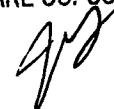


FILED

MAR 03 2021

CAROLINE M. WEAVER
DELAWARE CO. COURT CLERK



**IN THE DISTRICT COURT OF DELAWARE COUNTY
STATE OF OKLAHOMA**

Spring Creek Coalition)
)
Petitioner,)
)
v.)
)
The Oklahoma Department of Agriculture,)
Food & Forestry,)
An Agency of the State of Oklahoma,)
)
Respondent,)
)
And)
)
Michael Phan,)
)
Chau Tran & Donna Nguyen,)
)
Tong Nguyen,)
)
Ming Ngo,)
)
Loan Vo, and)
)
Tran & Tran LLC,)
)
Interested Parties.)

Case No. CJ-21-33

Hon. Judge Demey

PETITION

COMES NOW the Spring Creek Coalition, by and through undersigned counsel, and seeks relief under the Due Process clauses of the Oklahoma and United States constitutions. Further, pursuant to 75 O.S. § 306 and 12 O.S. § 1651 *et seq*, Petitioner seeks declaratory relief pertaining to the Oklahoma Department of Agriculture, Food &

Forestry's issuance of certain Poultry Feeding Operation registrations. In support thereof, Petitioner states and alleges as follows:

JURISDICTION AND PARTIES

1. Spring Creek Coalition (herein the "Coalition") is a grass-roots citizen group, whose purpose is to protect the waters and environment within the Spring Creek watershed.

2. Many of the Coalition's members live, reside, own property, recreate, work, or attend school or religious services in the Spring Creek watershed in Delaware County.

3. The Oklahoma Department of Agriculture, Food & Forestry (herein "ODAFF") is an agency of the state of Oklahoma charged with regulatory jurisdiction over commercial poultry operations within the state.

4. Such facilities under ODAFF's administrative jurisdiction may be referred to as "Animal Feeding Operations" ("AFO"), "Poultry Feeding Operations" ("PFO"), and/or "Concentrated Animal Feeding Operations" ("CAFO").

5. This case addresses ODAFF's issuance of certain PFO annual "registrations" within the Spring Creek watershed.

6. ODAFF's issuance of these registrations is challenged under the United States and Oklahoma constitutions and under Oklahoma's Administrative Procedures Act and Declaratory Judgment Act.

7. The Coalition believes and alleges that ODAFF's PFO registrations are improvident; failing to provide necessary Due Process for potentially adversely-impacted individuals and failing to satisfy mandatory, non-discretionary statutory safeguards.

8. The Coalition further believes and alleges that ODAFF's PFO registrations specifically at issue in this case are representative of widespread deficiencies of the agency and, as such, the Coalition seeks declaratory and injunctive relief from this Court; outlining the obligations of the agency in authorizing commercial poultry operations and barring the agency from authorizing such operations unless and until its mandatory, non-discretionary statutory obligations are satisfied.

9. Jurisdiction and venue are appropriate in this Court as the Coalition seeks a determination as to how Oklahoma's PFO provisions have been – and may be – applied within the Spring Creek watershed in Delaware County.¹ *See* 75 O.S. § 306.

10. The Coalition brings this action on behalf of – and has standing through – its members, some of whom live and own property within one (1) mile of the ODAFF-registered PFO facilities.

BACKGROUND

11. Delaware County, including the Spring Creek watershed, has a long history with commercial poultry growing.

¹ The Coalition is bringing a contemporaneous and substantially similar lawsuit in Cherokee County. That lawsuit, just like this, addresses ODAFF's Poultry Feeding Operation registrations in the Spring Creek Watershed. While recognizing that the substantive questions at issue in both cases will be functionally identical, the Coalition brings these two lawsuits in an attempt to comply with applicable venue provisions – each lawsuit addressing those poultry facilities, and the agency's registration thereof, within each specific county, 8 in Delaware County and 1 in Cherokee County.

12. In recent years, however, the scale and density of commercial poultry growing has expanded at unprecedented rates.

13. Towards the end of 2017, the poultry expansion was particularly abrupt, with significant increases in the relative size of individual poultry facilities as well as the respective density of such operations.

