IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,
Plaintiff,

vs. CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,
Defendants.

VIDEOTAPED DEPOSITION OF STEVE THOMPSON
TAKEN ON BEHALF OF THE DEFENDANTS
ON APRIL 7, 2009, BEGINNING AT 9:30 A.M.
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

On behalf of the PLAINTIFF:
J. Trevor Hammons
OKLAHOMA ATTORNEY GENERAL'S OFFICE
313 Northeast 21st
Oklahoma City, Oklahoma 73105
(405) 522-2801
thammons@oag.state.ok.us

On behalf of the PLAINTIFFS:
Martha Penisten
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
707 North Robinson
Oklahoma City, Oklahoma 73107
(405) 702-7184

On behalf of the DEFENDANT-PETERSON FARMS, INC.:
Scott McDaniel
MCDANIEL, HIXON, LONGWELL & ACORD
320 South Boston, Suite 700
Tulsa, Oklahoma 74103
(918) 382-9200
smcdaniel@mcdaniel-lawfirm.com

REPORTED BY: Laura L. Robinson, CSR, RPR

EXHIBIT
6

(APPEARANCES CONTINUED)

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

Jennifer Lloyd
THE BASSETT LAW FIRM
221 North College Avenue
Fayetteville, Arkansas 72702
479-521-9996

ALSO PRESENT: Stephen Carns, Videographer

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STIPULATIONS

It is stipulated that the deposition of STEVE THOMPSON may be taken on the APRIL 7, 2009, pursuant to agreement and in accordance with the Oklahoma Discovery Code before Laura L. Robertson, CSR, RPR.

I continued in that position until 1990. In 1990 I applied for the position of director of the Oklahoma Department of Pollution Control. I was chosen for that position.

I worked for the Oklahoma Department of Pollution Control as the director until August of 1993, when I became the deputy executive director of the Department of Environmental Quality. I served in that position until July of 2002, when I was chosen to be the executive director of the Department of Environmental Quality, and I have served in that position since then.

Q. Was there a time period when you worked for the office of the Secretary of Environment?

A. I'm sorry, there was a time period. When the Department of Environmental Quality was established by statute, the Department of Pollution Control was disestablished.

And so between July of 2000 -- I'm sorry, July of 1992 and August of 2003, I served as the assistant Secretary of Environment under secretary Patty Eaton.

Q. All right. You just said August of 2003. Did you mean 1993?

A. I'm sorry, 1993.

Q. And if I could ask you to read this paragraph B aloud, please.

A. "If the executive director finds that any of the air, land or waters of the state have been or are being polluted, the executive director shall make an order requiring such pollution to cease within a reasonable time, or require such manner of treatments or disposition of the sewage or other polluting material that may be in his judgment be necessary to prevent further pollution. Shall be the duty of the person to whom such order is directed to fully comply with the order of the executive director."

Q. All right. When it says in subsection B, "The executive director finds," what is the process that you or your staff go through in order to reach a finding?

MR. HAMMONS: I will object to the form, to the extent it calls for a legal conclusion.

Q. (BY MR. MCDANIEL) You can go ahead and answer, sir.

A. The process would be that an issue would come to our attention, the program would evaluate the problem. Our legal staff would then look at the statutory authorities, and then they would bring the issue to me for a decision.

Q. That decision, is that equivalent to a finding?

A. It would be a -- yes, it would be a finding, and if we found that there was an activity under the statute that was not being addressed, we could issue an order.

Q. All right. Are all findings that you issue under this statute, are they in writing?

A. Oh, yes.

Q. Okay. If the Oklahoma Department of Environmental Quality becomes aware of unlawful pollution of the waters of the state, does it have the duty to undertake this process?

A. It has a duty absent action by another agency, with more specific statutory authority.

Q. All right. I'm going to ask you, sir, to take a moment and look at this deposition notice that I gave you, and familiarize yourself with the names of the defendants. I'm assuming you don't have them committed to memory.

A. I do not.

Q. There is one name on here, it is Aviagen, Inc. that was originally in the case style, and they are no longer a defendant in the case, so I'm putting a line through that. Would you take a moment and look

at the names of all of the remaining defendants?

