes. If all the regulations and rules are adhered to.

Q All right. The -- all right.

So tell me what ODAFF is doing to try to facilitate this litter utilization or waste utilization.

A From our division standpoint -- we're regulatory, so -- this is one of the very few things we've done in a promotional effort, because we felt there was a need for it.

We then contacted Oklahoma State University, because we didn't have enough staff to keep up with our hotline and our website. Oklahoma State University said if we would maintain the toll-free number that people could call to buy or sell, they would maintain the website, they would do education and promotion on it.

In the Department of Agriculture, the Market Development division and others are

involved in the promotion of agriculture. Our division is only from a regulatory standpoint; except in this instance, we felt there was a need for it and were able to tie in with Oklahoma State University.

Q All right. The third paragraph says that your division, the AEMS staff, is working to get potential buyers and sellers of poultry litter together.

How does that work?

A Simply they call into the 800 toll-free number, which is the Department of Agriculture office at Tulsa, they say they want to buy waste or they want to sell waste.

Currently how it happens is, then, our person there e-mails that to OSU, OSU puts that on our joint website that is through Oklahoma State University, of people who are wanting to buy waste, people who are wanting to sell waste, and then simply put the buyers and sellers together and let them do whatever dealings they want to do in dollars, transportation.

All that is just getting the people together.

Q Has ODAFF developed any estimates of the exports of poultry waste from the Illinois River watershed?

A No.

Q Are you aware of anyone, sir, who has put together an estimate of the amount of poultry waste exported from the Illinois River watershed?

A I can only refer to the Conservation Commission report that is required by the poultry law, that is submitted to the legislature every year. And it's broken down by conservation districts, which in most cases is counties.

Q I have provided you what I've marked as Exhibit 12 to your deposition. The first two pages are Oklahoma statutes, Title 68, Section 2357.100. That's the first two pages. And the third page is from the Oklahoma Administrative Code, Title 710, Section 50-15-95.

Both of these relate to a poultry litter tax credit.

Would you agree with that statement, sir?

A Yes.

Q Are you generally familiar with the

Oklahoma poultry litter tax credit?

A Generally familiar with it, because I receive calls and questions about it.

Q All right. Tell me -- tell me briefly, what is this program or what is this credit?

A It is a credit that was approved by the legislature for $5 per ton of poultry litter that is purchased and transported, that it can be credited towards individuals' taxes, is a quick executive summary.

Our division has not been directly involved in it.

Q I see in Subsection D of the statute, which is on the first page of the exhibit, it indicates to me, as the reader, that ODAFF is involved in it by I guess approving the site or making some determination associated with where the litter goes.

A The Tax Commission is supposed to communicate -- as I understood it, supposed to communicate with our division to -- for us to be able to confirm with them that this is a registered poultry feeding operation.

Q That is the source?

A That is the source of the waste.
Our division, I repeat again, have not been involved in this.
Q If you look at Subsection D with me.
A Please -- yes.
Q And it says: "Provided the taxpayer is found by the Oklahoma Department of Agriculture, Food, and Forestry to have applied the poultry litter in a manner consistent with an animal waste management plan," et cetera.
That suggests to me that in order to be qualified for the tax credit, your department has to make some finding or give some approval.
Am I reading that correctly?
A You are correct.
And if I can, I would change my answer, now that you've read it to me -- and I should have read it. It is for those who have applied poultry litter.
Why I'm not familiar with it is that we have not had a single inquiry from the Tax Commission, nor have I had a single one that I've had to do that on.
Q All right. So in a nutshell, you don't know if this program is actually in

operation or not.

Is that a fair statement?

A Our division has not been involved in this, nor have not been asked to be involved in this.

Q Who is Mike Smolen?

A Mike Smolen works for Oklahoma State University. I do not know his title.

Q Do you know what he does for Oklahoma State University?

A I do not know his title. I believe, in conversations with him, that he believes he is a expert in waste management areas and some conservation areas.

Q You said you believe he believes he's an expert?

A That's what I said. You heard me correctly.

Q Okay. You've been pretty precise with your language today. That didn't sound like a mistake.

But is his background associated with water quality and waste management? Is that his field?

A He clearly has stressed waste

management, in a number of conversations -- that that is his field also, and in conservation practices, and I also believe connects it with water quality issues.

Q In Exhibit 13, an e-mail from Mike Smolen to a list of people, apparently including yourself, dated October 24th, 2003.

Do you agree?

A That is correct.

Q Do you recall this e-mail?

A I need to read it, please, since I didn't do a very good job of reading the previous one.

Q Go right ahead.

A (Witness reviews document)

Thank you for allowing me to read it. Yes, I have.

Q Okay. Put in a very broad sense, would you agree that this communication is Mr. Smolen conveying his position regarding problems with trying to burn poultry litter to generate energy?

MR. GARREN: Object as to form.

Q (BY MR. McDANIEL) That's the topic, in other words.

A He says, in Subject Matter: "Litter to energy" -- is the subject matter that he's giving his opinions on.

Q Well, and it appears that he's rather adverse to the idea.

Would you agree?

A In reading this document, yes.

And I had read it previously; did not respond, nor do anything with it.

Q The second paragraph, Mr. Smolen says: "To me, the problem is more direct. The raw litter, itself, is a commodity that needs to be recycled," in parenthesis, "to the land."

Do you see that -- where it says that?

A Yes, I do.

Q Now, he also continues in that paragraph, he says: "We lose the valuable soil amendment in favor of little energy."

Do you see where he said that?

A Yes.

Q Do you agree that raw litter provides a valuable soil amendment?

MR. GARREN: Object as to form and predicate.

THE WITNESS: Raw litter can provide a valuable soil amendment.

Our concern, as a regulatory division, is, it has to be done correctly and according to laws and rules and regulations.

Q (BY MR. McDANIEL) In the third paragraph, he says: "If purchased to meet NPK requirements" -- I assume that means nitrogen, phosphorus, and potassium requirements?

A I would assume also.

Q "If purchased to meet NPK requirements, however, litter is better than commercial fertilizer. One, it does not acidify the land as occurs with some nitrogen and phosphorus fertilizers."

Do you agree with that statement?

MR. GARREN: Object as to form, predicate.

THE WITNESS: I would agree with that statement, especially since he says "as occurs with some nitrogen" and -- he uses the word "some nitrogen and phosphorus fertilizers," yes.

Q (BY MR. McDANIEL) All right. And says: "Litter is better than commercial

fertilizer because, too, it includes organic matter, minor nutrients, organic matter, and other factors that promote a healthy soil."

Do you agree with that statement?

MR. GARREN: Objection as to form, predicate.

THE WITNESS: I can agree with the statement if the poultry waste is handled -- applied correctly, according to all the laws and regulations in Oklahoma that needs to be adhered to.

