1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY
2 STATE OF OKLAHOMA
3
4 JOEL J. REED, RHONDA REED,)
JIM L. PIGEON, MICHELLE R.)
5 PIGEON, KENNETH GLENN,)
FRANKLIN GLENN, JULIE)
6 ANDERSON CHANCELLOR and)
BILL ANDERSON)
7)
Plaintiffs,)
8 vs.) Case No. CV-2005-8975
)
9 STATE OF OKLAHOMA, ex rel)
THE DEPARTMENT OF AGRICULTURE)
10 FOOD AND FORESTRY)
)
11)
Defendant.)
12
13 DEPOSITION OF TERRY PEACH
14 TAKEN ON BEHALF OF THE PLAINTIFFS
15 IN OKLAHOMA CITY, OKLAHOMA
16 ON APRIL 18, 2006
17
18
19 REPORTED BY: ANDREA J. GORMAN, CSR, RPR
20
21
22
23
24
25

Exhibit N

APPEARANCES

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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties hereto that the deposition of TERRY PEACH may be taken on behalf of the Plaintiffs on the 18th of April, 2006, in Oklahoma City, Oklahoma, by Andrea J. Gorman, Certified Shorthand Reporter within and for the State of Oklahoma, pursuant to notice.

IT IS FURTHER STIPULATED AND AGREED by and among the attorneys for the respective parties hereto, that all objections except as to the form of the question and the responsiveness of the answer, are reserved until the time of trial, at which time they may be made with the same force and effect as if made at the time of the taking of this deposition.

IT IS FURTHER STIPULATED AND AGREED by and among the attorneys for the respective parties hereto that the time of filing of this deposition is expressly waived.

* * * * * *

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TERRY PEACH,
after having been first duly sworn at 10:01 a.m., deposes and says in reply to the questions propounded as follows, to wit:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q Secretary Peach, would you please state for the Court your true and correct name?

A Yes, Terry Peach.

Q Mr. Peach, Secretary Peach, we met just a moment ago, and as I indicated then, I'm Ken Williams. I represent the named growers in the Oklahoma County declaratory action. Are you familiar with that matter?

A Yes, sir.

Q Would you please tell Judge Swinton the nature of your current employment?

A Yes, I'm the Secretary and the Commissioner of Agriculture for the State of Oklahoma.

Q So referring to you by either Secretary or Commissioner is an accurate title for you?

A Yes, that would be fine.

Q And how long have you been serving in that capacity?

A Since the Governor Brad Henry administration came into office.
Q And how long ago was that?
A March of '03.
Q If I refer to your agency, which I guess its formal name is the Department of Agriculture Food and Forestry, if I refer to that as ODAFF, will that offend you in any way?
A That would be fine.
Q Secretary Peach, are you familiar with some administrative warrants that were issued out of Delaware County to the named growers in this action, Joel and Rhonda Reed, Jim and Michelle Pigeon, Kenneth and Franklin Glenn and Julie Chancellor and Bill Anderson?
A Yes, I'm familiar that those warrants were served.
Q And were you the individual that directed that those be obtained?
A Yes, sir.
Q Can you admit for Judge Swinton that you directed that those be obtained and served at the request of the Office of the Attorney General of Oklahoma?
A Those were served jointly between the

Department of Agriculture and the Attorney General's office, yes.
Q But, again, my question was that you requested them at the request of the Attorney General's office?
A Yes.
Q Can you tell Judge Swinton just a bit about your background and your education?
A Yes, I'm a farmer and rancher from Woodward County in Oklahoma. Our families farmed and ranched there since 1898, we homesteaded there. Attended high school at Mooreland, Oklahoma, attended Oklahoma State University and got my BS there, returned back -- taught vocational agriculture in the state of Oklahoma, returned back to the farm, was there until 1993 farming and ranching, in the oilfield business. Served the Clinton/Gore administration as the Farm Service Agency director for USDA for the State of Oklahoma. Went back to the farm in 2000 and was appointed Secretary of Agriculture in March of 2003.
Q Do you continue to maintain your farming and ranching operations today?
A Yes, sir. My son manages those operations while I'm in this position.

Q Do any of your operations include the raising of poultry?
A No, they do not.
Q Do you have any personal experience in the raising of poultry on a large scale, commercial basis?
A No.
Q Have you had formal education or training regarding commercial poultry growing?
A No.
Q Would it be fair to say, then, that what you know about it you have learned on the job since you've been serving in your present capacity?
A Yes, and on the job when I was a state director of the Farm Service Agency with the USDA.
Q I'm not going to mark this, Secretary Peach, but I just want to show you the subpoena duces tecum which was issued, and ask you if you have had occasion to see that before today?
A Yes, I reviewed that document.
Q And as a result of receiving that document, what did you do in response to it?
A I attended the hearing today and had our legal staff provide whatever information was required.

Q So have you had any further involvement in the actual performance of the delivery of the documents requested or did you direct that to be done by others?
A I directed that to be done by others.
Q And did you have occasion to review any of the documents that were delivered in response to the subpoena duces tecum?
A No, I did not.
Q Can you tell Judge Swinton what you did to prepare for the deposition today?
A We just reviewed the information with the staff yesterday.
Q And what staff would that be?
A That would be the legal staff that's here with me today.
Q Okay. Without disclosing the conversations that you had with them, can you tell me what documents you reviewed, if any, in preparation for today?
A No, not exactly. If you would present those to me, I would be more than happy to say yes or no.
Q Again, I'm not going to mark this, Secretary Peach, I'm going to hand it to you for your

1 reference and ask you if you have previously seen
2 this pleading, which for the benefit of counsel is
3 the answer to the petition for declaratory judgement
4 filed in Oklahoma County?
5 A No, I have not.
6 Q Why don't you hang onto that, then.
7 I will hand you another document and ask
8 you if you have had occasion to see it. Again, for
9 the benefit of counsel, I'm handing you a petition
10 for declaratory judgment, temporary restraining order
11 and preliminary and permanent injunctive relief filed
12 in the Delaware County action on October 19, 2005.
13 MR. WEITMAN: Are you asking if he has
14 seen this?
15 MR. WILLIAMS: I am asking if he has ever
16 seen it before today.
17 A Yes, I have.
18 Q (By Mr. Williams) And I believe your
19 answer a moment ago was that you have not previously
20 reviewed the answer to the petition?
21 A No, I have not.
22 Q Which has been filed in the case on behalf
23 of ODAFF. Let's lay those side by side for your ease
24 of reference and kind of walk through that with me,
25 if you will.

1 If you will turn to the second page of the
2 answer, I will direct your attention to your Answer
3 Number 2 in which you indicate -- and when I say you,
4 I mean the Department or ODAFF has indicated -- that
5 you have no information sufficient to form an answer
6 with regard to our petition paragraphs 1 through 4.
7 If you will take just a moment to compare
8 those and I'll ask you again if that is an accurate
9 statement of yours and the Department's position?
10 A Yes, it is.
11 Q So you don't have any personal
12 knowledge --
13 A No.
14 Q -- nor does the Department have any
15 information to indicate that these growers are
16 residents of the locations indicated in the petition?
17 MR. WEITMAN: Object to the form.
18 THE WITNESS: What's that?
19 MR. WEITMAN: I'm just making my record
20 for objections. You can still answer his question.
21 Q (By Mr. Williams) That's probably a good
22 point for me to ask you, Secretary, before you go any
23 further.
24 Have you had your deposition taken before?
25 A Yes.

