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. 05-CV-0329 GKF 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

VIDEOTAPED DEPOSITION OF DANIEL STORM
Taken on Behalf of the Defendants
On September 23, 2008, beginning at 9:16 a.m.
In Oklahoma City, Oklahoma

APPEARANCES:

Appearing on behalf of the PLAINTIFF STATE OF
OKLAHOMA
Robert A. Nance, Attorney at Law
Kelly Burch, Attorney at Law
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Videographer: Stephen Carns
Reported By: Becky C. Dame, CSR, RPR

EXHIBIT
106

MR. SANDERS: Bob Sanders for the Cal-Main defendants.

WHEREUPON,

DANIEL STORM,

after having been first duly sworn, deposes and says in reply to the questions propounded as follows, to-wit:

DIRECT EXAMINATION

BY MR. ELROD:

Q Dan, would you state your name and address for the record, please?

A Yep. Daniel Storm, 7119 North Sanger, Stillwater, Oklahoma.

Q Tell us what you do for a living.

A I'm a professor in the Department of Biosystems and Agricultural Engineering, Oklahoma State University.

Q Are you a retained expert in Edmondson versus Tyson et al.?

A No.

Q Are you a consulting expert in that case?

A No.

Q You've not been retained in any manner to provide advice to the Attorney General's office in regard to that litigation?

A Yes, sir.

Q And a number of different things can happen to that bundle of molecules; correct?

A That's correct.

Q And you've already described some maybe taken up in algae -- what are some of the other dominating things that can happen to a molecule as it travels down the river?

A All right. When it's going down the river, it -- and a lot of this deals more with when the phosphorus reaches Lake Tenkiller. It's not a matter of if, it's when. I mean, there are certain -- certain molecules of phosphorus that may never reach the lake, and those would be deposited out in the flood planes, for example, or a bald eagle comes down and eats a fish that contains phosphorus and then flies over to the next basin to defecate. I mean, that molecule of phosphorus will never reach the lake; right?

Q Right.

A But most of the phosphorus that does enter the river will reach the lake, and it's a matter of when it reaches it.

For example, during low flow, a lot of this phosphorus is assimilated into -- again,

that to be true and assuming all of that is actually land applied in the watershed and assuming you've got 450,000 acres of land on which to distribute that 212,000 tons, that would only be about a half ton per acre; correct?

MR. NANCE: Object to the form.

BY MR. ELROD:

Q That's -- my math -- I mean, that's correct, isn't it?

A Assuming that your math is correct, it is.

Q Okay. Now, at a half ton per acre rate in the world of fertilization with chicken litter is a small rate, isn't it?

A Correct.

Q So don't we really -- if there's an issue in the Illinois River watershed, won't you agree with me that it may be a distribution issue rather than a necessity of exporting litter?

A It's kind of a combination of both in one sense, because you have -- you have -- the litter is a source of nutrients for -- in this case, a foragery or grassland. And when you surface apply a por -- and, you know, you get runoff, you get a portion of that litter that moves into your surface runoff and into your receiving water bodies.

BY MR. NANCE:

Q Dr. Storm, I'm Bob Nance. I represent the State of Oklahoma, and I have just a few questions.

Do you recall your testimony with one of the counsel before about the background phosphorus level in the watershed before the white man came and all that? Do you remember that testimony?

A Yes.

Q Are there still phosphorus levels in the Illinois River watershed that are considerably elevated above that ground these days?

A Yes.

Q What is the source of the phosphorus that elevated those STP levels?

A It would be primarily from the poultry litter application.

Q Looking at your report, which is Exhibit No. 1, at Page 62. If you want to look at this, I've got it right here.

There's been some testimony about the practice or modification that you list as replacement of litter -- excuse me -- with hay pasture only, no cattle.

Do you remember talking about that?

A Yes.