Q (BY MR. McDANIEL) The final paragraph, talking about transporting poultry litter and the cost, and his second sentence, he says: "Of course, when it reaches the other end, there must be an infrastructure to spread it on the land."

I take this to mean that if you're exporting the litter 150 miles or more to put on lands, when you show up with a truckload of litter there's got to be some mechanism out there for taking it, managing it, and spreading it.

Is that what that means?

A Based upon his opinion --

MR. GARREN: Objection as to form.

THE WITNESS: Based upon his opinion, yes. Based upon the laws and the regulations, yes.

Q (BY MR. McDANIEL) Well, you've had some experience in trying to put buyers and sellers together, so you understand generally what he means about the need for an infrastructure on the other end --

MR. GARREN: Object as to form.

Q (BY MR. McDANIEL) -- when you're trucking litter.

Agreed?

A I understand what he is referring to, yes.

Q Okay. Can you tell me what kind of infrastructure generally is required if you're going to export litter -- what needs to be at the other end of the export pipeline?

A One, they can't back up the truck and dump it; they have to have -- by law, it has to be protected. I think I've explained that in my testimony before. I can go in further if you want me to.

Two, the person that's going to apply the waste has to obtain soil samples and

poultry waste samples. Have to have an applicator's -- poultry waste applicator's license with the Department of Agriculture.

Has to apply it at agronomic rates, have to apply it at crop uptake. There are numerous other rules and regulations that we've discussed throughout the day that I'm merely hitting the surface of.

Adhere to water quality standards. The list goes on and on and on.

Q But if you were going to seek to export a significant volume of poultry litter out of Eastern Oklahoma somewhere else in Oklahoma, you're going to require a significant amount of storage capacity, trucks, spreaders, other logistics in order to make use of it at the other end?

A Of course. And that has been done by others, and is being done presently by others.

Q All right. Are you aware of any location in Oklahoma where that type of infrastructure already exists, that could handle a large volume of poultry litter?

A Yes.

Q Where?

A BMPs is one example of a person who has done that. I'm aware of that because of applicators' annual reports and other information I've received. The Oklahoma Conservation Commission is in the process of doing that.

I would -- based upon applicators' annual reports I've received this year, it appears there are others also. I couldn't sit here and name the names to you, but based upon their annual reports they have submitted to us this year, clearly there are others now.

Those other two are two that come to the top of the list because of volume.

Q Okay. So it's working?

MR. GARREN: Objection to form.

Q (BY MR. McDANIEL) The process is working?

A The process has been used. To say that it's working and it's in adherence to all the laws and rules and regulations, time will tell that, because we're not completed with reviewing all the annual reports that -- most of them came in the last week of December.

Q Does it appear the volumes are increasing -- volumes of poultry waste being

transported out of Eastern Oklahoma, that the volumes are on the increase?

A I'm not qualified to make the overall judgment. I can only make the answer to that based upon annual reports that we have received. And it appears so, on annual reports only that we have received.

Q All right. Other than poultry operations, what other types of operations fall within your division's jurisdiction, that exist within the Illinois River watershed?

A Concentrated animal feeding operations. I believe there are some agricultural composting facilities that are not registered poultry operations and that are not CAFOs, but I can't cite to you whether they're in the Illinois River watershed.

Any animal or any poultry, whether it's one chicken, one dog, one cat, one horse, we regulate those. Someone can call a complaint in dealing with one horse in the Illinois River watershed, for example. Anything dealing with animals and poultry.

Q Okay. If it's animal waste in the Illinois River watershed, it could very well fall

within your group's jurisdiction?

A Based upon State statute, yes.

Q All right. It would include dairy cattle?

A Yes.

Q Swine?

A Yes.

Q Feed lots?

A Yes. If you're talking about beef or dairy cattle feed lots.

Q Yes.

Sale barns?

A Sale barns only from a carcass and waste standpoint. Sale barns are generally oversaw by the state veterinarian's office, animal industry services. Only do -- carcasses and waste do we get involved with those.

Q Are there waste management criteria for sale barns?

A There's waste management criteria for sale barns, yes.

Q Tell me generally what those are.

A Just, like, one horse, one dog, one animal, anyplace in the state, their waste can't leave the property. Their waste cannot enter

waters of the state. Those are the two main ones.

And then how they dispose of their waste has to be based upon the laws and regulations -- which, they can't just go out and throw it in a pile.

Q Assuming that a sale barn doesn't have land around the facility for disposal of manure, it has to be removed by someone.

Are there licensed cattle manure applicators like there are for poultry?

A The law does not require that, no.

Q So that operator of that sale barn, he's free to give that manure away to anyone who can go land-apply it on their land?

A Yes. But it has to be applied at agronomic rates.

Q And who verifies that?

A The Department of Agriculture.

If we had more staff, we could verify it a lot more, based upon citizens' complaints.

Q But is there some paperwork requirement, like there is for poultry litter, to track that manure from the source to where it

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

and issues that they do, that has nothing to do with our division -- the ones entitled Dairy Farm Inspection Report.

Q Okay. Just so we're clear, Mr. Swepston operates a dairy in Stilwell, apparently, from the documents; correct?

A Yes.

Q All right. Now, the first several pages -- for instance, starting with Bates number 577, it is titled Dairy Farm Inspection Report.

You don't deny that that is a form filled out by someone at ODAFF. You're simply telling me it's not your division.

Is that what you're saying?

A That is correct. Chris Stogsdill is an ODAFF employee.

But those pages deal with the dairy farm inspection, appears to be dealing with milk and all of those issues. And in that case, that is not part of our division -- those inspection reports there.

Q Okay. At the bottom of the sheet, he apparently has noted two things. He says: "Need to pump down lagoon."

Do you know whether Mr. Swepston has

some type of lagoon for retaining manure or animal waste?

A Yes. Do I know? Yes.

Q And the answer is yes, he does?

A Yes, he does.

Q Can you tell me basically how that works? Is this manure that is swept or hosed out of a dairy barn or a milking facility?

A His site I have not specifically been to, but typical dairies would be that it is either washed out and/or piped out to a lagoon which is a waste-holding basin.

Q All right. For that sort of typical dairy operation, what does that operator then do with that material in the lagoon? What's its disposition?

A Typically the operator will land-apply that, based upon the rules and regulations in this case that are required for dairy operations.

Q Does a dairy operator who wants to land-apply this waste in this lagoon have to have something equivalent to a animal waste management plan?

A If the dairy operation is a licensed

concentrated animal feeding operation, then he's required to have an animal waste management plan and adhere to it and the rules and regulations.

Q All right. Is Mr. Swepston's operation big enough to require that?

A I do not know the answer to that. I cannot answer that.