1 Q All right. So you are familiar with what
2 we're about.
3 Continue.
4 A Okay. My answer to this is, yes, that I
5 know that these are poultry feeding operations, yes;
6 2 through 4, yes.
7 Q Let's turn, then, to Number 3 of your
8 answer, and this is discussing our paragraphs 6
9 through 8. Let's focus in for a moment on our
10 paragraph 6 of the petition.
11 Your answer indicates that you deny that
12 the Department of Agriculture was acting through its
13 agents and employees as we discussed in this matter.
14 Do you deny that your department was doing
15 or performing the acts that we're discussing in this
16 lawsuit?
17 A That we're not --
18 MR. WEITMAN: Object to the form of the
19 question.
20 A I don't understand the question.
21 Q (By Mr. Williams) Let me try again.
22 Whenever the Department sought the
23 administrative warrants at the request of the
24 Attorney General, weren't the Department's employees
25 involved in that activity performing those activities

1 as employees of the Department?
2 A Yes, they were.
3 Q So would it be fair to say that with
4 regard to paragraph number 7, that since the
5 Department brought those administrative warrant
6 proceedings in Delaware County, that it believed that
7 was the proper place for the warrants to be sought?
8 A Yes.
9 Q Turn to your answer, then, Number 4. And
10 your answer number 4 is directed towards our
11 paragraph number 9 of the petition.
12 Isn't it correct, Secretary Peach, that
13 these named growers filed reports with your agency
14 that informed you whenever we are applying chicken
15 litter as fertilizer on our properties?
16 A Yes, you do.
17 Q Well, following up on that: Then if that
18 is the case, is it more accurate to say that you do
19 know, as a matter of knowledge of the Department,
20 that the allegation of number 9, that we do those
21 activities, i.e., applying litter as fertilizer, is a
22 true statement?
23 A Yes, it is.
24 Q Let's turn to number 5 of your answer.
25 Number 5, you are discussing our paragraph

1 number 10 of the petition. And you admit that these
2 growers are registered poultry growers under the
3 Oklahoma Registered Poultry Feeding Operations Act.
4 With regard to the second statement which
5 we suggest is a fact, that our farms are in
6 compliance with our nutrient management plan, you
7 have denied having sufficient knowledge to know the
8 truth of that in your answer, Number 5.
9 A State your question again.
10 Q I'm asking you if that is a correct
11 statement of your answer, that you have denied
12 knowing whether or not these growers are in
13 compliance with their nutrient management plan?
14 A I can't answer that question. I don't
15 know that answer.
16 Q Aren't each of these growers required --
17 I'll wait until you finish reviewing the question
18 again if that's helpful.
19 Aren't each of these growers required
20 annually to file reports with the Department that
21 provide the Department with information about their
22 compliance with the nutrient management plan?
23 A Yes, they are.
24 Q And isn't it the Department's legislative
25 mandate to annually inspect the farms of each of the

1 registered growers?
2 A Yes, we do.
3 Q And isn't the apparent intent of that
4 mandate to determine whether or not these growers are
5 in compliance with all of their registration
6 requirements, but certainly with regard to their
7 nutrient management plan?
8 MR. WEITMAN: Object to the form of the
9 question.
10 MR. WILLIAMS: If you care to elaborate,
11 I'll try to correct it.
12 MR. WEITMAN: Well, my concern is is going
13 to the intent of the statute.
14 Q (By Mr. Williams) You may answer.
15 A They are in compliance with the part that
16 we regulate and that we do not have any allegations
17 against them, but we -- just under the part of the
18 nutrient management plan and the litter that is
19 applied is the only thing that we would say that they
20 were under compliance with, yes, sir.
21 Q So you are agreeing that with regard to
22 these named growers and the area of regulation by the
23 Department of those nutrient management plans that
24 these growers are in compliance with your
25 requirements?

1 A Yes, they do file the plan -- yes, they do
2 have the nutrient management plan and they do file
3 their reports each year, yes, sir.
4 Q And you do perform your annual inspections
5 of their farms?
6 A Yes, sir, we do.
7 Q And for these growers, those inspections
8 have not resulted in notices of non-compliance; is
9 that correct?
10 A Yes, sir, that's correct.
11 Q So can you explain for Judge Swinton how
12 it is that you answered number 5 indicating that you
13 did not know whether that allegation of our
14 paragraph 10 was true and correct?
15 A Because all that we know that they are in
16 compliance with is because of the litter plans that
17 they apply, and not every part of the poultry law
18 that says there can be no runoff.
19 Q Can you point the Court to the particular
20 rule or statute to which you are referring you
21 indicate there can be no runoff?
22 A I could not, no.
23 Q So when you give that answer, you're
24 providing that answer based upon what?
25 A My knowledge of the statute, but I can't

1 refer it to you, but my legal staff could.
2 Q Okay. And when you are talking about
3 runoff, what type of runoff are you talking about,
4 Secretary?
5 A I'm talking about runoff that would occur
6 after rainfall or rainfall events that would cause
7 leaching or nitrogen phosphorus particles to leave
8 the property and enter streams and rivers.
9 Q Are you aware of any specific statutory
10 provision under your authorizing legislation, I mean
11 the Department's authorizing legislation, that
12 contains a prohibition on runoff that you just
13 described?
14 A I'm not aware, no.
15 Q Are you aware of any rule that the
16 Department has promulgated and adopted that prohibits
17 the runoff that you just described for Judge Swinton?
18 A No, I'm not.
19 Q Again, I'm not trying to inquire into
20 privileged communications, I'm asking what you have
21 done carrying out your responsibilities as the
22 Secretary of ODAFF. Have you directed that the
23 Department investigate runoff of applied materials,
24 as you described a moment ago, as a result of some
25 plan or policy that you are trying to create for the

first time at your agency?
A No, I have not.
Q How is it that you come to be involved in this type of activity, then? And by "this activity," I mean this -- this general exercise of the statute that you can't direct me to today.
A Because the Poultry Feeding Act says that there cannot be runoff, but the Department is not involved in water sampling, other agencies are.
Q And by "water sampling," are you talking about streams and rivers?
A Yes, sir.
Q Are you talking about ground water?
A Yes, sir.
Q So the Department has not, prior to these administrative warrants, sought to take water samples from growers' properties?
A Unless we had complaints that we would take action against.
Q Do you have any reason to believe, as we sit here today, that any of these named growers have had discharges of litter into a river or stream of the state?
A I can't answer that question. I have no idea.

Q So you are not operating under some type of a complaint by a citizen that they saw runoff from one of these named growers' properties that was running into a creek or stream; is that correct?
A No, no, we are not.
Q Has the Department, at your direction or otherwise, generated any rules that will allow you eventually to be involved in the water sampling aspect regulation that you are telling Judge Swinton about?
A Are you asking are we instigating new rules to do water sampling? No.
Q So if your department is not involved in water sampling, what agency will you team with or partner with to accomplish some water sampling event?
A If we had that request, we would do that for the conservation commission or the water board or any other state agency that asked us for cooperation.
Q Have you received a request from another state agency for cooperation in a water sampling event?
A No, sir.
Q Is ODAFF involved in any other poultry litter related litigation, other than the Oklahoma County declaratory action we're talking about today

and whatever lingering part of the Delaware County administrative warrant proceedings still exist?
A Not to my knowledge.
Q So specifically the Department is not involved in the Attorney General's lawsuit in the Northern District -- United States District Court, Northern District of Oklahoma?
A Well, yes, we'll be a partner in that, yes.
Q Are you a named party to that lawsuit?
A Yes, sir.
Q Let's turn, again, to the -- to your answers to our petition.
If you would look at -- I believe it's paragraph 6 of your answer, it is addressing paragraphs 11 and 12 of our petition. Were you present at the May 3rd, 2005 meeting with some of my clients and other poultry growers?
A Yes, sir, I was.
Q And at that meeting, do you recall being asked the question about why were you seeking these sampling events?
A Yes, sir.
Q And do you remember what your answer was, Secretary Peach?

