

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Phosphorus in river appears in court

EDITORIALLY SPEAKING

Lawsuit is no excuse to shirk clean water responsibilities

We have not supported a lawsuit against poultry companies over excess phosphorus in the Illinois River and other eastern Oklahoma streams.

Lawsuits are combative, lengthy, ending usually with forced settlements that often leave little satisfaction. They are expensive with much of the money going to attorneys, not to solving the problem that caused the lawsuit in the first place.

And though Attorney General Drew Edmondson says the poultry companies must pay for damages to the river, we all know who eventually will pay — us, the consumer.

Since we pay one way or the other, it seems a surcharge of a few cents per bird or one-half cent a pound of poultry meat raised in the basin should be made to deal with environmental issues.

So we still wish the poultry litter issue could be settled without a lawsuit.

But no one has been privy to the negotiations between Edmondson's office and the companies. They conducted closed-door meetings, and we don't know who's to blame or more to blame for the lack of an agreement on getting excess poultry litter out of the basin.

We do know we want clean streams because they are important to our health and economy. At some point — and we seem to have reached that point — we simply have to trust our officials to do the best thing and resolve the pollution that has gone on way too long.

But with the lawsuit, we also want Oklahoma to take a stronger stand for clean water and healthy streams.

Oklahomans have found it easy to blame Arkansas and ignore its own environmental failings.

We can blame ourselves for the high phosphorus levels we're seeing now as Oklahoma was slow to adopt regulations to control poultry litter application.

The state Scenic Rivers Commission was slow in producing a management plan for the Illinois, and even after having one for about five years, the plan has little clout and almost no promotion.

Some ranchers still allow cattle to wade in streams. The counties within the basin have no planning commissions; hillsides are laid bare and carved up for homes, barns and road gravel, allowing sediment to wash away freely; many septic systems, according to officials, in the basin are defective; Oklahomans leave trash everywhere; and the state has done little to study what effects the summer floater hordes have on the river.

We don't want anyone proclaiming this lawsuit a victory for the state until the state — and that's all of us — decide to do what's right.



A crew of Blue Thumb Project volunteers kick up gravel and rock in the swift-flowing water of Flint Creek this past winter in order to capture invertebrates in a fine-mesh seine.

Scenic rivers

The Oklahoma Scenic Rivers Commission is a state agency established in 1977 in accordance with

the Scenic Rivers Act. The primary emphasis of the Commission is to preserve and protect the aesthetic, scenic, historic, archaeological and scientific

features of the Illinois River and its tributaries — Lee, Little Lee, Barren (Baron) Fork and Flint creeks. Online: www.scenicrivers.state.ok.us.

Staff photo by Jerry Willis

AG explains suit filing

Attorney General Drew Edmondson announced Monday his office filed a lawsuit against out-of-state poultry companies for polluting waters of the state, citing the protection of Oklahoma lakes and streams, drinking water and public health.



Edmondson

The complaint alleges violations of the federal Comprehensive Environmental Response Compensation and Liability Act, state and federal nuisance and Oklahoma Environmental Quality and Agriculture codes. "It all comes down to pollution," Edmondson said. "They should be responsible for managing the hundreds of thousands of tons of waste that comes out of their birds."

Edmondson said the filing of the lawsuit does not mean he has given up on mediation or negotiation.

The lawsuit was filed in the U.S. District Court for the Northern District of Oklahoma on behalf of the state, including the attorney general and state secretary of the environment, Miles Tolbert. The suit addresses pollution in the Illinois River watershed, which consists of more than 1 million acres of land in Arkansas and Oklahoma. The watershed includes the Illinois River, Barren Fork, Caney and Flint creeks, Tenkiller Lake and other minor tributaries.

"We are asking the court to force these companies to stop polluting and repair the dam-

age they have already done," Edmondson said.

The lawsuit alleges runoff from the improper dumping and storage of poultry waste has caused and is causing the pollution of Oklahoma streams and lakes. In this watershed alone, the phosphorus from poultry waste is equivalent to the waste that would be generated by 10.7 million people.

"I understand that many hardworking Oklahomans are employed by this industry and that a viable industry is important to their future," Edmondson said. "I also un-

derstand that the poultry companies can conduct their business in compliance with the law and remain viable — if they choose to do so.

"One company alone, Tyson, announced it was spending \$75 million over 12 months in an ad campaign. If they can afford that, they can afford to clean up their waste."

The attorney general said the Illinois River watershed serves as the source of drinking water for 22 public water supplies.

Edmondson, who has spent three years seeking a negotiated water quality agreement with the poultry companies, said his attempts to reach an agreement outside the courtroom have not yet been successful.

The attorney general has never claimed that poultry waste is the only source of pollution, just the major one.

"I know there are other sources of pollution," Edmondson said. "But the major source of pollution in the watershed is poultry litter."

The defendants

Named in the complaint are 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.

Poultry companies say they are compelled to dispute claims

First, and foremost, we continue to hold out hope we can avoid wasteful litigation, which I think everyone agrees is certainly not the most efficient way to address the issues in a way that preserve water quality, our industry and the related 12,000 Oklahoma jobs. We would have hoped to continue our negotiations without publicly addressing allegations raised in the suit, but we have been given no other choice.

Think for a minute about the allegations. If they are true, every farmer in eastern Oklahoma and western Arkansas, as well as every state and federal environmental regulator, should be insulted. How can the state take the position that these poultry farmers have been using poultry litter exactly as the state's regulations tell them to, then turn around and claim that they are lawbreakers? We know better than that, and we think most Oklahomans do, too.