Mr. Swepston's name has come through our files because of complaints. Whether he's one of the licensed concentrated animal feeding operations today, I do not know the answer to that question. He has been, once upon a time.

Q So in the case of dairy cattle waste, your group is not the sole regulator of that item. It appears that this individual in the dairy department is also --

A Not correct.

Q All right. Tell me why I'm not correct.

A Those documents that are at the beginning of your sheet, that are items number 577 through and including 526, those documents are documents that appears to be the dairy inspector's dairy documents that they use when they go out.

And dairies, for their milk that they produce, are required to be licensed, I believe is the word. They're part of animal industry services division, and we're not involved with those checklists.

If they're a licensed concentrated animal feeding operation, then we have a seven-page document that is done by the inspectors, that is a joint document with EPA, that is done.

Those documents are not used by our division. Until you get back to the complaint form, then our division was involved in the complaint.

Q All right. This individual within the dairy inspection group was also apparently taking note of some waste management issues on this dairy.

You do agree with that?

MR. GARREN: Object as to form.

Q (BY MR. McDANIEL) Correct?

A It appears that when he wrote remarks down at the bottom, yes -- those documents I've never seen before today. They don't come to me.

Q All right. I understand that.

But I also need your help to help me understand how to understand these documents, to the extent you can.

All right. This individual -- did you say -- I don't understand -- his name again, please?

A Swepston.

Q No. The inspector.

A Chris Stogsdill, it looks, looking at the signature, who is one of the dairy inspectors.

Q All right. He's made a note on the bottom: "Need to pump down lagoon."

All right?

A Yes.

Q Would you interpret that to mean that Mr. Swepston's waste lagoon was too full?

MR. GARREN: Object as to form.

THE WITNESS: It would appear so, because he goes on and says: "Do not allow it to run over."

I repeat again, I've never seen this document before today.

Q (BY MR. McDANIEL) Okay. On page

577, he also notes: "Remove manure at end of lot."

He's making another comment relating to animal waste. Would you agree?

A Yes, he is.

Q All right. And as you look through these pages, you'll see there many, many times he has noted that this lagoon needs to be pumped down.

Would you agree?

A I would agree. But that is on forms that never comes to the Agriculture Environmental Services division.

Q And I'm not suggesting it is. I'm just making an observation.

All right. Now, let's go to page 526.

A 526?

Q Yes, sir.

A I'm there.

Q All right. On October 31st, 2003, this gentleman has noted the lagoon is full and running down the road.

You see that; correct?

A Yes, I do see that on that document.

Q All right. Is there some point at which this dairy inspector informs your group that we have a dairy out there that is having a problem with managing its animal waste?

A I would hope so. In this case, that did not happen until we received the complaint.

Q All right. The very next page, Bates number 524, it's a Department of Environmental data complaint form.

Do you see that?

A Yes, I do.

Q Okay. And that is an ODEQ form.

That's not one of your forms; right?

A That is correct.

Q Do you understand from this document that apparently ODEQ responded to a complaint at the Swepston facility?

A ODEQ received the complaint, and it appears that they went out to the site.

Q And what were the observations made by the ODEQ inspectors?

A Well, the main and most important observation is, it's not DEQ's jurisdiction, as it says at the bottom of page 524, and they send it on to the Department.

However, when they chose to go out there and spend their time looking at something that wasn't their jurisdiction, they arrived at the site and observed from the road where a dairy waste off water lagoon had overflowed and the wastewater had run onto the road. There was wastewater on the road, but the lagoon was not overflowing at the time of the investigation.

Then it says it's not their jurisdiction and submitted to the Department because it was an agricultural issue. They received it on 10/30/03 at 2:10. We received it -- we received it on 6/25/04, which is document 517. Please note that.

Q Okay. All right. The next -- the sheet, Bates number 517, that is a document from your division; correct?

A That document from our division, where we received the DEQ complaint that was called by a citizen to them on 10/30/03, that the Department received on 6/25/04. And up until then, our division was not aware that this issue that was alleged was happening.

Q All right. Would you -- would you read into the record that statement there -- the

complaint details on Bates number 517?

A The complaint details are taken from the ODEQ report that they received, that they submitted to us, and it says: "Odor is really bad coming from a field. Looks like manure has been dumped, puddles of it, plus there are three dead cows on the property. This is running into the Baron Fork running river. Has a dairy on top of the hill and is running from the dairy down a hill and onto the field, then in the Baron Fork. Hand carried the complaint over to Ellen Pennington."

That's a DEQ comment. Pennington works for ODEQ.

Q Okay. Let's go to the next sheet, page 516. Memorandum to you from Chris Stogsdill?

A Yes. Correct.

Q June 28th, 2004.

What is that memorandum?

A That is a memorandum in response to the complaint number -- Department of Agriculture number WQC-04248, that I previously read to you on Bates 517. That was assigned to the dairy inspector since it was a dairy issue, and the

dairy inspectors did an investigation report and review of what issues he found.

And then in this case, he chose to go ahead and include what had been done in the way of corrective actions.

Q All right. Now, a dairy waste lagoon overflowing, running down hillside, and collecting in a creek bed, does that present a risk of bacteria loading to the waters of the state?

A Absolutely, yes. All waste has coliform -- fecal coliform and E-coli and lots of other things in it, yes.

Q Does it present a human health risk?

A Based upon what this report says, it could.

Q Do dead cows lying in a field or lying in a ravine present a risk of bacteria loading to the waters of the state in the Illinois River watershed?

A Yes, they can.

Q Do bacteria from dead cows left in the open or in the waters of the state present a potential human health risk?

A If not handled correctly, yes, it

can.

Q All right. I gather from the papers that I've read here that when your division was advised of this complaint and verified its existence, your division took action to stop the problem; is that correct?

A That is correct, with one issue. The dairy inspectors -- I am not their boss and supervisor. That's why, when I give staff -- they are bossed and supervised by Animal Industry.

But the requirement of the two commissioners of agriculture has been that dairy inspectors should receive all dairy complaints and do investigations, and I am not their direct supervisor.

Q Well, when your department -- your division does become aware of an environmental or human health risk within its jurisdiction, it has the duty to act, doesn't it?

A Hopefully so, yes.

Q And your division and your personnel, you do that within the best of your capability, don't you, sir?

A That is well said, the way you just

said it.

Q All right. Has anyone, to your knowledge, undertaken to determine the extent to which dairy operations in the Illinois River watershed contribute to bacteria in surface or subsurface waters?

A To my knowledge, the answer to your question is no.

Q How about swine feeding operations?

A To my knowledge, as a general statement, the answer is no.

If we get complaints against any swine or any other operations in the Illinois River watershed -- there have been individual cases, including that one LMFO that is located in the Illinois River watershed -- there have been individual cases where we have been involved in testing and sampling.

