

The National Agricultural Law Center

We are the nation's leading source of agricultural and food law research and information



Mid-Year Mid-South Review of Ag Law & Policy Developments

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About the NALC

- Since 1987, the National Agricultural Law Center is the nation's leading source for agricultural and food law research and information.
 - The NALC is a unit of the University of Arkansas System Division of Agriculture
 - In close partnership with the USDA Agricultural Research Service, National Agricultural Library
- Objective, non-partisan research and information regarding laws and regulations affecting agriculture

nationalaglawcenter.org



NALC Newsletter: The Feed



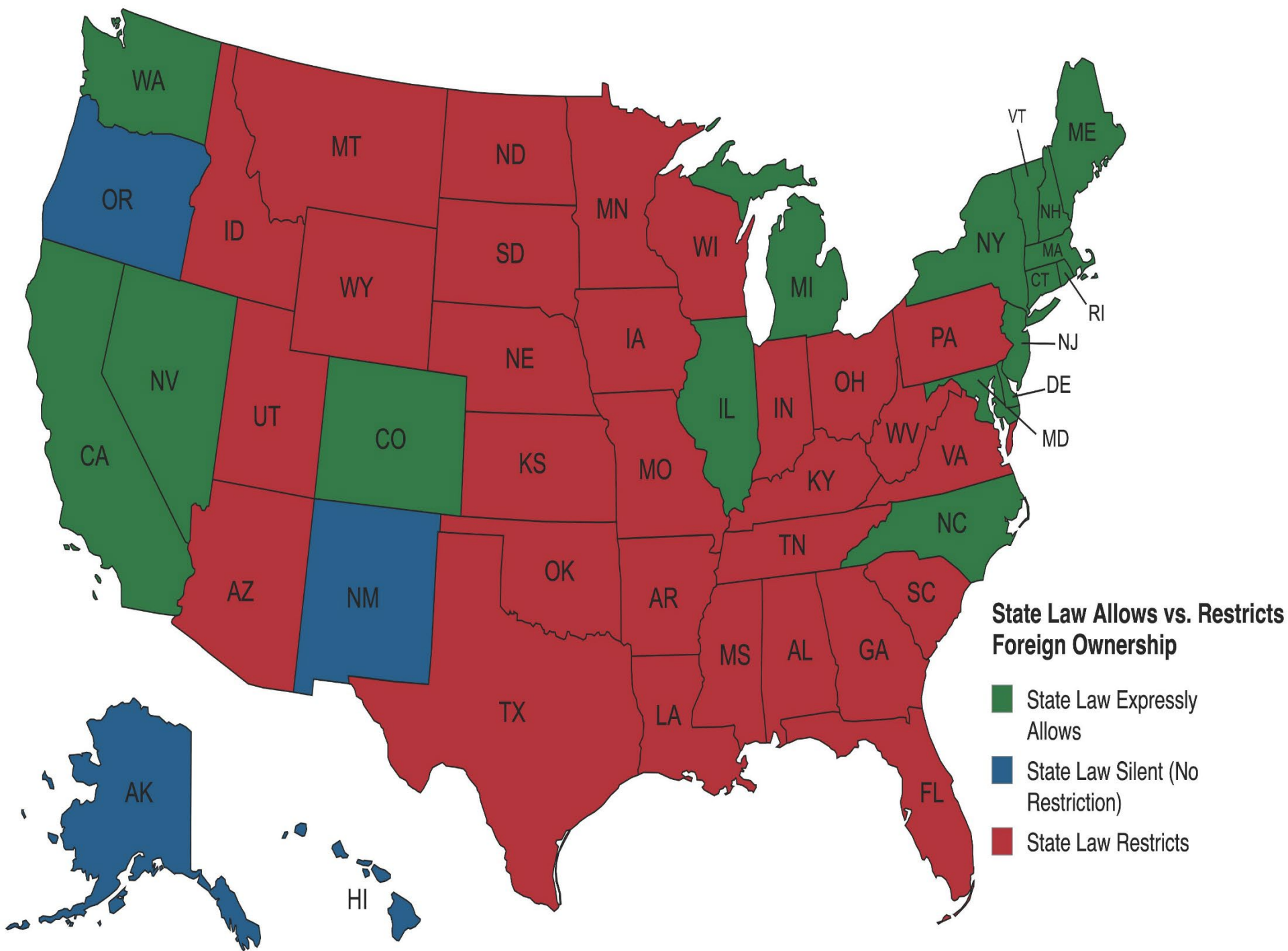
- Issues every 2 weeks (once only in December)
- Concise ag law & policy updates w/ links to NALC resources