14. This has often resulted in many individual commercial poultry facilities being constructed in very close proximity, often surrounding preexisting property owners who end up having their property and lives impacted without any opportunity to protect their own interests from the interferences caused by the commercial poultry facilities.

15. Prior to their construction – much less, prior to their operation – such facilities must receive approval from ODAFF.

16. As part of ODAFF’s review and approval of these poultry facilities, ODAFF provides no notice to surrounding property owners or residents concerning the applied-for facility.

17. ODAFF’s PFO approvals are only good for one calendar year such that the facility must obtain a “new” authorization if it is to operate into the next calendar year.

18. Specific to this action, since 2017, ODAFF authorized PFO Number 1929, in the Spring Creek watershed, without providing the Coalition or any of its members any notice.

19. Similarly, since 2017, ODAFF authorized PFO Number 1940, in the Spring Creek watershed, without providing the Coalition or any of its members any notice.

20. Similarly, since 2017, ODAFF authorized PFO Number 1944, in the Spring Creek watershed, without providing the Coalition or any of its members any notice.

21. Similarly, since 2017, ODAFF authorized PFO Number 1958, in the Spring Creek watershed, without providing the Coalition or any of its members any notice.

22. Similarly, since 2017, ODAFF authorized PFO Number 1959, in the Spring Creek watershed, without providing the Coalition or any of its members any notice.

23. Similarly, since 2017, ODAFF authorized PFO Number 1961, in the Spring Creek watershed, without providing the Coalition or any of its members any notice.

24. Similarly, since 2017, ODAFF authorized PFO Number 1964, in the Spring Creek watershed, without providing the Coalition or any of its members any notice.

25. Similarly, since 2017, ODAFF authorized PFO Number 1968, in the Spring Creek watershed, without providing the Coalition or any of its members any notice.

26. Each of the above-listed poultry facilities – eight in total (herein collectively referred to as the “8 Registrations”) – is individually authorized to house at least 300,000 birds at one time. Each poultry facility grows multiple flocks per year, far surpassing 1,000,000 chickens in each calendar year.

27. In addition to the 8 Registrations, ODAFF has issued more than twenty (20) other poultry registrations within the Spring Creek watershed, which have been in place at all times material hereto.

28. ODAFF initially issued the 8 Registrations without the agency considering whether, and to what extent, the registered-facilities might contaminate or pollute the underlying groundwaters.

29. ODAFF initially issued the 8 Registrations without the agency considering whether, and to what extent, the registered-facilities might contaminate or pollute the surrounding surface waters.

30. ODAFF initially issued the 8 Registrations without the agency considering whether the registered-facilities will cause a degradation of the quality of the waters of Oklahoma and the United States.

31. ODAFF initially issued the 8 Registrations without agency inquiry into, or consideration or knowledge of, operational practices of the registered-facilities.

32. For instance, ODAFF initially issued the 8 Registrations without the agency understanding how, or what, the registered-facilities would exhaust into the surrounding air, nor any understanding of who or what might be impacted by such actions.

33. Specifically, ODAFF had no information as to whether (or not) the registered-facilities would be emitting hazardous air pollutants, including bacteria or viruses.

34. Similarly, ODAFF initially issued the 8 Registrations without agency inquiry into, or consideration or knowledge of, how much water would be utilized within the registered-facilities, nor how the water would be used, nor what would happen to the water after use.

35. Quite simply, at the time ODAFF initially issued the 8 Registrations, the agency lacked any evidence to suggest that the registered-facilities would not cause pollution, environmental degradation, or a public health hazard.

36. By annually reissuing the 8 Registrations at the conclusion of each calendar year since 2018, ODAFF has allowed the registered-facilities to continue operating.

37. Despite ODAFF allowing the registered-facilities' ongoing operations, the agency has not undertaken any assessment as to how the registered-facilities may adversely impact water quality, cause pollution, lead to environmental degradation, cause the emission of hazardous air pollutants, and create a public health hazard including through the emission of viruses and bacteria.

38. In the years that ODAFF has authorized the registered-facilities through the 8 Registrations, ODAFF has not gathered or considered any evidence concerning water quality degradation, pollution, environmental degradation, and public health hazards which may be – and likely are – caused by the registered-facilities.