But general overall picture, the answer is no.

Q All right. You -- you're certainly aware that there are a large number of grazing cattle within the Illinois River watershed?

MR. GARREN: Object as to form.

THE WITNESS: I am aware, yes.

Q (BY MR. McDANIEL) Are you aware of any estimate that has been developed as to the number of head of cattle in the Illinois River watershed?

MR. GARREN: Object as to form.

THE WITNESS: I'm not aware of those numbers. I believe there is one group that could probably say what those numbers are -- at least by county. I'm not sure by watershed.

Q (BY MR. McDANIEL) All right. But as far as for the watershed, itself, you've not seen or you're not aware of the existence of any estimate of the head of cattle in the watershed?

A I have not seen and am not aware of that.

Q All right. I understand it's not that difficult to get data for counties, but the watershed is a different matter. That's why I phrased my question that way.

A And I have not seen information based upon the watershed.

Q Would you agree, Mr. Parrish, that this large number of cattle grazing in the Illinois River watershed generate a significant volume of manure?

MR. GARREN: Objection to the form of the question. Foundation, predicate.

THE WITNESS: Cattle generate manure, yes.

Q (BY MR. McDANIEL) And if you have a significant number of head of cattle -- do you dispute that there's a significant amount of cattle manure deposited on the pastures of the Illinois River watershed?

MR. GARREN: Object as to form.

THE WITNESS: I do not.

Q (BY MR. McDANIEL) I just want to make sure we weren't arguing about something that we really don't have anything to argue about.

Now, you're a farm boy; is that fair?

A Yes, sir. Proud of it.

Q Right. I meant that in a positive way.

In your experience, where do grazing cattle generally deposit manure?

A They can deposit manure in the pastures or the wheat or whatever they're grazing on, and then in other places where they go to get water.

Q To loaf, get cool, get water?
A Yes, sir.
Q So manure deposition right into watering holes, ponds, and streams -- that's what cows do; right?
MR. GARREN: Object as to form.
Q (BY MR. McDANIEL) It is a normal behavior for grazing cattle to defecate in the water sources they have access to?
A Yes, sir.
Q Does the State of Oklahoma have any laws that address the environmental impact from the manure of grazing cattle?
A Yes.
Q And what is that?
A That their waste can't leave their property. If it's one head, as I've referred to previously, the waste cannot leave their property.
Q So if I am a riparian property owner, and I allow my cattle to have access to a stream and -- which means they can both drink from and defecate into the stream -- would that be a violation of the provision you just stated, sir?

A It could be a violation of the provision, based upon how much waste there is in that stream from those cattle.

Q It depends on the quantity of waste?

A It depends on whether we can take a sample that can prove that.

Q All right. There is no mechanism under Oklahoma law for anyone to go inspect grazing pastures for the manner in which grazing cattle manure is managed, is there?

A Not unless we receive a complaint. Citizens' eyes are our eyes. We do not have staff to begin to even start doing that.

Q Are you aware of any estimate of the environmental impact from cattle in the Illinois River watershed that's been developed?

A I am not.

Q Are you aware of any estimate of the contribution of fecal bacteria from grazing cattle to the surface and subsurface waters in the Illinois River watershed?

A I am not.

Q Would you agree that the contribution of fecal bacteria from grazing cattle to the surface and subsurface waters in

the Illinois River watershed is likely to be significant?

MR. GARREN: Object to form.

THE WITNESS: I believe that it could be significant.

Q (BY MR. McDANIEL) Sir, do you believe that a comprehensive approach to managing the agricultural impacts to the Illinois River watershed should address the impact of grazing cattle?

MR. GARREN: Object as to form.

THE WITNESS: Please ask that one more time.

Q (BY MR. McDANIEL) Do you believe that a comprehensive approach to managing the agricultural impacts to the Illinois River watershed should address the impact from grazing cattle?

MR. GARREN: Same objection.

THE WITNESS: That's an opinion I'm giving, but I'll go ahead and give it anyway.

Yes.

Q (BY MR. McDANIEL) Is it part of your work, either by choice or otherwise, that you try to keep up with poultry litter or poultry waste

management laws in other states?

A The answer is yes.

Q How do you keep up?

A There is an organization of all the states' regulatory authorities dealing with CAFOs and poultry and animals, that meet once a year. I or staff goes to those, and states meet and talk. There are meetings that we have -- for instance, this week, the next two or three days, at EPA Region 6, where the six states' compliance and inspectors come together and share ideas and go through training.

So there are matters like that, that I'm generally aware of. But if you want me to sit here and tell you the things I just told you about the Oklahoma, I don't even want to touch that with a ten-foot pole.

Q I have no intention.

A Thank you.

Q The first organization or group you mentioned in your answer, what's the name of that group?

A Oh, presently it is handled by ASWICA, out of Washington, DC. But previously, up to two years ago, there was not a name. That

was a general get-together of all the regulatory state authorities that would get together and would meet. We hosted it one year many, many years ago.

A-S-W-I-C-A -- and I can't tell you what each one of those stand for -- now is the one that manages that and gets the meeting together the last two years.

Q Are there any sort of periodicals, newsletters, or publications on -- related to phosphorus management and agricultural environmental regulation, that you receive and have a chance to review?

A Sure. I see those. Most of those come to our technical staff, then they usually share them with me to read and to look at, yes.

Q Can you identify -- identify the ones you remember that are circulated through you?

A I can't identify them by name, no, sir.

Q Okay. But is this a fairly regular practice within AEMS, that you have the opportunity to see these when they come through?

A Those and/or through e-mails, that

we see a number of things that come through AEMS, yes.

Q Generally, since it's not fair for me to ask you specifics about other states, how other states regulate poultry waste, the ones that do regulate poultry waste -- but in a general sense, how does Oklahoma compare?

Do we appear to be in the mainstream with our regulatory scheme?

MR. GARREN: Object as to form.

THE WITNESS: In discussions -- in formal discussion with other state authorities, in most cases, in the mainstream of rules and regulations, number of states' licensing of applicators, I've only heard of a -- I can't even name one other one that does that.

But most of the general rules of agronomic uptake, nutrient uptake, doing it at an agronomic rate -- most of those requirements of applicators and registering of poultry feeding operations and those type of things, many states do those things.

Q (BY MR. McDANIEL) So you're saying when it comes to licensing of applicators, Oklahoma has some layers of regulatory process

that other states do not?

MR. GARREN: Object as to form.

THE WITNESS: From what I have informally been told by some other states. I do not read their rules and regulations.

Q (BY MR. McDANIEL) Are you aware of any other state that regulates poultry waste, that manages poultry waste as a solid waste under RCRA?

MR. GARREN: Object as to form.

THE WITNESS: I am not knowledgeable of that, and have not had discussions, that I can remember, with other states about that specific -- especially when you get into RCRA.