While we're doing everything humanly possible to avoid going to court, our at-

torneys tell us that when the facts come out and the court applies the law, the poultry industry's position will be proven correct.

We are particularly amazed that the state would take the position that the Illinois River/Tenkiller Lake watershed is a Superfund site, or that poultry litter, or all animal manure for that matter, is a hazardous substance. The state and federal governments have told farmers exactly how they can use animal manure to fertilize their crops and pastures. Does the attorney general want every farm declared a hazardous waste dump? What about wastewater treatment facilities that put the same chemicals in the water?

The notion that the any water quality issue in the water-

sheds is entirely the fault of poultry operations, or any other single industry, is simply not credible. It defies common sense, and I doubt any scientist could make this claim with a straight face. We have been saying for a long time that the companies are willing to do their part, but if the state is serious about water quality, it needs to follow through on comprehensive watershed management programs to address the thousands of sources out there.

Allegations that the use of poultry litter as fertilizer by farmers and cattlemen is somehow posing a threat to human health appears to be a move by the state to scare the public as fuel for the lawsuit. There is no scientific data to show that this is true and we will meet this and all of the other allegations head-on.

Wilkerson is the spokeswoman for Aviagen Inc., Cargill Turkey Products LLC, Cobb-Vantress Inc., George's Inc., Peterson Farms Inc., Simmons Foods Inc., Tyson Foods Inc., and Willow Brook Farms Inc.



Janet Wilkerson

Poultry industry spokeswoman

Lawsuit harms state agriculture

Attorney General Drew Edmondson's lawsuit against the poultry industry came as no surprise to the state's largest farm organization.

"We were convinced from the very beginning of this issue that the attorney general was only interested in a lawsuit with a large monetary settlement," Steve Kouplen, President of the Oklahoma Farm Bureau, said. "This is about large monetary settlements and not about solving environmental issues. The AG is focused on solving only one portion of the problem and not every contributing entity because of the potential deep pockets of the poultry companies. A big cash settlement for lawyers will not solve the environmental issues."

Farmers are concerned the AG's office is spending taxpayers' funds to attack an Oklahoma industry. In recent weeks the office has used state resources to place water quality monitoring devices in

Oklahoma and Arkansas.

"He is acting unilaterally in a way that could potentially cost thousands of jobs and devastate an important industry to our state."

Farm Bureau has successfully worked with the state Legislature and others to develop solutions to the poultry litter issue. One solution is a \$5 per ton tax credit for moving litter out of nutrient limited watersheds, a program which was extended by the state Legislature for three more years this past session.

Kouplen said he is concerned the attorney general is preventing Oklahoma from working with Arkansas to develop a joint watershed plan, as called for in the Statement of Joint Principles and Actions signed by both states in December 2003.

"We believe the solutions already exist to solve any dispute over water quality in the state," Kouplen said, "and therefore a lawsuit is unnecessary."

Clean water important to everyone — citizen and corporation

Oklahoma's lawsuit is about clean, safe water for eastern Oklahoma, not about money or power as some would have you believe.

It's about the Illinois River's legitimacy as an "Oklahoma scenic river," and it's about the future of Tenkiller Lake. Successful resolution will benefit the region and wherever animal waste is degrading the nation's waters.

No industry has the right to ruin a river or a lake, and we must remember that other industries are dependent on clean water. A moderate amount of corporate responsibility by the poultry industry would go a long way toward resolution of this lawsuit.

STIR is encouraged by the attorney general's attention to other contaminants of concern besides phosphorus. The lawsuit also requires an examination of poultry pollution for arsenic, growth hormones and bacterial pathogens, such as E. coli. While the problem associated with excess phosphorus is well known, the concerns regarding these other pollutants must be investigated and addressed if we are to protect citizens' safety and heritage of Scenic Rivers.

Farmers' routine application of chemical fertilizers and manure to the land poses a far greater environmental problem to freshwater lakes

STIR

Save the Illinois River, Inc. is a nonprofit organization chartered to protect the Illinois River, its tributaries and Tenkiller Lake.

STIR was formed by several Tahlequah residents in the 1980's to stop Fayetteville, Ark., from dumping its sewage into the Illinois River basin. The group was a party to the state's

lawsuit, which went to the U.S. Supreme Court, resulting in the precedent-setting opinion that upstream states must meet the water quality standards of downstream states.

Online: www.illinoisriver.org. Membership: \$15 for individuals and families and \$25 for businesses and organizations. Contact: STIR 24369 E. 757 Road, Tahlequah, OK 74464, or admin@illinoisriver.org.

than previously thought, potentially polluting water for hundreds of years, according to new research.

In a paper published Monday in the proceedings of the National Academy of Sciences, a University of Wisconsin-

Madison expert blames the buildup largely on industrial agriculture's excessive use of fertilizer and manure since the 1940s.

The study concludes that major changes in soil management are needed to re-

verse the trend. It may add urgency to government efforts to stop phosphorus from fouling up lakes and streams.

Phosphorus in those substances has built up in the soil and will slowly end up in many lakes, where the nutrients lead to plant and algae growth. The environmental problem, known as eutrophication, can turn pristine lakes into smelly, weed-filled swamps with dead fish.

The concentration could cause the eutrophication of lakes for centuries as the treated soil slowly washes into lakes and streams, writes Stephen Carpenter, a professor of zoology and a leading expert on freshwater lakes.