39. Concerned that the community and environment were suffering and would continue to suffer due to the operation of the registered-facilities and that ODAFF was not aware of, nor seemingly concerned about, any material information for the registered-facilities, in December of 2020, the Coalition submitted formal letters to ODAFF protesting against reissuance of any of the 8 Registrations for the 2021 year.

40. The Coalition has not received a response from ODAFF regarding its December, 2020 protest letters to the 8 Registrations.

41. Upon information and belief, the Coalition understands ODAFF reissued the 8 Registrations for 2021 without considering – and without responding to – the Coalition's protests.

42. Upon information and belief, the Coalition understands ODAFF is not considering – and will not consider – the Coalition’s protests.

43. The Coalition brings this lawsuit as a result of ODAFF’s refusal to consider the Coalition’s protests.

44. The Coalition seeks to enjoin any authorizations from ODAFF for the 8 Registrations until and unless the agency complies with Oklahoma law, both procedurally (procedural due process) and substantively (statutory obligations and substantive due process concerning private property rights).

45. The Coalition seeks to enjoin any authorizations from ODAFF for the 8 Registrations until and unless the agency establishes that the registered-facilities will not adversely impact water quality; will not cause pollution; will not lead to degradation of water quality, in violation of state and federal law; will not cause the emissions of hazardous air pollutants; and will not create a public health hazard.

FIRST CAUSE OF ACTION – DEPRIVATION OF DUE PROCESS

ODAFF’s Issuance of Protested Poultry Feeding Operation Registrations Without Any Process Violates Fundamental Due Process

46. All previous paragraphs are incorporated as if alleged herein.

47. The Coalition, on behalf of itself and its members, protested reissuance of the 8 Registrations for the 2021 year.

48. The 8 Registrations, for the 2021 calendar year, are, in function and effect, identical to the prior years’ registrations, apart from the dates for which they are effective.

49. Coalition members' property interests stand to be adversely impacted by the facilities and activities authorized by ODAFF's 8 Registrations.

50. Coalition members' health and safety stand to be adversely impacted by the facilities and actions authorized by ODAFF's 8 Registrations.

51. Despite Coalition members' protected interests which are likely to be adversely impacted by ODAFF's 8 Registrations, ODAFF provided no notice prior to issuance of the 8 Registrations.

52. Further, despite the Coalition's timely protests to the 8 Registrations, ODAFF failed to afford the Coalition or its members notice or any opportunity to address the substance of the protests.

53. Moreover, ODAFF refused to consider the Coalition's material protests in issuing the 8 Registrations for the 2021 calendar year.

54. By failing to ensure that the public – including nearby and potentially-impacted residents and property owners – are provided notice of potential PFO registrations, ODAFF fails – and failed herein – to comply with necessary due process.

55. By failing to consider material protest(s) against the issuance of a PFO registration, ODAFF fails – and failed herein – to comply with necessary due process.

56. By failing to allow potentially-impacted individuals an opportunity to remonstrate against issuance of a PFO registration, ODAFF fails – and failed herein – to comply with necessary due process.

57. ODAFF's issuance of *ex parte* PFO registrations fails to afford necessary due process.

58. The Coalition respectfully asks that the Court enjoin ODAFF from issuing additional PFO registrations unless and until ODAFF formulates a framework to ensure that adequate due process can be, and will be, provided.

SECOND CAUSE OF ACTION – DECLARATORY JUDGMENT
(12 O.S. § 1651 *et seq.* & 75 O.S. § 306)

ODAFF’s PFO Registration Process Fails to Satisfy Necessary Statutory Safeguards

59. All previous paragraphs are incorporated as if alleged herein.

60. ODAFF is responsible to comply with Oklahoma statutes concerning the emission of pollutants into the air, soil, and water and ensure that commercial poultry operations do not cause pollution.

61. ODAFF is obligated to ensure that commercial poultry operations do not cause degradation – or impairment – of existing uses of waters of the State and the United States.

62. Additionally, ODAFF is responsible to ensure that commercial poultry operations do not lead to a public health hazard.