Q (BY MR. McDANIEL) All right. But just to be clear, as you sit here today, you cannot advise me of any other state that manages poultry waste as a solid waste under RCRA?

MR. GARREN: Object again as to form, predicate, and foundation.

THE WITNESS: I cannot, only because I have not had those discussions about that matter.

Q (BY MR. McDANIEL) All right. Are you aware of any state that requires that poultry

waste be disposed of in a permitted landfill, rather than land-applied?

MR. GARREN: Object to form, predicate, foundation.

THE WITNESS: I'm not aware of, only because I've not had discussions with other state regulatory people about that subject matter.

Q (BY MR. McDANIEL) Are you aware of any poultry -- registered poultry feeding operator in the Illinois River watershed who is currently operating in violation of his or her animal waste management plan?

MR. GARREN: Again, objection as to form.

THE WITNESS: I can't answer that question, because we don't have enough staff for me to be able to answer that question -- that we are doing constant inspections and testing all that. I could not answer that question simply because we do not have enough people or budget to be able to determine an answer to that question.

Q (BY MR. McDANIEL) All right, sir. And I've got to move to strike that answer.

The question was, sir, are you aware of any poultry -- registered poultry feeding

operator in the Illinois River watershed who is currently operating in violation of his or her animal waste management plan?

If you can answer it yes or no, I request that you do so.

MR. GARREN: Same objection.

THE WITNESS: I cannot answer it yes or no.

Q (BY MR. McDANIEL) You can't tell me what you're aware of?

A I can't answer if anyone is in violation of our laws and rules, because I'm not out to every operation every day, nor is our staff out to every operation every day.

There's not enough state troopers to pick up everybody that's speeding on the roads.

Q I understand that point, sir, and it's been made multiple times by you.

My question is: Are you aware of any operator -- poultry operator in the watershed that is currently in violation of their plan?

A I am not aware of any today. But that answer can only be said by saying that we do not have enough staff to be able to determine that on a daily, hourly basis.

Q Understood.

When was the last time you visited the Illinois River or any of the streams in the Illinois River watershed?

A A year ago last summer would have been the last time. I did not last summer, but the previous year I did.

Q And what did you do when you were there?

A Fishing.

Q Which stream or streams did you fish in?

A I was in the Illinois River, only because a friend invited me to. I was there for a fishing trip with a friend.

Q And I'm not asking for your favorite spot or his spot, but what part of the river did you fish on -- or did you float it?

A No -- we only fished. I did not float.

And obviously a good fisherman does not give where they go fish.

Q Yeah. But you're under oath.

No, what -- generally what area did you fish?

A I would rather not go there. I did fish in the Illinois River watershed.

Q You seriously don't want to tell me because it's a fishing secret?

A I see no reason why I need to tell you. Because it is good fisherman don't tell where they fish at.

Q All right. But that is your basis for not answering the question?

A And it was based upon my friend's fish -- and we did do very well fishing.

Q Okay. What county were you fishing in, sir?

A We were fishing --

Q Surely you can't lay claim to a whole county.

A We were -- I don't think I need to go into the location that we were at.

Q Sir, I appreciate your trying to be considerate of your friend, but you're under oath in a federal court proceeding.

I'm asking you where you fished on the river, and unless --

A Adair County.

Q -- and unless Mr. Garren or

Mr. Lennington or Ms. Gunter tells you not to answer a question, you have to answer truthfully. I think they would agree to that.

A Adair County, sir.

Q Okay. And on the main stem of the Illinois River?

A Yes, sir.

Q All right. Were you fishing from the bank or wading?

A Fishing from the bank. Did not wade.

Q All right. During -- did you say what month or months of the year that was?

A It was in the summer a year ago. I can't tell you what date. It's the third time I've fished since I've been in Oklahoma.

Q When was the next prior time you visited the Illinois River watershed or --

A Prior time?

Q Yes, sir. Before that one.

A I would have been over there on some complaint investigations with John Littlefield. I don't know what year.

Q How about for recreational purposes? Fishing, floating, camping?

A That's the only time since I've been in Oklahoma -- ten years.

Q The one last year?

A Yes, sir.

Q Okay. Was it a day trip or did y'all spend the night?

A It was -- I spent a night with my friend.

Q Okay.

A And came back the next day. Fished one day, enjoyed with my friend from my other life, and came back the next day.

Q As far as the river was concerned, that was just a day trip?

A Yes, sir.

Q You didn't camp down there?

A It wasn't even a full day.

Q Did y'all get in the water and wade or cool off or anything like that?

A No, sir.

Q Wash your hands, rinse your fish off?

A When we took the fish out, no, we did not rinse the fish off. We took the fish out, did not rinse the fish off.

Q Did you have any reservations about getting in the Illinois River water, sir, for your personal health?

A The day I was there, I wouldn't have, but that was a year ago last summer. Definitely not.

Q Okay.

MR. McDANIEL: That's all the questions I have, subject to my reservation, if Mr. Garren or anyone else asks questions, I may want to follow up. But thank you for your patience.

THE WITNESS: Thank you.

MR. JANTZEN: I might have a couple if we can take a real short break.

(Short break from 4:23 p.m. to 4:39 p.m.)

DIRECT-EXAMINATION

BY MR. JANTZEN:

Q Good afternoon, Dan.

A Good afternoon.

Q My name is Steve Jantzen. You and I have met before. I'm representing the Tyson entities in this litigation during the deposition here, for today at least, as to the preliminary injunction side of things, and I've got just a

very few questions and then we'll move you on.

My first question is: What did you do to prepare for your deposition here today?

A Very little to prepare for the deposition today. Read my previous deposition. I can't think of much else.

I think there was one other document I read. I believe I read the document that the AG's Office had filed -- their latest document. That's the only two I can think of.

Q By "latest document," are you referring to the motion for preliminary injunction?

A Yes, sir.

Q Okay. And this deposition that you read, is that from the --

A June of '06, I believe it was -- or sometime in '06, yes -- of the lawsuit of the Poultry Growers against the Department of Agriculture.

Q That was a deposition that was taken here in Oklahoma City?

A Yes, sir.

Q Did you meet with anyone or talk with anyone to prepare for your deposition today?

A Yes.

Q Who?

A I talked to the Commissioner of Agriculture, Terry Peach. I talked to Teena Gunter. And there was some discussion with some of the representatives of the Attorney General's Office.

Q And do you recall who those representatives were?

And bear in mind I'm going to ask you just some points about when you prepared, who you talked to, things like that. I don't want you to get into discussions that could be privileged, and I know your able counsel will keep you from going there. But I want to make it clear that's not the nature of my inquiry.

Having said that, who did you talk to at the Attorney General's Office?