A. Okay.

Q. All right, sir. Have you as executive director of Oklahoma Department of Environmental Quality made a finding that any one of the companies listed as defendants on that notice has caused pollution of the waters of the state in the Illinois River Watershed?

MR. HAMMONS: And I would object to the form.

THE WITNESS: The answer to your question is that if -- I don't have the records at hand, but if during -- these companies are also in the business of food processing, and that is under our direct jurisdiction.

And so it may be that under our jurisdictions for food processing, we may have found, had a finding and may have issued an order. But I don't specifically -- I don't specifically recall that. But I'm not at a point where I can say conclusively one way or the other whether that's the case or not.

Q. All right. And if that were the case, are you referring to, sir, potentially to a situation that would involve a point source discharge associated with

a food processing facility?

A. It could be. It could be related to a point source water discharge, it could be related to air quality issues, it could be related to the improper disposal of process waste. It could be any number of those things.

Again, I don't have a independent recollection of having done so, but it could have happened.

Q. All right. You know this case, this lawsuit involves allegations relating to the manner in which poultry litter or some may say poultry waste has been handled or utilized within the Illinois River Watershed. Do you understand that to be the case?

A. I do.

Q. All right. That's the context for my question.

A. Okay.

Q. So let me re-ask the question, if you don't mind.

A. Okay.

Q. Have you as executive director of Oklahoma Department of Environmental Quality made a finding that any one of these companies listed as the defendant in this case has caused pollution of the

1 waters of the state of Oklahoma in the Illinois River
2 Watershed by virtue of management or utilization of
3 poultry litter or poultry waste?
4 A. I have not.
5 MR. HAMMONS: Object to the form.
6 THE WITNESS: Sorry.
7 MR. HAMMONS: I'm sorry, I object to the
8 form. You can answer.
9 Q. (BY MR. MCDANIEL) I'm sorry, sir, would you
10 just repeat your answer so the video --
11 A. I have not.
12 Q. Now, the same context, sir, have you as
13 executive director made a finding that any poultry
14 grower operating under a contract with any one of the
15 companies that's listed as a defendant in this case
16 has caused pollution to the waters of the state of
17 Oklahoma in the Illinois River Watershed?
18 MR. HAMMONS: Object to the form.
19 THE WITNESS: Again, in the context of --
20 let me be clear. If a poultry grower has a violation
21 under our direct statutory responsibility, we could
22 have. For instance, if they had a septic tank that
23 was malfunctioning.
24 But in the context of the lawsuit, the
25 answer to your question is no, I have not.

Q. (BY MR. MCDANIEL) All right. Are you generally familiar with the Federal Solid Waste Disposal Act?

A. Generally.

Q. And we often, or I shouldn't say we. It is often referred to as RCRA?

A. Yes.

Q. R-C-R-A. And these, what I'm referring to, these are federal environmental laws that address the handling and disposal of solid and hazardous wastes. Do you agree?

A. That's correct.

Q. What duties does the Oklahoma Department of Environmental Quality have under these federal laws?

A. Well, we have a responsibility for the proper disposal of solid waste, particularly as it relates to disposal in landfills. We have a responsibility, direct responsibility for disposal of waste at a site that would be considered an unpermitted landfill.

And then we have a general responsibility -- we have responsibility for subtitle C, which is the -- which is particularly related to the generation and disposal of hazardous wastes.

Q. Does the state of Oklahoma have its own

state statutory counterpart to the -- to RCRA?

A. It does.

Q. What is that statute, can you direct me to that?

A. It is in 27-A. It is the solid waste statutes. I don't have the specific site number, but it is the Solid Waste Act under title 27-A.

Q. Does the Oklahoma act, and I'm not trying to make you a legal expert, so I can accept a general answer.

A. Okay.

Q. Does the Oklahoma statute parallel the federal statute?

MR. HAMMONS: Object to the form.

