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, et al.	)	
Plaintiffs,	)	
V.	)	No. 05-CV-329-GKF-SAJ
TYSON FOODS, INC., et al.,	)	
Defendants.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FEBRUARY 19, 2008

PRELIMINARY INJUNCTION HEARING

VOLUME I

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

APPEARANCES:

For the Plaintiffs: Mr. Drew Edmondson
Attorney General
Mr. Robert Nance
Mr. Daniel Lennington
Ms. Kelly Hunter Burch
Mr. Trevor Hammons
Assistant Attorneys General
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105

Exhibit 9

Glen R. Dorrough
UNITED STATES COURT REPORTER

THE COURT: Just one second. Because we have daily copy, General, we'll take a short break here. I'm going to stay here on the bench to allow the copy to be sent to the transcriptionist. We'll let's take a five minute break. I'm going to stay here on the bench and we'll make that transcriptionist run at this time.

(Recess.)

CLERK: We're back on the record in the State of Oklahoma vs. Tyson.

THE COURT: The witness will be sworn, please.

CANON MILES TOLBERT

Called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE COURT: State your name for the record please, sir.

THE WITNESS: My name is Canon Miles Tolbert.

THE COURT: Attorney General Edmondson.

MR. EDMONDSON: Your Honor just threw me off. That was my first question there.

DIRECT EXAMINATION

BY MR. EDMONDSON:

Q. Mr. Tolbert, please, would you give us your educational background and employment prior to now?

A. Yes. I was raised in Oklahoma City, attended schools here in Oklahoma. I have an undergraduate degree in political

used to -- money from that has been used to replace septic tanks and to do these various measures designed to improve land use practices.

Q. Has the State of Oklahoma engaged in any litter hauling?

A. We have not engaged in litter hauling but we have subsidized litter hauling.

Q. Let me invite your attention to State's Exhibit 47. Could you tell me, please -- do you have that?

A. If it didn't drop to the ground, yes, I do, sir.

Q. How does the incentive program work?

A. There are -- the State pays a subsidy of approximately $10 a ton to move litter out of the Illinois River Watershed. There's also a tax credit that's available for the same purpose. And the litter is not just hauled out of the watershed willy-nilly. We put restrictions on where it can be taken in order to protect the area that receives it.

Q. Are there any prohibitions associated with that program as well?

A. There are.

Q. What would that be?

A. Well, Exhibit 47 shows the areas where the litter that's taken out of the watershed cannot go, either because of a concern about nutrients in those watersheds or because of the vulnerability of the groundwater there.

Q. Do we, as a state, list the water areas that are impaired

A. Well, as much as we -- this is a problem that is -- has its origins on the other side of the border in Arkansas. Eighty percent of the poultry houses are in Arkansas. There is -- our ability to do something in Oklahoma in state court or under state law or under state regulation is very limited, and we could not solve the problem if we were forced to rely entirely or solely on our state authorities.

Q. And in your opinion, how serious is this problem?

A. I consider it a very serious problem.

Q. Could you tell me, please, why you sued the integrators, the companies, instead of the growers, the farmers?

A. Because it is the integrators' waste.

Q. And what do you base that on?

A. The feed that supplies these birds is brought into the watershed and owned by the integrators. The birds that eat that feed are owned -- brought into the watershed and are owned by the integrators. And when nature takes its course and feed enters bird, what comes out the other side is the result of the integrators' actions.

Q. To your knowledge, has that degree of control by the integrators ever been recognized in a court decree?

A. It has.

Q. I invite your attention to State's Exhibit 41. Could you tell me what that is?

A. Yes. This is the decree that resolved the City of Tulsa

case. And by -- I should say more formally it's the case that was brought by the City of Tulsa and the TUMA against a number of poultry companies and an Arkansas municipality over water quality problems in the Eucha-Spavinaw watershed, which is Tulsa's water supply.

Q. Do you know whether there was ever a moratorium on land application leading up to or subsequent to this order?

A. Subsequent to this order. What the order did was require that land application in that watershed not occur until there were new plans written based on a newly adopted phosphorus index. And so from the summer of 2003 when that was implemented, well into and through much of the next year, there was a moratorium on land application in that watershed.

Q. To your knowledge, were any growers or farmers in that case?

A. I don't believe that there was a single grower or a single farmer in that case.

Q. So the named defendants were the companies?

A. The only -- the named defendants were the companies. The order bound them and the result was a moratorium, an effective moratorium, and then an effective change in how it is that litter was managed in that watershed.

Q. And in your opinion, will the risks associated with these bacterial levels be substantially reduced if the injunction is granted?