A Rick was involved in some of the discussions. Kelly Birch was involved in some of the discussions.

Q When did those discussions take place?

A Thursday of last week. I don't know the date.

Q And your discussion with Commissioner Peach, when did that take place?

A That was this morning -- early this morning.

Q And what did you and Commissioner Peach discuss?

A Only discussed that -- I updated him on my schedule for this week and -- that was one of the discussions I had with him, was that I was going to be in depositions all day today. And he updated me his week.

Then I also discussed with him where I'm going to be Tuesday, Wednesday, and Thursday of this week.

That was my typical weekly discussion with him.

Q Has anyone from the Attorney General's Office or from the State of Oklahoma in this litigation approached you or asked you about being a witness on its behalf as it relates to the State of Oklahoma's motion for preliminary injunction?

A No one has told me, that I am aware of, that "You're going to be a witness in the case of the preliminary injunction."

I have not been given a "You will be there on" such-and-such day and "You're going to be a witness."

Q So no one from the State of Oklahoma has asked you to be prepared or that you may be a witness at the upcoming trial related to the motion for preliminary injunction?

MR. GARREN: Object, to the extent it might call for communications privileged -- attorney-client.

You can answer.

THE WITNESS: The only thing at all that's been said to me was today, for the first time, that there may be some issues the end of this month and the first week of March, "What is your schedule like?" And that's it.

Q (BY MR. JANTZEN) And did those issues relate to the -- are you aware there's a trial?

A I was made aware of it today.

Q Okay. And who made you aware of it today?

A I was told that today by Rick of the Attorney General's Office.

Q So Mr. Garren inquired as to your

schedule; is that correct?

A That was brought up today for the first time, yes.

Q Okay. When did you start with ODAFF?

A July 7th, 1997.

Q Okay. And I believe your testimony was that the Registered Poultry Operations Act or Feeding Operations Act came into being 1998; is that correct?

A Yes. July 1, 1998.

Q In your experience and to your knowledge, has the Department ever denied licensure or an application to be covered by that Act, to a poultry feeding operation, based upon the identity of the integrator with whom the poultry feeding operation is doing business?

A Has the Department ever denied it based upon who the integrator was that was listed on the application for registration?

Q That's correct.

A No.

Q Okay. Has the Department ever denied an application under that Act, based upon the environmental history of the integrator that

was listed on the application?

A No. Not to my knowledge.

Q You would agree with me, would you not, that ODAFF certainly looks at the environmental history of the owner and operator of the feeding operation that's listed on the application?

Correct?

A Yes. It's one of the requirements that has to be submitted to us.

Q Okay. When was the last time that a poultry feeding operation registration application under that Act was granted for a poultry feeding operation that was located within the Illinois River watershed?

A I do not know the answer to that question.

Q Okay. Do you know if a permanent application to be covered by that Act or under that Act by a poultry feeding operation has been submitted and approved since the Attorney General initiated this litigation?

A I do not know the answer to that question.

Q Who would know the answer to that

question, on your staff?

A It would be a matter of going to the computer and seeing when we received any registration -- new registration application. I obviously can direct staff to do that by going to the computer in the database. It's in the database. I can't remember by memory.

Q Would it surprise you one way or another -- and I'll have to clarify this -- that licensure or coverage under that Act has been granted since the State of Oklahoma initiated this litigation?

MR. GARREN: Object as to form.

Q (BY MR. JANTZEN) Do you understand what I'm --

A No. Please ask the question again.

Q That's fair.

Would it surprise you -- let's assume, for example, that your staff and the Department has granted an application to be covered by that Act, to a poultry feeding operation in the Illinois River watershed since the inception of the litigation by the Attorney General.

Would that surprise you?

MR. GARREN: Same -- objection as to form.

Q (BY MR. JANTZEN) Do you understand what I'm saying, Mr. Parrish?

A Yes. I understand your question.

I don't have an opinion one way or another would it surprise me. We've received a few, but not very many, new registration applications in the office, but where they're located, I don't know that off my memory, so I can't answer that question whether it would surprise me or not surprise me.

We receive registration applications, I process them.

Q If I had to pick one person on your staff to ask these questions about, about the timing and sequencing of approvals of permit applications to be covered under that Act since the inception of this litigation, who would that one person be?

A Myself.

Q But you can't answer that question as you sit here today: Other than you, who would I ask?

A Sir, I can't answer that question,

because I have thousands of pieces of documents come across my desk every day, and I don't keep track of them by the Illinois River watershed or any other watershed.

Q You're the person, but you can't answer that question?

A Can't answer it, sitting here, without looking at the computer database that has date received, date approved, and has the dates in it.

Your question was since it was filed, and for me to know that, I can't do that without looking at the database. And that would be for anyplace in Oklahoma.

MR. JANTZEN: I'll pass the witness.

CROSS-EXAMINATION

BY MR. GARREN:

Q Mr. Parrish, I'm Richard Garren with the State of Oklahoma. I have a few questions about what's been asked to you today.

In follow-up to one of Mr. Jantzen's questions, he said to you, do you look at the environmental history of the applicant when it's filed.

What did you mean by that, when you

said you do?

A When they file their registration application, they're required to submit, if they're a new operation, any environmental history that they have had in the past. That's part of their submittal.

Q When you say you look at it, you mean you just look at what's put on the paper?

A Yes. I have to take their word for it, of what they submit to us. That is correct.

Q Does the Department make any other independent investigation or verification process of the statements made on their application?

A No. We do not, because they notarize it by a Notary Public, and they sign it.

Q Okay. Does the Department make any investigation as to any statement on an application for poultry license or registration form for the State of Oklahoma?

A No, we do not.

Q In some earlier questions dealing with animal waste management plans and if they specified application rates, are those application rates the same for every one of the six years that plan is supposed to be in effect?

A No.

Q What guides a grower with regard to what the application rates should be after the initial plan is written?

A It's based upon their soil sample results that they receive every year prior to application.

Q All right. And the plan is written for the soil test that's given at the time the plan is written; is that correct?

A That is correct, yes.

Q If there is a -- if after the initial plan is delivered to the grower, another application occurs a year later, what guides that grower as to what he's supposed to do and the amount that he's supposed to apply?

A The soil sample, lab results, and the poultry waste -- but the main one is the soil sample lab results for that current year. The law says prior to the first application of each year.

Q All right. So he must get a new litter test, meaning poultry waste sample analysis, performed?

A Yes, sir.

Q And he must also then sample the soil in which that land is -- sample the soil where that poultry waste is going to be applied; is that correct?

A Soil sample for each field, yes.

Q And that's done every time any application occurs?

A Yes, it is.

Q And that may change the rate -- does that affect the rate that is then applied?

A Yes, it does.

Q Does the information that a plan writer obtains in order to write a plan based solely on his factual knowledge?