63. To help effectuate these requirements, ODAFF is to develop and enforce “Best Management Practices” over commercial poultry operations.

64. However, ODAFF initially issued the 8 Registrations – and has annually reissued the 8 Registrations – without ensuring that the registered-facilities will not cause pollution, will not cause water quality degradation, and will not lead to a public health hazard.

65. Indeed, ODAFF issued the 8 Registrations without understanding any of the management practices of the registered-facilities – much less ensuring that only Best Management Practices would be implemented.

66. By failing to ensure that the registered-facilities will not cause pollution prior to issuance of the PFO registration, ODAFF is failing – and has failed herein – to effectuate its statutory obligations.

67. By failing to ensure that the registered-facilities will not cause degradation of water quality – of both surface and subsurface waters – prior to issuance of the PFO registration, ODAFF is failing – and has failed herein – to effectuate its statutory obligations.

68. By issuing PFO registrations without first promulgating and enforcing Best Management Practices, ODAFF fails – and failed herein – to effectuate its statutory obligations.

69. Because the 8 Registrations lack non-discretionary – and beneficial – statutory environmental safeguards from ODAFF, the Coalitions seeks to have the 8 Registrations invalidated.

70. The Coalition seeks to enjoin ODAFF from issuing any further PFO registrations without the agency first satisfying its statutory environmental oversight obligations.

71. To the extent ODAFF seeks to portray its promulgated administrative rules as adequate to satisfy the agency's obligations, the Coalition would seek an Order from this Court declaring the same to be insufficient.

RELIEF REQUESTED

72. Petitioner seeks declaratory relief from this Court as to the propriety of ODAFF's commercial poultry operation "registration" process which does not provide notice to the public or surrounding persons potentially impacted.

73. Petitioner seeks declaratory relief from this Court as to the propriety of ODAFF's *ex parte* commercial poultry operation "registration" process when protests have been lodged in opposition to the same.

74. Petitioner seeks declaratory relief from this Court as to the propriety and adequacy of ODAFF's pollution prevention actions within the agency's commercial poultry operation "registration" process.

75. Petitioner seeks declaratory relief from this Court as to the propriety and adequacy of ODAFF's water quality protection actions within the agency's commercial poultry operation "registration" process.

76. Petitioner seeks a determination as to applicability of ODAFF's "Registered Poultry Feeding Operations" rules, 35 Okla. Admin. Code 17-5-1 *et seq.* to the registered-facilities.

77. Petitioner seeks a determination that ODAFF's promulgated "Registered Poultry Feeding Operations" rules fail to effectuate the agency's environmental obligations for and towards Poultry Feeding Operations.

78. Petitioner seeks a determination as to the applicability of 35 Okla. Admin. Code 44-1-2 for – and to – the registered-facilities.

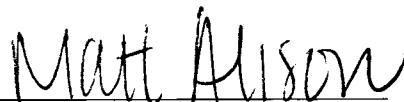
79. Petitioner seeks a determination as to the applicability of 35 Okla. Admin. Code 44-3-2 for – and to – the registered-facilities.

80. Petitioner seeks to enjoin ODAFF from issuing or reissuing any of the 8 Registrations or any other similarly-situated commercial poultry operations until the Court determines that ODAFF can and will provide adequate due process.

81. Petitioner seeks to enjoin ODAFF from issuing or reissuing any of the 8 Registrations or any other similarly-situated commercial poultry operations until the Court determines that ODAFF can and will satisfy its environmental regulatory oversight in its registration process for the same.

WHEREFORE, Petitioner respectfully requests this Court to enjoin ODAFF from authorizing any of the 8 Registrations until the agency provides requisite notice and process and until the agency has satisfied its statutory environmental obligations over the same.

Respectfully submitted this 2nd day of March, 2021,



Matthew D. Alison, OBA No. 32723
Jason B. Aamodt, OBA No. 16974
Krystina E. Phillips, OBA No. 30111
Dallas L.D. Strimple, OBA No. 30266
INDIAN AND ENVIRONMENTAL LAW
GROUP, PLLC
406 S. Boulder,
Suite 830
Tulsa OK, 74103
Tel: (918) 347-6169
Attorneys for Petitioner Spring Creek Coalition