A Yes, I remember that I -- my answer was that we were working in cooperation with the Attorney General's office to check for additional concerns about possible pollution of the Illinois River watershed.
Q So your answer was not that you didn't know why the Attorney General was seeking that information?
A That wasn't the question you asked me.
Q Well, let me ask you that question. Did you respond that you didn't know why the Attorney General was seeking that sampling information?
A No, I did not.
Q What was your response to that question?
A My response was that the Attorney General was seeking additional soil sampling for possible contamination of the Illinois River watershed and we were working jointly with them to do that sampling.
(Plaintiff's Exhibit No. 1 marked for identification and made part of the record)
Q (By Mr. Williams) I'm going to hand you what I have marked as Plaintiff's Exhibit Number 1. For benefit of counsel, I did not bring a multitude of copies -- it's the cooperative agreement between

1 the AG's office and ODAFF -- and ask you if you have
2 seen that document?
3 A Yes, sir, I have.
4 Q Whenever you mentioned a moment ago that
5 you were operating in cooperation with the Attorney
6 General's office, is this document a memorialization
7 of the cooperation between your office and the AG's
8 office?
9 A Yes, sir.
10 Q Okay. I see under paragraph 2 the
11 objective, that the stated objective was to take
12 poultry waste and soil samples to implement and
13 determine compliance with the Oklahoma Registered
14 Poultry Feeding Operations Act and the Oklahoma
15 Poultry Waste Applicators Certification Act.
16 I'll ask you, Secretary Peach, that
17 objective sounds as if it would be one sought by your
18 department, rather than by the Attorney General's
19 office; is that correct?
20 A Yes, it would be.
21 Q And how did you come to initiate, then,
22 this investigation of compliance, if it was your
23 office, rather than the AG's office that created that
24 objective?
25 A Because the Attorney General's office felt

1 like there are other components that may be leaving
2 poultry operations and have an affect on the
3 environmental standard of the Illinois River, and we
4 wanted to address that issue and see if that was a
5 possibility, so we were working jointly with them.
6 Q But you've already told the Court that
7 your agency does not really involve itself in the
8 sampling and regulation of rivers and streams; is
9 that correct.
10 MR. WEITMAN: Object to the form.
11 A That's actually incorrect. We don't test
12 the water, yes, sir, that's right, but the reality is
13 if there are additional nutrients, other than
14 nitrogen, phosphorus, potassium and pH, which is our
15 normal test, it is our responsibility to know if
16 there are other trace elements or arsenic or other
17 items that may be going into the streams and rivers,
18 so, yes, it is our responsibility to find out if
19 those contaminants are available and could possibly
20 be going into the Illinois River or any other
21 watershed.
22 Q And your authority for that stated
23 responsibility is what statute?
24 A It's the Poultry Feeding Act, we can
25 sample for anything that might be a contaminant. It

1 doesn't just state in the Poultry Feeding Act that we
2 can do nitrogen, phosphorus, potassium and pH.
3 Q Has the Department promulgated a rule that
4 puts growers on notice that the Department can sample
5 for any constituent it wants to sample?
6 A No.
7 Q Has the Department sought a formal opinion
8 from the Attorney General's office interpreting the
9 Poultry Feeding Act to determine whether or not any
10 such constituent can be sampled by the Department?
11 A No.
12 Q So in the absence of a rule or the
13 Attorney General's opinion, are you telling
14 Judge Swinton that your belief that that is the
15 Department's right is based upon your own review of
16 the statute and your own interpretation?
17 A And our legal staff's interpretation and
18 the fact that there is no limitation in the law that
19 says we can only check for nitrogen, phosphorus,
20 potassium and pH.
21 Q Your legal department's interpretation,
22 which you just described, has not been publicly
23 released or provided to the entities you regulate,
24 has it?
25 A State your question again.

1 Q I'll try it again.
2 You've indicated that -- you have two
3 bases upon which you believe the Department can
4 sample for basically anything you want to look at.
5 One is your legal department's opinion; and secondly,
6 that there is no limitation in the Act on what you
7 can sample and evaluate?
8 A Yes, sir.
9 Q And my question was: Has the legal
10 opinion generated by your staff been published for
11 your regulated community, so that they are aware of
12 that interpretation of the statute?
13 A Not to my knowledge, no.
14 Q So we have established that there is not a
15 rule that puts the regulated community on notice of
16 that interpretation, nor has there been a publication
17 of the opinion, is that an accurate statement of
18 where we are so far?
19 A I think we have established that the
20 statute doesn't give us any limitation; and,
21 therefore, without any limitation, we have the
22 authority to do that until it's challenged.
23 Q Which you would agree is what this lawsuit
24 is all about?
25 A Which you are doing today, yes, sir.

1 Q After the May 3rd, 2005 meeting, did you
2 request that the Department provide any further
3 information to the growers with whom you met?
4 A Not that I recall.
5 Q I will refer you back to your answer
6 number 6, in which the Department acknowledges with
7 regard to our paragraph 12, that Mr. Parrish sent a
8 May 18, 2005 memorandum to the growers.
9 A Okay. What's your question?
10 Q I'm trying to determine whether you are
11 familiar with that memorandum. I'm going to hand you
12 what has been marked as Plaintiff's Exhibit 2. And
13 I'll tell counsel present that's the transmittal
14 memorandum dated May 18, 2005, from D.J. Parrish of
15 the ODAFF.
16 (Plaintiff's Exhibit No. 2 marked
17 for identification and made part
18 of the record)
19 A Okay. Still, what's your question?
20 Q (By Mr. Williams) Are you familiar with
21 that?
22 A Yes, sir.
23 Q Was this the first time that the
24 Department published the constituents and parameters
25 that the Department was proposing to sample and

1 analyze from growers' properties?
2 A I can't tell you if it was the first time,
3 so I guess I would have to say I don't know.
4 Q Well, who developed this list of
5 constituents and parameters?
6 A Who developed the growers that we were
7 going to test?
8 Q No, let me try again.
9 Referring, again, to the Parrish
10 memorandum.
11 A Okay.
12 Q If you look on the second page, you'll see
13 there Table 1, Short List Parameters. And then on
14 the following page, you'll see Long List Parameters.
15 Who developed that list of parameters for soil and --
16 manure and soil?
17 A I cannot answer who developed that table.
18 I had nothing to do with it.
19 Q Can you tell me to whom I need to talk to
20 find out who developed that list?
21 A I'm assuming Dan Parrish might be able to
22 answer that question.
23 Q But if Mr. Parrish developed it, he did
24 not develop it at your direction?
25 A No.

1 Q Would you know if the Department had
2 engaged outside consultants to develop a list of
3 parameters like this?
4 A Mr. Parrish would have to answer that
5 question.
6 Q So you basically just don't --
7 A No, I don't know.
8 Q -- don't know where this came from or how
9 it came to be created?
10 A No.
11 Q So the memorandum that Mr. Parrish
12 generated was done without your involvement in the
13 preparation of the memorandum; is that correct?
14 A No, the first -- the cover letter and the
15 second page would be -- well, the cover letter would
16 be -- I would have been aware of that. And I'm sure
17 page 2 and 3 were probably developed between
18 Mr. Parrish and the Attorney General's office, but
19 he'll have to answer that question.
20 Q But, again, the question I was asking is:
21 You --
22 A Did I develop two and three, no. Was I
23 aware of the cover letter, yes.
24 Q All right. Thank you.
25 Is there anyone else at the Department to