A No.

Q What other source of data does a soil waste -- I'm sorry.

What other source of data does a waste management plan writer rely on in writing a plan?

A Much of the information comes from that registered poultry operation person.

Q Do your contract plan writers for ODAFF have adequate time and resources to verify the data that's provided them by the grower?

A No. In most cases, if not all cases, they take what is given to them by that registered poultry feeding operation.

Q Looking at Exhibit 5, if you would, please, sir.

A Yes, I'm at Exhibit 5.

Q If you look at Bates number 3558, on that page where it shows the examples of the soil test --

Do you see that page?

A Yes, I do.

Q How common is it to see two fields with identical NP and K results on a soil test?

Page 3558. They're summarized at that location.

A Yes, sir.

It's not very common, but it's a reason why they are the same.

Q I don't understand what you just said.

A That's the one they only took one soil sample result, and they're supposed to have a soil sample result of Field 5 and Field 6. In this document, there is only one soil sample result.

Q And you're referring to what page?
A I'm referring to Bates 003566.
Q And that's not in conformance with the law, is it?
A That is correct. And I earlier testified to that.
Q I said it -- created a double negative.
Does taking a soil test on two fields at the same time conform with the law?
A No.
Q All right. I think you were asked by Mr. McDaniel that it's generally true that applicators are applying waste that's sold to third parties.
Is that your knowledge?
MR. McDANIEL: Object to the form.
Q (BY MR. GARREN) Do you have that knowledge, sir?
A Applicators do that, and other means, also, besides that.
Q Is it also common knowledge that poultry growers -- several poultry growers don't have enough land in order to apply the amount of waste that is generated on their operations?

MR. McDANIEL: Objection.

THE WITNESS: Yes. There are many cases of that, according to our files of animal waste management plans and other matters in our files.

Q (BY MR. GARREN) Even though the waste may be sold or transferred to a third party, it's generally commonly known that that waste is still land-applied, is it not?

MR. McDANIEL: Object. Leading. I object to you leading your own witness here.

Q (BY MR. GARREN) What do you know is done with poultry waste that is sold to a third party by a poultry operator?

A Poultry waste that is sold to a third party and -- if it's applied in Oklahoma, then all the rules and regulations that we have discussed today have to be adhered to -- apply at agronomic rates, crop uptake, all of those matters, 590 standards and all those.

Q We've heard all these questions about it being a soil amendment, being a fertilizer.

Generally, poultry waste is land-applied when it's removed from a barn, isn't

it?

MR. McDANIEL: Object to the form.

THE WITNESS: In many cases it is land-applied when it's removed from the barn -- in many cases.

Q (BY MR. GARREN) What other uses of poultry waste do you know of that's -- that is put to?

A Other current uses of a bulk of the poultry waste, I'm not aware of other current uses.

Q Looking at Exhibit 6, if you would -- Mr. McDaniel was making a comment about the numbers of flocks when it's showed in their minimum flocks per year and maximum flocks per year, and asked you some questions along the line would the number of flocks mean the amount of waste would be different.

Do you remember that line of questions?

A Yes, I do.

Q All right. I believe in another part of this form, it recognizes that there are different kinds of birds for these various flocks; is that true?

A Yes, that is correct.

Q Do you know how long layers stay in a house?

A Of those that are identified in there as -- one flocks, for instance, would probably be layers, and they would be in there throughout the year.

Q And broilers, when there's five flocks, how long are they in a house -- a single flock?

A Obviously, five turnarounds within a year, so there's obviously a lot more waste produced from those five flocks of broilers than there would be throughout the year.

Q Well, my point is, there's a bird in the house the entire year, generally speaking?

A Yes.

MR. McDANIEL: Object to the form.

THE WITNESS: That is a correct statement, except for between cleanup.

Q (BY MR. GARREN) Do you know whether or not a layer that sits in a house all year makes more or less poultry waste than five flocks of broilers who grow into the -- in a barn for that same one-year period?

A Based upon information I have seen, I know that.

Q What do you know?

A That the five flocks of birds would generate more waste than that one that stays in there throughout the year.

Q Okay. And what -- how do you know that?

A From information I've received.

Q Looking at Exhibit 7 briefly, you were asked about page 528 of that exhibit, I believe, and it's the sampling taken under 4-B, Subparagraphs little I, little II, little III.

Do you see that?

A Yes, I'm there.

Q I believe there's a question about whether or not that's in compliance with what ODAFF requires.

Do you remember that former question?

A Yes.

Q Let's examine that for a second.

What is it that is set forth in the fact sheet that ODAFF relies on in order to take a soil sample?

A Six-inch soil sample is what generally you're in reference to, of the OSU Fact Sheet.

Q And how many samples are normally taken?

A Normally there are 20 cores that are taken in a 48-acre field.

Q Do you know how many cores the protocol calls for, in Exhibit 7, of these three different samplings?

A I can total it up, but there's lots more, and it would be in addition to what the present laws and rules are in the OSU Fact Sheet.

Q So maybe it's not in conformity.

But in fact, there's more sampling being conducted under this protocol than what the State relies on in the OSU Fact Sheet; is that true?

MR. McDANIEL: Object to the form.

THE WITNESS: Yes. That is in addition to -- what is on Bates 528 is in addition to and even more than what is required by the law.

Q (BY MR. GARREN) Looking now at Exhibit 10, if you would, please, sir.

A Yes.
Q Looking at the second page of that document, paragraph 11 at the bottom, read what that says.
A Starting with 11, Settlement Agreement?
Q Yes, sir.
A 11: "'Settlement agreement' means the settlement agreement dated July 16th, 2003, between the parties and the City of Tulsa case."
Q Do you know who those parties are that's referenced in that statement in that legislation?
A Poultry Integrating Companies.
Q And the City of Tulsa?
A And the City of Tulsa filed the lawsuit, yes.
Q And this legislation required ODAFF perform or create certain rules; is that correct?
A Yes. That's correct.
Q And is the rules that it created -- is one of those referencing a phosphorus index?
MR. GRAVES: Object to the form.
THE WITNESS: Yes, that's correct.
Q (BY MR. GARREN) Did ODAFF create

that phosphorus index?

A No. The Eucha-Spavinaw Phosphorous Index was created as a result of the lawsuit -- and as I understand it, the poultry companies, in conjunction with the City of Tulsa.

Q So by its terms, there must be an agreement.

Would you agree with --

MR. McDANIEL: Object to the form.

THE WITNESS: I have understood there was an agreement between the poultry companies and the City of Tulsa, in developing that Eucha-Spavinaw index.

Q (BY MR. GARREN) You mention that ODAFF has four and a half inspectors.

Is that what I understood you to say?

A Four and a half poultry inspectors, yes.