Q. (BY MR. MCDANIEL) Generally?

A. Yes.

Q. Now, what division within Oklahoma Department of Environmental Quality handles the solid and hazardous waste issues within the state?

A. The Land Protection Division.

Q. Who is in charge of that division?

A. Scott Thompson.

Q. Do you know what a RCRA citizen suit is?

A. I just generally know.

Q. Whereby a private citizen or entity can

growers?

A. Not to my knowledge.

Q. In response to this purported notice, did ODEQ initiate any enforcement action against these poultry companies or any of their contract growers?

A. No.

Q. Has Oklahoma Department of Environmental Quality made a finding that any of the defendants in this lawsuit have violated the Solid Waste Disposal Act?

MR. HAMMONS: Object to the form. Calls for a legal conclusion.

THE WITNESS: Again, in the context that we are talking about, no.

Q. (BY MR. MCDANIEL) Okay. And to use your words, in the context of these allegations contained in this purported notice of intent to file a citizen's suit, has Oklahoma Department of Environmental Quality made a finding that any poultry grower under contract with any of the defendants in this lawsuit has violated the Solid Waste Disposal Act?

MR. HAMMONS: Object to the form.

THE WITNESS: No.

Q. (BY MR. MCDANIEL) Has the Oklahoma Department of Environmental Quality made a finding

that poultry waste is a solid waste under RCRA?

MR. HAMMONS: Object to the form.

THE WITNESS: Well, again, the department would have made a finding related to the disposal of poultry waste in a solid waste landfill, or the improper disposal of waste in what would be purported to be a landfill.

But in the context of this lawsuit, the answer is no.

Q. (BY MR. MCDANIEL) Has Oklahoma Department of Environmental Quality made a finding that poultry waste is a hazardous waste under RCRA?

MR. HAMMONS: Object to the form.

THE WITNESS: No.

Q. (BY MR. MCDANIEL) Now, in Oklahoma, poultry waste handling, storage and use is regulated by Oklahoma Department of Agriculture Food and Forestry, am I right?

A. That's correct.

Q. Now, Oklahoma Department of Environmental Quality does not regulate poultry waste as a solid waste?

MR. HAMMONS: Object to the form.

THE WITNESS: The Department of Environmental Quality would regulate the processing of

poultry waste in a setting in which it was being packaged and sold as a nutrient.

We would regulate air quality, we would regulate any, process water disposal, in that context we would regulate it. But that's the -- well, that is the context in which we would regulate it.

Q. (BY MR. MCDANIEL) All right. I understand what you're telling me. So let me put it this way, if in the practice of land applying poultry waste on agricultural lands, does the Oklahoma Department of Environmental Quality regulate poultry waste in that setting as a solid waste?

A. No.

Q. Does it regulate poultry waste in that setting as a hazardous waste?

MR. HAMMONS: Object to the form.

THE WITNESS: No.

Q. (BY MR. MCDANIEL) Are you generally familiar with the statutes in Oklahoma that pertain to the handling, storage and use of poultry waste?

A. It would be very general.

Q. Are you satisfied that the personnel at the Oklahoma Department of Agriculture Food and Forestry are fulfilling their statutory duties with regard to regulating the handling, storage and use of poultry

waste?

MR. HAMMONS: Object to the form.

THE WITNESS: I don't have enough information to make an independent judgment about that.

Q. (BY MR. MCDANIEL) Do you have any reason to doubt that Oklahoma Department of Agriculture Food and Forestry is performing their statutory duties with regard to poultry waste management?

MR. HAMMONS: Object to the form.

THE WITNESS: No. Sorry. No.

Q. (BY MR. MCDANIEL) All right. I understand from our earlier discussion that ODEQ as sort of the final backstop as it comes to environmental protection in Oklahoma, has ODEQ elected to step in to assert jurisdiction with regard to the regulation of poultry waste management in Oklahoma?

A. As of this date, no.

Q. Has the Oklahoma Department of Environmental Quality made a finding that the spreading of poultry waste on lands within the Illinois River Watershed may present an imminent and substantial endangerment to human health?

MR. HAMMONS: Object to the form.

THE WITNESS: No.