1 whom you would direct me on the off chance that
2 Mr. Parrish is not the right person to ask the
3 question about who developed this list of parameters?
4 A It would be Teena Gunter if it was not
5 Mr. Parrish.
6 Q And is Teena Gunter --
7 A Yes.
8 Q And my question was: Is Teena Gunter an
9 employee --
10 A She is an employee of the Oklahoma
11 Department of Agriculture.
12 Q -- of the Department?
13 MR. WEITMAN: Commissioner, I know that we
14 get to talking and it's very casual, but we need to
15 wait for him to finish his question before you
16 respond. That way we get a clean record.
17 Q (By Mr. Williams) And she's part of your
18 legal staff; is that correct?
19 A Yes.
20 (Plaintiff's Exhibit No. 3 marked
21 for identification and made part
22 of the record)
23 Q (By Mr. Williams) Secretary, I'm handing
24 you another document which I have marked as
25 Plaintiff's Exhibit Number 3, and will tell counsel

that it is titled Summary of Agency Authority for Sampling, and ask you if you're familiar with that document?
A No, I'm not.
Q So you do not recall this being handed out at the May 3rd, 2005 meeting with the growers?
A No, I'm not aware of that. It may have been a document that Mr. Parrish handed out at that meeting.
Q But if this was generated by the Department, it was not done at your direction or request, is that a fair statement?
A No.
Q And would you direct me, then, to Mr. Parrish --
A Yes.
Q -- as well to inquire about that?
A Yes.
Q Thanks.
Look at your answer number 7, please, which is addressing our paragraph 13 of the petition.
A Okay. What's your question?
Q Were you aware, Secretary Peach, that the named growers, as well as other growers represented by my law firm notified the Department on May 23rd,

2005 that they were going to voluntarily participate in a sampling event?
A Yes, and in their parameters they said if we only did nitrogen, phosphorus, potassium and pH.
Q But you would agree that that offer was made even with conditions?
A Yes. Yes, sir.
Q Look at your answer number 8, which deals with our paragraph 14.
A Okay.
Q Is the Department's answer in number 8 a reflection of the testimony you've been providing to the effect that you believe the Department can sample for other constituents because there is no limitation?
A Yes, sir.
Q And we're talking about no limitation within your authorizing legislation?
A Yes, sir.
Q If I have questions for the Department, Secretary Peach, with regard to the sampling protocol that was proposed -- or at least published in the May 18th, 2005 memo from Mr. Parrish, would you be able to discuss those parameters any more than we have already talked about?

A No, I would not have additional information on that.
Q So if I wanted to inquire about why and what was the idea here, that's all going to have to be directed to somebody else?
A Yes, sir.
Q Secretary Peach, are you familiar with the sampling protocol that the regulated growers have been following historically in performing their annual sampling events?
A Are you going to provide me with a document on what you are talking about?
Q I would be happy to do that.
A I would be happy to look at it.
(Plaintiff's Exhibit No. 4 marked for identification and made part of the record)
Q (By Mr. Williams) I'm going to hand you what I have marked as Plaintiff's Exhibit Number 4. And, Counsel, that's the NRCS Nutrient Management publication 590.
Are you familiar with that?
A To some extent, yes, not detailed by any means.
Q I understand.

Secretary Peach, do you know who developed this document?
A Yes, NRCS with USDA.
Q And do the growers that ODAFF regulates utilize this document in their operations?
A They are required to, yes, sir.
Q And how is it that they are required to?
A Because it's the standard that's been accepted since the implementation of the Poultry Feeding Act.
Q So it's fair to say that ODAFF expects the growers to follow this procedure?
A Yes, sir.
Q Has ODAFF promulgated a regulation specifically directing the growers to follow this procedure?
A Yes, sir.
Q Do you know whether NRCS developed this procedure at the request of the Department?
A No, I do not know that.
Q Who would I need to talk to at ODAFF to determine how NRCS knew the management procedure 590 came to be adopted as the appropriate procedure?
A Whoever the director of that division would have been. I'm assuming it was Dan Parrish in

'98, when it was adopted.
Q Secretary Peach, I'm going to explore a few documents with you that you may or may not have seen.
A Okay.
(Plaintiff's Exhibit No. 5 marked for identification and made part of the record)
Q (By Mr. Williams) I have marked this as Plaintiff's Exhibit 5, if you'll notice in the lower right-hand corner there's a number, document Number 230 through 233, those were so marked when I received them from your department. Are you familiar with these handwritten notes?
A No.
Q Are you familiar with the handwriting, such that you can tell me to whom I would need to speak about these notes?
A No.
(Plaintiff's Exhibit No. 6 marked for identification and made part of the record)
Q (By Mr. Williams) I'm going to hand you what I'm marking as Plaintiff's Exhibit 6, and will again direct your attention to a number that was

placed on it by your department starting with Number 242, it's in the upper right-hand corner, to 245, and ask you if you're familiar with that document? It's titled Operations in the Illinois River Watershed.
A Yes, I am familiar with this document.
Q Can you tell me how this document came to be created?
A These are documents that we have on file at all time, it is a list of the growers and who the integrator is that they do business with and where their location is.
Q And was this specific Plaintiff's Exhibit Number 6 in existence prior to the date up in the upper right-hand corner of March 18, 2005?
A I have no idea when this document was created.
Q Well, you say that this document exists at all times or this information exists at all times, I think you said. Do you have a global database of all of the growers, their location and their integrated company?
A Yes, we do have.
Q Do you have the ability to search that on a watershed basis?

A I'm certain that we do.
Q Did you direct that a -- that this Plaintiff's Exhibit Number 6 be created?
A No, I did not.
Q To whom would you direct me to determine who caused this document to be generated?
A I don't know who caused it to be created. But I can see those three initials there that say DJP, which would be Dan Parrish.
Q So that would be a likely candidate to ask?
A He could probably provide you that answer, yes, sir.
(Plaintiff's Exhibit No. 7 marked for identification and made part of the record)
Q (By Mr. Williams) I'm handing you what I'm marking as Number 7, and will represent to you that, again, the numbers appearing this time in the lower left-hand corner are ones that were placed on there, I assume, by your department before they were delivered to me, and ask you if you have seen this particular document before today?
A This particular document? No.
Q Do you recognize the handwriting, the

notes that appear on the face of that document?
A No, but I recognize the initial, again.
Q Again, you would direct me to Mr. Parrish as a likely candidate?
A Yes, sir.
(Plaintiff's Exhibit No. 8 marked for identification and made part of the record)
Q (By Mr. Williams) I'm handing you what I have marked as Number 8, exhibit, the number in the right-hand lower corner is 300. I will ask you if you have had occasion to see that document before today?
A No.
Q Do you recognize the handwriting?
A No, not to be -- specifically to identify it and there is no identifying characteristics on there.
Q Can you read there on page 1, I believe it says meeting Dennis Faulk, Scotty Martin, family farm, and I'm having trouble reading it there myself, stop 9:00 a.m., I think, something to the effect swallow sample taken. Can you read that?
A Yes, I can read that.
Q Are you familiar with any sampling being

done on a Scott Martin family farm in April of 2005?
A No, I would not be.
Q To whom would you direct me to determine whether such sampling had been done?
A Mr. Parrish.
Q Again, Mr. Parrish.
(Plaintiff's Exhibit No. 9 marked for identification and made part of the record)
Q (By Mr. Williams) I'm handing you what I have marked as Number 9, and ask you if you can -- if you have previously seen this document.
A Have I previously seen it?
Q Yes, Secretary.
A Not that I recall.
Q Can you tell the Judge what is intended by the title Second Sort of Registered Poultry Feeding Operations in the Illinois River Watershed, tentatively identified for soil and waste sampling. What does that mean?
A I guess what this probably is, is a list of the integrators that have operations in this watershed.
Q So if I want to get details about it, again I would direct that question to Mr. Parrish; is

that correct?
A Yes, sir.
Q Turning with me back to your answer to our petition, if you would, Secretary. I would like for you to drop down to the page that says affirmative defenses, paragraph 17, the first affirmative defense. Actually I want to turn your attention to the third affirmative defense.
Are you familiar with the concept of the doctrine of unclean hands?
A No, I'm not.
Q So if I inquire as to why the Department thought these growers had unclean hands, would you be able to answer that question?
A No, I could not.
Q To whom would I need to address that question?
A I would assume to the legal department of the Department of Agriculture.
Q Did you have any personal knowledge that leads you to believe that these named growers are somehow bad actors?
A No, I do not.
Q Look with me, then, at the fifth affirmative defense. Are you familiar with the

concept of the doctrine of estoppel?
A No, I'm not.
Q So if I asked you why the Department thought estoppel was involved here, you would not be able to answer that question?
A I would not be able to answer that, no, sir.
Q Again, I would have to address that to the legal department?
A Yes, sir.
Q Are you aware of any occasion where any of these named growers were asked by the Department to provide access for the Department to conduct sampling events and any of these named growers specifically allowed the Department access and allowed the Department to take samples?
MR. WEITMAN: Object to the form.
A You need to restate that question.
Q (By Mr. Williams) I'll try.
Are you aware of any prior sampling performed by the Department itself on any of the named growers' farms?
A Am I personally aware of any?
Q Yes.
A No, sir.