Q And are all those four and a half poultry inspectors delegated to solely the Illinois River watershed?

A No, sir.

Q What is their boundaries in which they're required to perform their tasks?

A Each one of them are required to work within a certain territory. That territory was originally defined by me.

Q Do those four and a half inspectors cover the entire state of Oklahoma?

A Yes, sir.

Q Where there are poultry operations?

A Yes, sir.

Q When they do an inspection, what's required of them?

A What's required of them. When they do a annual inspection, they're required to fill out a form, with a great deal of the information coming from the registered poultry operation, that they put on that form, and submit it to the Department.

Q Do they check records that are in the possession of the grower?

A They check only a few of the records -- for instance, we've sold and given away. But a very small portion of the records.

Most of the information is given to them by the poultry grower, for them to complete that form.

Q Once they complete that form, what

else are they expected to do at the time of that annual inspection?

A They then submit that form to the Department, and then the Department looks and see if -- what was given by the poultry operation to the inspector, on that form, if they are in compliance with the laws.

Q And you do that from what's on that form?

A From what's on the form that in most cases was given to them by the poultry operation.

Q Looking briefly at Exhibit 13, if you would, sir.

A Yes, I'm there.

Q I believe Mr. McDaniel pointed out that Mr. Smolen made the statement in this that poultry litter can be used as a soil amendment.

Do you remember that?

A Yes, I do remember that.

Q Does poultry waste contain bacteria?

A Yes.

Q Is it susceptible to run off -- bacteria in the poultry waste?

MR. McDANIEL: Object to the form.

THE WITNESS: Yes. Of course, the

poultry waste is susceptible to run off, and bacteria is part of that poultry waste -- bacteria that includes fecal coliform, coliform, E-coli, and others.

Q (BY MR. GARREN) And is that the kind of bacteria that might be harmful to the environment?

A Yes.

Q Is that kind of bacteria that may be harmful to humans?

A Yes, it can be.

Q Do you know whether or not poultry waste and/or -- let me ask it this way.

Do you know whether bacteria can leach through the soil?

MR. McDANIEL: Object to the form.

THE WITNESS: Yes, it can.

Q (BY MR. GARREN) Mr. McDaniel asked you whether or not cattle waste could be significant.

Did you understand what he meant by the term "significant"?

MR. McDANIEL: Object to the form.

MR. GARREN: Okay.

Q (BY MR. GARREN) Did you understand

what he meant?

A I'm not sure what he meant. I took it "significant," but I didn't have anything to back that up. It was just an opinion.

Q Let me ask you this, sir. Have you made any study to determine the amount of cows versus the amount of poultry are contained in the Illinois River watershed?

A I have not.

Q Have you been provided any such study that would give you the basis in order to make such an opinion?

A No.

MR. GARREN: No other questions.

REDIRECT-EXAMINATION

BY MR. McDANIEL:

Q Mr. Parrish, there are a couple lines of questions that Mr. Garren asked you, and I'm not going to put words in Mr. Garren's mouth, but I got the implication that he was asking you to suggest that poultry growers may just be lying to your department on the documents they submit to your people.

Is it your testimony here today that you believe that there is a wholesale

falsification of records being submitted to your document (sic) by registered poultry feeding operators?

A That is not my testimony, in the words that you have put it in. I could put my testimony in my words, not in the words you put it in.

Q But you're not making an accusation that, by and large, registered poultry feeding operators submit false documents to your department or plan writers for your department?

A I am not making that as part of my testimony, the way you just worded it.

Q The issue about the ability of bacteria to move in the environment, the gentlemen -- the soil scientists that work for ODAFF, that draft these animal waste management plans, is it your understanding that they understand how bacteria moves in the environment?

A I believe they do, as having the title of soil scientist.

Q All right. Thank you.

MR. McDANIEL: That's all.

MR. JANTZEN: Tyson will reserve its remaining time and rights to redepose him.

MR. McDaniel: Are you going to ask the questions or do you want to ad- --

MR. GARREN: He's going to read and sign it.

I'm not sure what it is you're reserving down there, Mr. Jantzen.

MR. JANTZEN: The ability to redepose Mr. Parrish at some future time.

MR. GARREN: Well, it states on the record, your opportunity to do so is today. We would object to any attempt to do so again.

MR. JANTZEN: And we're on the record otherwise.

THE REPORTER: Okay. Just real quick. Mr. McDaniel, are you ordering a copy of the transcript?

MR. McDANIEL: Yes, ma'am. And video and e-tran. You're going to e-mail the draft tomorrow?

THE REPORTER: Yes.

And, Mr. Graves?

MR. GRAVES: Yes.

THE REPORTER: Do you need a rough draft also?

MR. GRAVES: Yes.

THE REPORTER: Mr. Sanders?

MR. McDANIEL: We have a deal. So when we get done, we can discuss this. We've been trying to work something out.

THE REPORTER: Mr. Sanders?

MR. SANDER: I've got your card. I'll call you.

THE REPORTER: Mr. Jantzen?

MR. JANTZEN: Yes.

THE REPORTER: Do you need a rough draft also?

MR. JANTZEN: Yes.

THE REPORTER: Mr. Lennington?

MR. LENNINGTON: Yeah, just to --

THE REPORTER: Mr. Garren?

MR. GARREN: Right.

THE REPORTER: And you don't need a rough draft?

MR. GARREN: No.

(Deposition concluded at 5:13 p.m.)

ERRATA SHEET

DEPOSITION OF DANIEL JOSEPH PARRISH

REPORTED BY: LANA L. PHILLIPS, CSR, RPR

DATE OF DEPOSITION TAKEN: JANUARY 14, 2008

PR FILE NO. 9833

PAGE	LINE IS	SHOULD BE

JURAT

STATE OF OKLAHOMA, ET AL. V. TYSON FOODS, ET AL.

STATE OF OKLAHOMA)
)SS:
COUNTY OF _____)

I, DANIEL JOSEPH PARRISH, do hereby state under oath that I have read the above and foregoing deposition in its entirety, and that the same is a full, true, and correct transcription of my testimony so given at said time and place, except for the corrections noted.

_____
DANIEL JOSEPH PARRISH

Subscribed and sworn to before me, the undersigned Notary Public in and for the State of Oklahoma, by said witness, on this, the _____day of _____ 2008.

_____
NOTARY PUBLIC

My Commission Expires: _____

(LP) PR FILE #9833

CERTIFICATE

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA)

I, LANA L. PHILLIPS, Certified Shorthand Reporter within and for the State of Oklahoma, do hereby certify that the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the case aforesaid, taken in shorthand and thereafter transcribed; that the same was taken pursuant to stipulations hereinbefore set out; and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16th day of January 2008.

_____

Lana L. Phillips, CSR, RPR
CSR No. 01776

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