

# Oklahoma hires firm, threatens poultry-litter suit

BY ROBERT J. SMITH

**Arkansas Democrat Gazette**

Posted on Saturday, September 11, 2004

Oklahoma's attorney general says he expects Arkansas poultry companies to accept responsibility for excess poultry litter in Oklahoma scenic river watersheds, and he'll sue them if they don't.

Drew Edmondson's comments Friday came a day after Springdale-based Tyson Foods Inc. and four other poultry companies submitted a settlement proposal to Edmondson's office regarding excess poultry litter in the watersheds. The proposal wasn't sufficient, the attorney general said. "I expect them to accept responsibility for all the excess chicken litter that can't be safely applied to the land," Edmondson said in a telephone interview. "Our evidence would be that the poultry industry is the primary contributor of the phosphorus problem in the watersheds."

Edmondson wants the five companies to agree to an enforceable, specific consent decree that will detail what they must do to satisfy the state of Oklahoma. Vague promises aren't acceptable, Edmondson said.

The five poultry companies — Tyson, Peterson Farms Inc., Simmons Foods Inc., George's Inc. and Cargill Inc. — went public Friday regarding their stalled settlement negotiations with Edmondson's office over poultry litter.

Edmondson said Friday that he hired independent counsel in July to represent the state in a possible lawsuit against the companies. The lawyers work for firms in Tulsa and South Carolina and have expertise in environmental litigation, he said. The five companies will be asked to pay the state's legal costs that have occurred so far and in the future, he said. "When we selected a law firm, that's the first time they were willing to [consider] a consent decree," Edmondson said. "When it was just the AG's office and the poultry industry, we got nowhere. After 2 4/2 years, I said that's enough.

" I see a clear message. They aren't responsive to government. They are responsive to the threat of litigation. "

Randy Young, the director of the Arkansas Soil and Water Conservation Commission, said Friday that he wasn't hopeful that a settlement will be reached. He thinks it's wrong for Edmondson to blame river phosphorus on the poultry industry when there are other factors that contribute phosphorus to the watersheds. Those include golf courses, city sewer plants, septic tank owners, nurseries and cattle.

" I keep hearing from my contacts in Oklahoma that he's going to sue, "Young said." I'm not optimistic. "

The goal in negotiating with Edmondson's office is to avoid a lawsuit over poultry litter that farmers spread on crops as fertilizer, said Janet Wilkerson, a vice president of Decatur-based Peterson Farms and a spokesman for the five companies.

The companies offered to spend millions of dollars improving Oklahoma scenic river watersheds by better dealing with litter, Wilkerson said.

Poultry litter is a concoction of wood chips and rice hulls that's spread in chicken and turkey houses to soak up bird manure.

Phosphorus can reach streams after it's loosened from fertilized soil by rainfall. An excess of phosphorus in streams can lead to algae blooms and degrade water quality.

" We are proposing to do some landmark items that address the issues the attorney general says he wants us to do, "Wilkerson said." We want the citizens of Oklahoma to know that the poultry industry is talking. "

Officials with the poultry companies said they didn't know how much they'd spend under the proposal submitted to Edmondson on Thursday. They couldn't get more specific than " millions of dollars, "Wilkerson said.

Full-page advertisements paid for by the companies were published Friday in the Northwest Arkansas edition of the Arkansas Democrat-Gazette and nine Oklahoma newspapers, including the Tulsa World and The Oklahoman of Oklahoma City. The ads tell readers in a letter format about the companies' offer on Thursday to Edmondson.

Oklahoma approved a phosphorus limit two years ago for the state's six scenic waterways — the Illinois River, Flint Creek, Lee Creek, Little Lee Creek, Barren Fork Creek and the Upper Mountain Fork River.

Arkansas is required to meet the limit of 0.037 milligrams per liter of phosphorus at the state line in the four streams that have headwaters in Arkansas before flowing west into Oklahoma. Arkansas officials have described the numeric goal as unrealistic and unachievable for the watersheds, particularly the Illinois River that drains large sections of fast-growing Benton and Washington counties in Northwest Arkansas.

Edmondson hasn't waived from his first talk of suing poultry companies in March 2002. At the time, Edmondson alleged that the companies had failed to safely dispose of chicken litter in eastern Oklahoma.

" Our view is they bear the responsibility for the safe disposal of chicken waste, "Edmondson said at the time." I haven't heard them accept that responsibility, and it's non-negotiable on our part. "

The companies contacted Oklahoma Gov. Brad Henry's office July 29 seeking a meeting with the governor and other top state officials, said Phil Bacharach, Henry's press secretary. Bacharach said Henry told the companies they need to deal with Edmondson and not involve the governor's office.

" We were just touching base with all the state officials to see if they could help us prevent litigation, "Wilkerson said." We didn't want to step on the attorney general's toes. We just wanted everybody to know. We needed all the support we could get to prevent litigation. "

The companies and the city of Decatur settled a lawsuit last year for \$7.5 million with the city of Tulsa over phosphorus in creeks that flow into Lake Spavinaw and Lake Eucha. The lakes are Tulsa water supplies. All but \$200,000 of the \$7.5 million the companies agreed to pay will go to Tulsa's legal counsel.

" We don't want a repeat of the city of Tulsa litigation, "Wilkerson said." Resources should be invested in environmental stewardship, not wasted on trial lawyers. "