Q In order to further explore that, because I take it by your answer that someone else in the Department might know that answer, you don't know that answer?
A I do not know that answer, but it is routine that we go to those farms and do sampling, and Mr. Dan Parrish is the director over that division and he's who I would direct that question.
Q Let's talk for just a second about that statement. Is it routine for the Department to go to farms and perform the sampling itself?
A Yes, if we have a complaint.
Q If you have a complaint.
Is it routine for the Department to go to a farm where there is not a complaint and perform sampling itself?
A Yes, we do go on occasion. Is it routine, no.
Q Is that normally accomplished through the voluntary cooperation of the grower?
A Yes, sir.
Q Do you know of another instance where administrative warrants have been sought to obtain the cooperation of a grower who declined to voluntarily participate?

A Not to my knowledge.
Q And we've already established that none of these named growers were the subject of a complaint or a specific investigation by ODAFF; is that correct?
A Not at this present time.
MR. WILLIAMS: Could we take just a very short recess?
(Break from 11:00 to 11:12 a.m.)
Q (By Mr. Williams) Secretary Peach, since you've had your deposition taken before, you know you are still under oath?
A Yes, sir.
Q We're still at this.
Circling back to the May 3rd, 2005 meeting with the growers again, do you recall any discussion with the growers about how they had occasion to be selected for this sampling on their properties?
A How they were selected?
Q Yes.
A Yes.
Q Did you tell the growers something to the effect that they were at least in part selected because they were considered to be good farmers?
A Not that I recall, no.

Q So if they recall you telling them that they were selected because they were good growers and seemed to be in compliance, that would not be an accurate reflection of your memory?
A Yes, it would be. They weren't out of compliance or we didn't have a complaint against any of those growers at that time, yes, sir, that's accurate.
Q So did you say, welcome to the meeting, we selected you because . . .
A Did I open the meeting like that, no.
Q What did you tell them? To the best of your recollection, what did you say about why they were selected?
A The intent of the meeting was that we would educate the growers on the process, let them have confidence that we were going out there not for any particular reason, that we were out to get them or anything, that we were trying to do honest and fair soil sampling, and the reason they were selected was because in a joint meeting between the legal staff of the Department of Ag, myself and the Attorney General's office, that we wanted a representative of each integrator in that area.
Q And out of those comments also came

recognition that they were currently in compliance, as far as the Department knew?
MR. WEITMAN: Object to the form.
A My answer to that would be that I don't think the compliance word was said, but the reality is that we didn't have any complaints against them at that time or their farms weren't under any kind of investigation.
Q (By Mr. Williams) Would you turn back, please, to Plaintiff's Exhibit 2, that's the May 18, 2005 memo from Mr. Parrish.
A Okay.
Q If you'll look at the table 1, the short list of parameters, and I recognize that you don't know how we came to have these from your prior testimony, but just bear with me a moment.
In the soil, which is the table 1 list, didn't I hear you say that part of what you were doing was trying to determine whether specific constituents were leaving the farmers' property where litter had been applied and being transported to waters in the state?
A No, I didn't say that at all.
Q Okay. So you are not interested in whether specific constituents are traveling from the

farmers' property to the waters in the state?
A Yes, we are interested in that.
Q How is that different than what I just asked you?
A We have to first find out if they are in excess in the soils.
Q And for any field to which a farmer applies litter, is not that farmer required to perform soil sampling and provide the Department with the results of the analysis of those soil samples?
A Yes, sir.
Q And wouldn't the Department have the information about the soil and whether there were excessive levels that regulated constituents as a result of those annual sampling events?
A Yes, on the regulated. But as I mentioned earlier, the Attorney General's office had brought concern that there were additional contaminants that might be in the soil, and that's what we were testing for here.
Q So for these constituents that ODAFF has not previously been regulating, is that a fair statement, that you have not previously be regulating certain constituents that you are now trying to investigate?

A No, we regulate them all, all the time, it has just never been brought to our attention that they might be in excess.
Q Secretary Peach, if it has now been brought to your attention that there may be excesses in the soil of these farms to which litter is applied, and those excesses would be certain constituents you have not previously been looking at, wouldn't the appropriate thing for the Department to do be to promulgate some rules to provide guidance for the regulated community about those constituents of concern?
MR. WEITMAN: Object to the form.
A Again, my answer would be, first of all, we have to see if they are there, and we have the authority already in the statute, so we don't have to promulgate a rule.
Q (By Mr. Williams) Leaving now the issue about whether or not these new constituents of concern are present in the soil, let's get back to transport to the waters of the state.
Isn't one of the goals of the sampling events to determine whether these new constituents of concern and the old regulated constituents are being transported from the farmers' farms to waters of the

state?
A Before we can determine if they are being transferred to the waters of the state, we have to do soil sampling to find out if they are in the soils in an excess manner, so that would be a follow-up, if they are there in excess.
Q And in excess of what, Secretary Peach?
A Of an appropriate standard level.
Q And if the statute doesn't spell out the appropriate level of those constituents, who is going to determine the appropriate levels?
A Well, there is soil fertility standards that are accepted nationwide, based upon -- based upon university standards.
Q Back up and just assume I'm ignorant. What standards are you talking about, Secretary Peach?
A You ask me the question again.
Q I will try.
You are indicating, if I'm understanding your testimony, that part of what ODAFF is doing in cooperation with the AG's office is to look at levels of certain constituents in the soil of the farms to which litter has been applied; is that correct?
A Yes.

Q Then you indicated that if certain constituents are present beyond appropriate levels in the soil, you would have follow-up investigation about whether those constituents were being transported to the waters of Oklahoma; is that correct?
A Yes.
Q And my question then was: If these constituents are not specifically identified in your authorizing legislation, who establishes what these appropriate levels of the constituents in the soil should be?
A And it would be the scientific community, not anybody at the Department of Agriculture.
Q I didn't hear you.
A Someone in the scientific community, whether it be a university or a soil specialist, not anyone at the Department of Agriculture.
Q So are you telling Judge Swinton that the Department is going to have to rely on some outside source to establish the appropriate levels of constituents in the soil of these farms?
A Yes, sir.
Q And as we sit here today, if a farmer is trying to determine for him or herself whether they

have excesses in their soil, what is the standard that that farmer can use today?
A We have the standards established today for the nitrogen, phosphorus, potassium, pH, like we talked about.
Q Right.
A So these soil samplings were to find out if there were others there that were in excess, and then we'll see what those standards are based on scientific knowledge and information.
Q So you are telling Judge Swinton that there isn't a statutory standard for these new constituents of concern; is that correct?
A No, I'm saying that we have the statutory responsibility to find out if they are there and then refer those results of the soil tests to scientists to see if they are within the limitations.
Q I appreciate that answer, but the question is: Can you point Judge Swinton to a statute, for example, that would have an appropriate level of aluminum that could be present in a farmer's soil?
A No.
Q The same question for phosphorus?
A Phosphorus, yes, we can.
Q Just checking to see if you are listening.

