

**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 THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)

Plaintiff,)

v.)

Case No. 05-CV-00329 GKF-SAJ

TYSON FOODS, INC., TYSON)
POULTRY, INC., TYSON CHICKEN,)
INC., COBB-VANTRESS, INC., CAL-)
MAINE FOODS, INC., CAL-MAINE)
FARMS, INC., CARBILL, INC., CARGILL)
TURKEY PRODUCTION, LLC,)
GEORGE'S, INC., GEORGE'S FARMS,)
INC., PETERSON FARMS, INC.,)
SIMMONS FOODS, INC., and WILLOW)
BROOK FOODS, INC.,)

Defendant.)

**MOTION OF OKLAHOMA FARM BUREAU, INC,
FOR PERMISSION TO FILE BRIEF AS *AMICUS CURIAE*
IN OPPOSITION TO THE PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION AND BRIEF IN SUPPORT THEREOF**

Oklahoma Farm Bureau, Inc. (the " Farm Bureau"), representing its 168,000 farm family members, asks leave to file a brief in response to the Plaintiffs' Motion for Preliminary Injunction. Farm Bureau believes that it has a different perspective and interest from the defendants and that briefing from its perspective and interest will assist the Court. The direct impact of the requested injunction will be felt by farmers, including Farm Bureau's members, and not just farmers who raise chickens. The injunction would broadly impact agricultural

producers, and especially cattle producers. The impact would be felt, not only with regard to efficient cattle and farm operations, but also with regard to the farmer's and cattleman's significant financial investment in their farms and ranches being jeopardized by denied access to an effective fertilizer and soil amendment. The legal theories on which the injunction is sought would, if established, transform animal husbandry from food production to generation, handling and disposal of hazardous waste.

The Oklahoma Farm Bureau itself has long been involved as a participant in legislative and administrative proceedings that have resulted in the highly regulated environment in which Oklahoma chicken farmers, and farmers generally, operate. As such, it is well positioned to address the collective statement of the public interest which that legislative and regulatory structure represents and the extent to which and the ways in which the requested injunction conflicts with it. Farm Bureau's knowledge and perspective is broader than that of the defendants because it is not limited to chicken production.

The Oklahoma Farm Bureau's role as the representative of a sizable section of the public and an even more significant segment of the food production industry also uniquely positions it to address the public interest, particularly the interest of the food producing and food consuming public.

Oklahoma Farm Bureau asks leave to file an *amicus curiae* brief, on the same schedule as defendants, opposing the request for injunction. Farm Bureau's participation, if granted would not delay, or unduly complicate consideration and decision of the issues and would, we believe, assist the court. Counsel for defendants have stated that they do not object to this motion. Counsel for Farm Bureau has called counsel for plaintiffs several times (and counsel for plaintiffs has returned the calls), but counsel have not been able to talk about this request; as a

result, Farm Bureau cannot represent to the Court whether or not counsel for plaintiffs object. In support of this motion, Farm Bureau would show the Court as follows:

1. The Oklahoma Farm Bureau, Inc., is an Oklahoma non-profit corporation, originally organized in 1942. It is the State's largest agricultural organization consisting of more than 168,000 member families.

2. One of the primary purposes of the Oklahoma Farm Bureau is to promote the welfare and best interest of farm families. That purpose frequently includes taking part in public legislative and administrative process, and serving as the voice of the farmer in court proceedings. It has been permitted to participate as *amicus curiae* in other actions affecting its members' interests.

3. Plaintiffs' motion would lead the reader to the far-from-accurate belief that there is little or no water quality and animal manure management without Plaintiffs' injunction. Plaintiffs' motion would also lead the reader to the misguided belief that the ranchers and farmers in this and neighboring states give no thought or planning to water quality and animal manure management issues.

4. Oklahoma, as a state, and the families who rely on agriculture as the basis for their living, and others simply interested in the issues have actively addressed water quality and animal waste issues through regulatory and non-regulatory mechanisms, including legislation, water quality standards, the federal-state 319 nonpoint source program, state income tax incentives, and USDA Natural Resources Conservation Service's conservation cost share programs. Oklahoma agriculture is also regulated by the Clean Water Act and other federal laws. These state and federal programs have been crafted by citizens, industry, regulators, and legislators after much study. Plaintiffs ask the Court to judicially override these and other

programs that the United States and the State of Oklahoma have mandated or encouraged, and that farming and ranching families have relied upon in managing their businesses.¹

5. Plaintiffs ask this Court to prohibit conduct that has been legislatively authorized. The effect of such a prohibition would be far-reaching, affecting the lives and living of cattle ranchers, farmers and others who make lawful use of manure as fertilizer. Their point of view should be heard.

6. Plaintiffs state that their motion is brought pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, and that fact alone shifts the primary focus from irreparable harm (which they claim they need not plead or prove) to concern for the public interest. Plaintiffs have chosen to define the public interest here, in this lawsuit, as involving only the hypothetical exposure of recreational water users to waterborne bacteria. Oklahoma Farm Bureau would like to be able to show the Court another perspective of the public interest -- that of farming and ranching families whose efforts feed us all. "An amicus curiae brief which brings relevant matter to the attention of the Court that has not already been brought to its attention by the parties is of considerable help to the Court." Advisory Committee Note to the 1998 amendments to Fed. R. App. P., Rule 29(b)(2).

7. In order that the concerns of the Oklahoma Farm Bureau and the agricultural community it represents might be considered as part of the decisional process, the Oklahoma Farm Bureau respectfully requests that the Court grant it leave to file an *Amicus* Brief based upon the interests and concerns described for the Court herein.

¹ It should be noted that Oklahoma was one of the first states in the Nation, if not the first state, to require animal waste management plans using phosphorus as the limiting factor, rather than nitrogen. Oklahoma's state law regulating poultry operations exceeds the requirements for poultry operations under federal law. *See*, 2 Okla. Stat. § 10-9.1 *et seq.*, and OAC 35:17-5-1, *et seq.*

8. Oklahoma Farm Bureau believes that the issues which the Oklahoma Farm Bureau wishes to present as an *Amicus Curiae* in this matter will be of substantial assistance to the court, and will not be merely redundant of arguments made by defendants. "An amicus brief should normally be allowed when . . . the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062, 1063 (7th Cir. 1997), citing *Miller-Wohl Co. v. Commissioner of Labor & Industry*, 694 F.2d 203 (9th Cir. 1982) (per curiam).

9. Counsel for the Oklahoma Farm Bureau has conferred with counsel for defendants, who do not object to this request. Counsel for the Oklahoma Farm Bureau has called to confer with counsel for plaintiffs, but has not yet been able to visit with plaintiffs' counsel.

10. For the reasons set forth above, the Oklahoma Farm Bureau respectfully requests that the Court grant leave to the Oklahoma Farm Bureau to file a Brief in this matter as *Amicus Curiae*, and to set the time for filing its Brief consistent with the briefing schedule for defendants.

Respectfully submitted,

s/ LeAnne Burnett

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ATTORNEYS FOR OKLAHOMA FARM
BUREAU, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, 2007, I electronically transmitted to the Court Clerk using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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Lee M. Heath
Philip D. Hixon

I hereby certify that on this 6th day of December, 2007, I served the same document via U.S. Postal Service on the following, who are not registered participants of the ECF system:

C. Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 N. Classen
Oklahoma City, OK 73118

s/ LeAnne Burnett