1 The same question for arsenic?
2 A No.
3 Q For copper?
4 A No.
5 Q Zinc?
6 A No.
7 Q How about Millich 3 phosphorus?
8 A No.
9 Q Soluble phosphorus?
10 A Yes.
11 Q Soluble nitrate?
12 A Yes.
13 Q Total nitrogen?
14 A Yes.
15 Q Soluble ammonium?
16 A If you are going to continue to ask
17 specifics, you are going to have to get a scientist
18 to answer your question, or a specialist.
19 Q I'm just trying to determine whether we
20 can tell Judge Swinton that there are specific
21 statutory levels or standards for anything other than
22 the historically regulated constituents that the
23 farmers are used to testing for.
24 A No, we cannot.
25 Q If we cannot, then that answers my

1 question.
2 A No, we cannot.
3 Q Turn back, again, to Plaintiff's Exhibit
4 Number 1, the cooperative agreement, is there a
5 designated ODAFF representative to coordinate with
6 the Attorney General's office on this agreement?
7 A One designated person?
8 Q Yes.
9 A I guess that would be, yes, Janet Stewart,
10 the director of our legal staff. And she may direct
11 you to one of her staff members that she's assigned
12 to that.
13 Q Are you aware of whether there is a
14 designated representative of the Attorney General's
15 office to coordinate with ODAFF on the performance of
16 this cooperative agreement?
17 A Yes, I'm certain it's Kelly Burch, she
18 signed it.
19 Q On page 2 of the cooperative agreement,
20 under paragraph Roman Numeral II B, it indicates that
21 the Oklahoma Attorney General will attempt to recover
22 the costs of the sampling events through any
23 settlement, court order or other recovery as allowed
24 by law.
25 Would sampling events that occur during

1 just the ordinary course of ODAFF's operations be
2 included in this cost recovery item B?
3 A If we were doing a cooperative agreement
4 any time with their office, yes, it would be.
5 Q Let me give a specific example just to
6 make sure I understand. Take Mr. -- my client
7 Mr. Pigeon.
8 A Okay.
9 Q Mr. Pigeon, I think if he was here, he
10 will tell you he doesn't like record-keeping, he made
11 a mistake recently. ODAFF indicated that his report
12 had a problem and asked to come out and do a sample.
13 He cooperated in that, sampling occurred, everything
14 was fine, the record was corrected. There was no
15 complaint and it turned out that there wasn't any
16 noncompliance, just a record problem.
17 Would the cost of that sampling event be
18 one that would be recovered under the cooperative
19 agreement?
20 A No, it would not, that would be our normal
21 routine operation at the Department of Agriculture.
22 Q So would it be fair to say that my clients
23 should not be concerned about cost recovery against
24 them with regard to their annual inspections or
25 normal course of dealings with the Department?

1 A That's correct.
2 MR. WILLIAMS: Give me one second. I
3 think I'm ready to pass the witness.
4 (Plaintiff's Exhibit No. 10 marked
5 for identification and made part
6 of the record)
7 Q (By Mr. Williams) Secretary Peach, I'm
8 marking this as an exhibit and I will represent to
9 you it's just a copy of a portion of the statutes
10 under which your department operates, Title 2,
11 Section 10-9.10. I direct your attention to that
12 first page, paragraph capital A1B and ask you to read
13 that to yourself.
14 A Okay.
15 Q Secretary Peach, would you agree with me
16 that if the Department has not promulgated rules
17 pertaining to these sampling events that arise not
18 out of a complaint or not out of noncompliance, but
19 rather just an investigation such as your
20 coordinating with the AG's office, that the farmers
21 might consider that an unreasonable search and
22 seizure of their property?
23 MR. WEITMAN: I'm going to object to the
24 question as requiring a legal conclusion. We have
25 not established that he is any type of constitutional

1 scholar or anything of that nature, and further, I
2 don't know if he can attest to what the growers might
3 believe.
4 MR. WILLIAMS: Let's ask it a different
5 way.
6 Q (By Mr. Williams) You've indicated
7 previously that you are interpreting your legislation
8 to authorize you to do anything that is not
9 specifically prohibited in the way of sampling and
10 analyzing constituents; is that correct?
11 A Yes, sir.
12 Q And that was based upon your
13 interpretation of the statute.
14 I'm asking you, then, if you are able to
15 interpret the statute, what does sub part B mean to
16 you?
17 MR. WEITMAN: I will have the same
18 objection.
19 A Part B means to me that we should not
20 violate their constitutional right. And my response
21 would be that we are not violating their
22 constitutional right when they determine that they
23 want to have a registered poultry feeding operation
24 in the state of Oklahoma that they must provide by
25 the laws and the statute. And we do have the right

1 to do the sampling, and if they choose not to operate
2 within that right, they should withdraw their poultry
3 feeding operation license and return that license to
4 us.
5 Q (By Mr. Williams) Your suggestion to the
6 Court, then, is if the poultry grower doesn't like
7 the Department sampling for anything they want to,
8 they should just quit being a registered farmer; is
9 that a fair restatement?
10 A Yes.
11 (Break from 11:31 to 11:41 a.m.)
12 Q (By Mr. Williams) Secretary Peach,
13 turning back again to my favorite exhibit, the
14 May 18th memorandum, it is Exhibit Number 2. Now, if
15 we assume for the moment that ODAFF is -- has
16 satisfied itself that some constituents of interest
17 are present on a particular farmer's property in
18 excess of some standard, I think you indicated that
19 then you would want to investigate whether that
20 constituent was being transported to the waters of
21 the state; is that correct?
22 A Yes.
23 Q Does the Department have any reason today
24 to believe that, for example, arsenic is being
25 transported from any of these named growers' fields

1 to the waters of the state of Oklahoma?
2 A The Department does not have a concern,
3 but in the cooperative agreement with the Attorney
4 General's office, they have a concern about that, so
5 it's our responsibility to the environment, to
6 protect the people in the state of Oklahoma, that we
7 find out if that's accurate, and that's why we are
8 doing the soil testing.
9 Q And if I would ask you that question about
10 all these items that we were talking about
11 previously, other than the historical regulated
12 comment --
13 A It would be the same answer.
14 Q -- it would be the same answer?
15 And by using the language, the Department
16 does not have a concern, do you mean that you don't
17 have evidence today of that occurring?
18 A No, not on file.
19 Q You do not have evidence on file of that
20 transport occurring as we sit here today?
21 A Yes, that's accurate.
22 Q Secretary Peach, does the Department
23 consider chicken litter to be a hazardous waste?
24 A The Department doesn't consider poultry
25 litter to be a hazardous material, but anything used

1 in excess, and I want to emphasize anything, can be
2 hazardous material.
3 Q Does the Department have a specific
4 legislative area of responsibility to regulate
5 hazardous materials?
6 A No, we do not.
7 Q What state agency, if you know, would
8 regulate hazardous materials?
9 A I can't answer that question.
10 MR. WILLIAMS: I pass the witness.
11 (Discussion off the record)
12 MR. ELROD: I intend to ask
13 Secretary Peach questions. It is my understanding
14 you're telling me I cannot do that?
15 MR. WEITMAN: That's correct, sir. You
16 represent Simmons Foods, they are not a party to this
17 case. You have no stand to ask questions in this
18 matter.
19 MR. ELROD: Let me make a record. We
20 participated previously in a matter before
21 Judge Swinton. The cases were consolidated in
22 Delaware County. We have filed a motion to intervene
23 in this case, if you do not permit me to ask
24 questions of Secretary Peach today, it will be
25 necessary for us to reconvene this event, impose,

1 again, on the Secretary's time, impose upon my time
2 and the time of everybody in this room. I count 1,
3 2, 3, 4, 5, 6, 7, 8, 9, 10 people, in addition to the
4 court reporter present today, that's a lot of hourly
5 rate and that's a lot of money, that's a lot of time
6 and consideration. I have about 30 minutes of
7 questions. It makes absolutely no sense from a
8 logistical standpoint, from a comity standpoint or
9 any other standpoint that you would not permit me to
10 ask questions in this case.
11 MR. WEITMAN: Sir, I don't have a copy of
12 your motion to intervene. I certainly don't have an
13 order permitting you to intervene. I'm aware that
14 you presented at a hearing and I believe
15 Judge Swinton asked you, if you wanted to be a part
16 of this proceeding, to go ahead and file a motion,
17 get an order permitting you to intervene. I'm not
18 aware of that occurring.
19 Do you have a copy of that?
20 MR. ELROD: No, I do not.
21 MR. WEITMAN: As long as I am not aware of
22 your people being parties to this matter, sir, and
23 you have had plenty of time to make them parties to
24 this matter at this point, it has been two or three
25 months since that hearing, I am not going to have

1 non-parties questioning the Commissioner and ganging
2 up on the Commissioner. It's not going to happen
3 here today.
4 MR. ELROD: So we are going to have to
5 reconvene this session, then, after my intervention?
6 MR. WEITMAN: If the judge permits you,
7 sir. You have had plenty of time to get your people
8 intervened in this matter and you haven't done it.
9 The judge may allow you to reconvene, may not, but
10 that's something we will have to take up with the
11 judge.
12 MR. ELROD: You are not going to
13 voluntarily permit the Secretary to be deposed by me,
14 I'm going to have to do it by motion?
15 MR. WEITMAN: That's correct.
16 MR. ELROD: After we intervene?
17 MR. WEITMAN: That's correct.
18 MR. ELROD: We need a few minutes.
19 MR. WILLIAMS: We will let you have the
20 room and I'll get us a different room.
21 (Discussion held off the record)
22 (Break from 11:49 to 12:13 p.m.)
23 Q (By Mr. Williams) Secretary Peach, I
24 guess I didn't mean it when I said I passed you.
25 I have just a couple more questions. I

1 appreciate your patience.
2 If you recall, I asked you earlier whether
3 you knew of any specific complaints against my
4 clients, my named growers in this dec action, and I
5 think that you indicated that you're not aware of any
6 specific complaints or specific investigations of
7 noncompliance with regard to my clients.
8 A related question: Are you aware of any
9 specific complaints directed towards other growers in
10 the Illinois River watershed, which I guess would be
11 the list which I showed you on Plaintiff's Exhibit
12 Number 7?
13 A I wouldn't be able to answer that
14 question. We have complaints and concerns at various
15 times, so I could not answer that accurately today,
16 no.
17 Q Who would be the right person to follow up
18 to determine whether any of the people listed on
19 Plaintiff's Exhibit 7 had had specific complaints
20 asserted against them?
21 A If they had ever had complaints against
22 them?
23 Q Let's say in the last five years.
24 A Dan Parrish.
25 Q Dan Parrish. Okay. Can you sort of work

1 me through the enforcement process? You are
2 certainly chief of your department. But is it fair
3 to say that you don't normally get involved directly
4 in enforcement actions?
5 A Exactly. I don't get involved. Dan would
6 be the one to answer that question and he would work
7 jointly with the legal division on all enforcement
8 actions.
9 Q If there was a complaint, just pick a
10 person, complaint against Farmer Brown, and it comes
11 in to your department, what is the process that the
12 Department follows to follow through on that
13 complaint?
14 A Of course, that complaint would come to
15 Mr. Parrish, the director of the division, and then
16 he would look at the complaint and then assign
17 specific people to follow up. But specific steps, he
18 would have to answer that question, also.
19 Q Okay. And I'm sorry, you've told me at
20 least a couple times, his title is . . .
21 A The director of environmental management
22 services division.
23 Q And is that division charged with
24 enforcement responsibility?
25 A Yes.

1 Q But in order to find out who all is
2 involved in the enforcement process, I'm going to
3 have to ask Mr. Parrish?
4 A Mr. Parrish, yes, sir.
5 Q Do the field inspectors report up to his
6 department, as well?
7 A Yes, sir. Yes, sir.
8 Q And you keep referring to ODAFF's legal
9 department, I've met Mr. Levitt, David Levitt, is he
10 with the legal department?
11 A Yes, David is with the legal department,
12 but I refer those questions to the director of the
13 legal division and her name is Ms. Janet Stewart.
14 Q And, again, she is --
15 A The director of the legal division.
16 Q As secretary of ODAFF, you are familiar
17 with who is your, what I would call, in-house legal
18 staff, aren't you, sir?
19 A Yes.
20 Q And that would be Janet Stewart and as I
21 said, I know Mr. Levitt, I met Mr. Woodruff. Any
22 other in-house attorneys with the department?
23 A Yes, Teena Gunter works probably more
24 directly with Mr. Parrish on these issues, and I
25 mentioned that name previously, also.

1 Q Correct. And then other attorneys that
2 work with the Department, are those sourced out of
3 the Attorney General's office, for example,
4 Mr. Weitman is with you today, but he's part of the
5 Attorney General's staff, isn't he?
6 A Yes, and like I mentioned earlier, we work
7 jointly with the Attorney General's office on many
8 occasions.
9 Q Is it typical to use the Attorney
10 General's staff on enforcement actions, if you know?
11 A On cases of this magnitude, yes, sir.
12 Q And you said this magnitude. What are you
13 talking about?
14 A A challenge of the statute and our
15 authority.
16 Q Like this declaratory action we are
17 talking about today?
18 A Yes, like this dec action we're here for.
19 Q A little earlier today I think I asked you
20 if ODAFF was a party to the Northern District case
21 and I think you indicated that it is a party?
22 A Yes.
23 Q I don't remember whether I asked you if
24 the Northern District case was filed at your request?
25 A No, it was not.

1 Q Was it filed at the request of the State
2 Board of Agriculture?
3 A I think it was filed jointly with the
4 Attorney General's office.
5 Q But, again --
6 A But I don't actually know the correct
7 answer to that question.
8 Q So you don't know whether --
9 A No.
10 Q -- the State Board of Agriculture
11 requested that the lawsuit be filed?
12 A No. I guess one other thing, I don't know
13 what that has to do with the dec action.
14 Q You are familiar with animal waste
15 management plans?
16 A Yes, sir.
17 Q If a grower is in compliance with their
18 animal waste management plan, which I think you've
19 indicated my main clients are, as far as you know, in
20 compliance with their plans, does that mean that
21 they're in compliance with the law, as far as the
22 Department is concerned?
23 A All the provisions of our authority? No,
24 that would not mean that.
25 Q But we've already established unless there

1 is a specific complaint, then as far as you know, the
2 growers are in compliance with your requirements, are
3 they not?
4 MR. WEITMAN: Object to the form.
5 A Restate the question in a clearer manner.
6 Q (By Mr. Williams) Unless you have
7 received a complaint about a grower, or unless you
8 have independent reason to believe there is
9 noncompliance and the grower has provided reporting
10 and sampling and analytical data demonstrating
11 compliance with their animal waste management plan of
12 the requirements of their permit, they're in
13 compliance at that point in time as far as the
14 Department is concerned, aren't they?
15 A Yes, they would be in compliance, yes.
16 Q Bear with me a moment, Secretary.
17 Secretary Peach, are you familiar with the
18 term agronomic rates?
19 A Just in a very general knowledge, not
20 enough to answer specific questions.
21 Q Who with the Department would be the
22 proper person to ask about agronomic rates, if not
23 you?
24 A Dan Parrish.
25 Q Dan is the go-to guy?

A This is Dan's division.
Q Secretary Peach, you weren't present at the only hearing I can recall we've had in front of Judge Swinton, were you?
A No, sir.
Q I could probably dig the transcript out and find the statement, but I seem to recall the judge making a comment to the effect that it appeared that the administrative warrant proceeding was being done at the request of the Attorney General's office.
Was the administrative warrant proceeding performed at the request of the Attorney General to obtain information used to prepare for this Northern District litigation that you said ODAFF is a party to?
A I would say that it was probably -- the warrants were to find out what the soil testing results would be in regard to a concern that the Attorney General had in regard to other micronutrients that might be in the soil, other than the N, P and K and pH. How they would use the information, I have no idea.
Q You don't specifically know how that was going to be used?
A No.

Q Or how it was used?
Have you familiarized yourself with the Northern District case?
A No, I have not.
Q So you don't know whether --
A Specific knowledge, no; general knowledge, yes.
MR. WILLIAMS: I really do pass the witness at this time. I do.
CROSS-EXAMINATION
BY MR. WEITMAN:
Q Mr. Secretary, I'm just going to have a couple questions for you.
We were talking earlier about the petition and the answer, do you recall that line of questioning from Mr. Williams?
A Yes.
Q When you received the petition regarding this matter, what did you do with it?
A I referred it to our legal division to provide our responses.
Q Okay. Did you personally investigate every fact listed in the petition?
A No, I did not.
Q Did you trust on your legal division to

investigate those facts?
A Yes.
Q And to provide proper answers to these -- to the allegations in the petition?
A Yes, sir.
Q For example, sir, if you will turn with me to paragraph 6 of the petition, (quoted as read):
"At all relevant times, the State of Oklahoma, Ex Rel, the Department of Agriculture, Food and Forestry, through its agents and employees acted as described below."
Do you have any idea if the agents and employees of ODAFF, in fact, acted in every way described in this petition?
A No, there would be no way of knowing that.
Q Is that something that you left to other people to figure out?
A Yes, sir.
Q Okay. Are you aware of any statute that -- under either the agricultural code or the Poultry Feeding Act or any of the acts that the Department of Agriculture deals with, are you aware of any statute that states that a poultry operation, by registering grants, consent to the agency to come on and conduct testing?

A Yes, sir, that's actually provided in Plaintiff's Exhibit Number 10, it would be 10-9.10, 9.10, A1A, (quoted as read):
"The State Board of Agriculture or its authorized agents are empowered to enter upon the premises of any poultry feeding operation for the purpose of investigating complaints as to the operation or to determine whether there are any violations of the Oklahoma Registered Poultry Feeding Operations Act."
Q Okay. Can I also have you look at paragraph 2A, sir?
A Yes, sir.
Q What does that paragraph say?
A Yes, it says that by registering with the Poultry Feeding Act, they constitute consent for entry upon the premises of such operations.
Q Okay. Now, you have testified along the way that it's your understanding that the state statutes give ODAFF the right to come in and test for these other constituents?
A Yes, sir.
Q Do you have any idea why that is?
A Yes, because our responsibility is to protect the environment for the citizens of the State

of Oklahoma.
Q Do you have any responsibility to test for pollutants in general?
A Yes, sir.
Q Could the constituents proposed in the testing be considered pollutants?
A Restate that question.
Q Sure. The constituents proposed or in the proposed testing that was going to be performed by ODAFF, could those be considered pollutants?
A Yes, anything could be considered a pollutant in excess amounts.
Q Now, Counsel talked to you before about some testing, reporting that the growers do on an annual or semi-annual basis, on a regular basis. Is that self-testing?
A Yes, sir, it is.
Q Okay. Can you tell just through their self-testing and their reports if their reports are accurate?
A No, we would not be able to verify that because our inspectors are not there with them during these testing operations.
Q Okay. One final question, Mr. Commissioner.

When you were asked earlier if you had evidence of other constituents besides the N, P, and K actually existing on these growers' properties, were you speaking on behalf of the agency and all the employees of the agency as to whether or not there is knowledge or was that from your own personal knowledge?
A That would be from my personal knowledge and actually it's never been brought to my attention by the agency.
MR. WEITMAN: Nothing further.
REDIRECT EXAMINATION
BY MR. WILLIAMS:
Q Secretary Peach, just a follow-up question.
You answered a moment ago a question regarding our -- Plaintiff's Exhibit Number 10, which is the statute and your authority to enter under 10-9.10 A1A. You will agree that that particular provision indicates that your power to enter is conditioned upon investigation of complaints or to determine whether there are any violations, do you agree?
A Yes, sir.
Q And would you also agree that you would

only determine if there was a violation if you had either received a complaint or had some independent reason to believe there was a violation, wouldn't you?
MR. WEITMAN: Object to the form.
A You need to restate that.
Q (By Mr. Williams) Wouldn't you agree that the only reason that you would be determining whether there was a violation is if you had either received a complaint or had some independent basis to believe a violation was occurring?
A One reason would be if there was a complaint, the other would be if anyone brought to our attention that there might be a violation, so there would be two instances.
Q And I appreciate that answer.
A Yes.
Q There's also a statement in that provision to the effect that the State Board of Agriculture or its authorized agents have this power to enter.
Do you know who the agents were that ODAFF sent as its authorized agents to carry out the administrative warrants that were issued in Delaware County?
A No, I do not know.

Q Do you even know the name of all the entities involved if not the individuals?
A No.
Q Who would know the answer to that question?
A The head of our legal division, Ms. Janet Stewart.
MR. WEITMAN: I thought we were going to get a different answer on that one.
Q (By Mr. Williams) You also pointed to, in your answer, Title 2, Section 10-9.10, A2A, as another basis for entry on the growers' properties?
A Uh-huh.
Q And this particular provision requires that you would be implementing provisions of this particular portion of the statute; is that correct?
A You are talking about 2A?
Q Yes. It carries over to the top of the next page.
A Yes.
Q And, again, recalling your testimony from earlier today, it's a fair restatement of your testimony, isn't it, Secretary Peach, that you don't have rules or regulations specifically dealing with the constituents, other than the historically

regulated constituents. And so my question to you is: How are you implementing provisions of this subsection whenever you seek entry for these administrative warrants for anything other than historically regulated substances?

A Because the statute doesn't give us any limitation on what we can go on their premises to regulate.

Q In response to counsel's question a moment ago, you made a -- you gave testimony to the effect about pollutants in excess amounts might be present on these properties as a reason for investigating.

And, again, in excess of what amounts?

A As I stated previously, we're going to do the soil sampling and we're going to refer that to the professionals and the scientists that can tell us if they are in excess amounts, after we do the soil sampling to find out if they are present.

MR. WILLIAMS: I don't think I have anything further.

MR. WEITMAN: Read and sign.

(Deposition adjourned at 12:35 p.m.)

JURAT PAGE

I, TERRY PEACH, 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 transcript of my testimony so given at said time and place, except for the corrections noted.

_____
TERRY PEACH

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 _____, 2006.

_____
Notary Public

My Commission Expires: _____

AG

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Correction Sheet

Case Style: REED, ET AL. VS. STATE OF OKLAHOMA
Witness: TERRY PEACH, Volume I Reporter: AG
Attorney: D. Ken Williams Date Reported: 4/18/06
OA: M. Daniel Weitman, 4545 North Lincoln Boulevard Suite 260, Oklahoma City, Oklahoma, 73105

Page	Line	Correction	Reason for Correction

CERTIFICATE

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Andrea J. Gorman, Certified Shorthand Reporter for the State of Oklahoma, certify that the above-named TERRY PEACH was by me first duly sworn to testify the truth; that the above and foregoing deposition taken by me in stenotype and thereafter transcribed is a true and correct transcript of the testimony of the witness; that the deposition was taken on April 18, 2006, at 10:01 a.m., at Oklahoma City, Oklahoma, that I am not an attorney for nor a relative of any said parties, or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office on this 21st day of April, 2006.

_____
Andrea J. Gorman,
Certified Shorthand
Reporter for the State
of Oklahoma

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