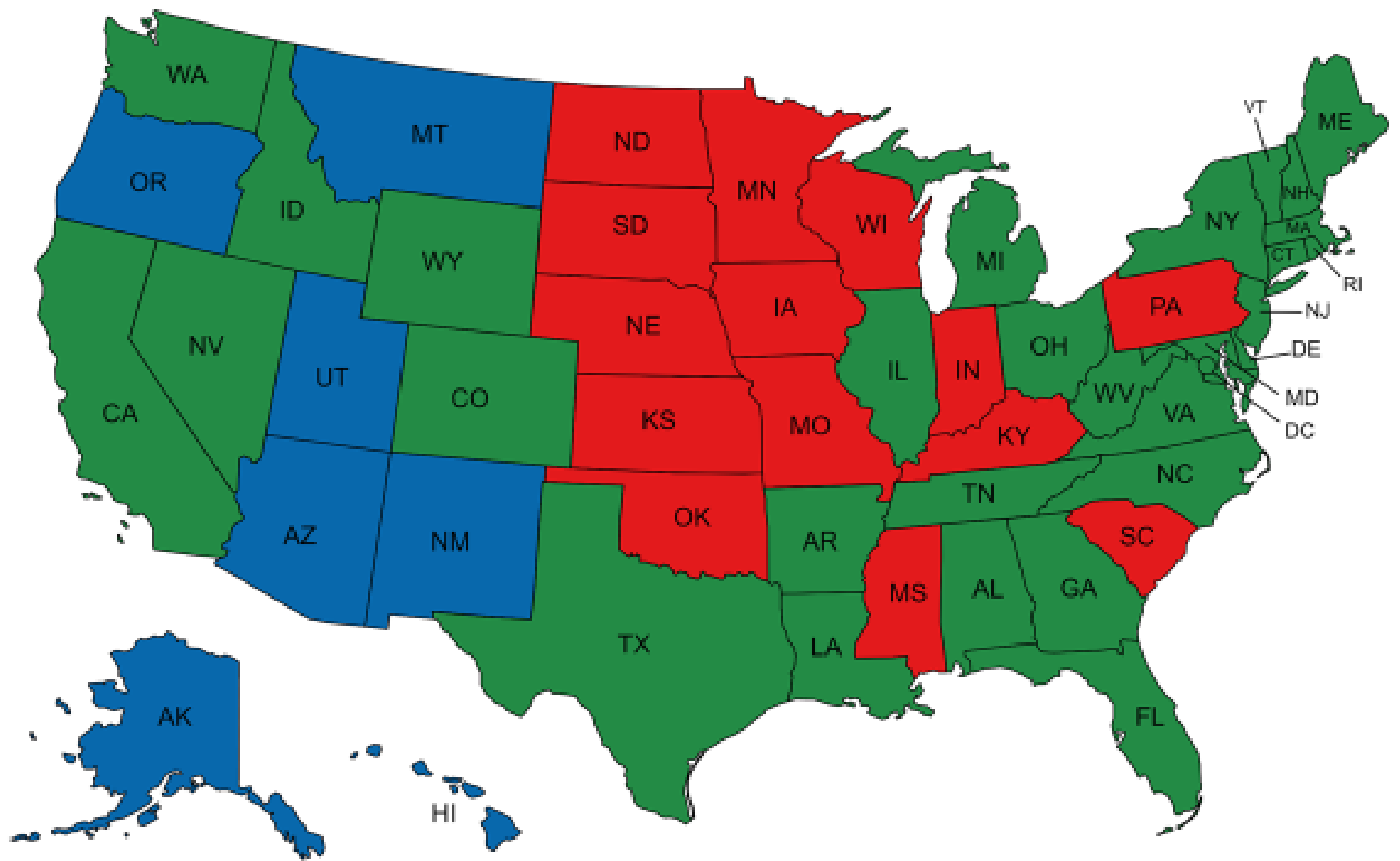
Sign Up for our Attorney List:

- Based on an increasing number of requests from stakeholders throughout the country, the NALC is creating a contact list to connect members of the agricultural community with private practice attorneys experienced in ag-related issues.
 - Participation does not constitute endorsement or referral.
- **Information requested:**
 - Contact information
 - States of practice
 - Areas of practice
- Join the list at <https://rebrand.ly/aglawlist> or follow the QR code.





Foreign Ownership Laws: December 31, 2022



Foreign Ownership: Key Updates

- State level: 2025/2026
 - 7 states amended prior laws: Arkansas, Georgia, Idaho, Nebraska, Tennessee, Utah, and Indiana
 - 4 state enacted new laws: Arizona, Kentucky, Texas, and West Virginia
- Federal level: Congress, USDA, CFIUS, & Courts



Industrial Hemp... Where are we?

- Hemp is *cannabis sativa* with a THC amount under the federal threshold.
 - [T]he plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and **all derivatives, extracts, cannabinoids**, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. 7 U.S.C. 1621 (FB)
 - The ag appropriations bill in 2025 changed the definition to a total THC concentration (including THCA) of not more than 0.3% on a dry weight basis.
 - This goes into effect in November



Industrial Hemp

- Why does this even matter?
 - Early hemp production was for CBD primarily
 - Along came Epidiolex
 - The rise of Delta-8 and Delta-10
 - To make Delta-8 you essentially process the CBD oil, add that into a solvent, and then add in an acid while keeping the temperature steady.
 - Current push is for industrial hemp that focuses on fiber, oilseed and terpenes
 - Questions going forward:
 - Is there local markets/infrastructure available for these products?
 - Will Congress extend the Nov. deadline or roll back the definition?
 - How does the proposed rescheduling medical marijuana affect this industry?



EU Deforestation Regulations

- Currently hearing about this issue from MS and AR landowners
- Importers must certify that imports were not produced on deforested lands going back to 12-31-2020
- They would have to trace back the products all the way back to the location where it was produced
 - The concern is shifting the compliance burden to the landowners...



EU Deforestation Regulations

- Some timber companies are hesitant to buy lumber if the land could be converted to pasture or soybeans...
 - Fines could be up to 4% of the total value of sales in the EU that year for that company...
- This is supposed to go into effect at the end of this year, but it has been put off the past two years due to technical challenges.
- There was hope earlier this year that the EU would soften the regulations a bit, but that did not happen.



“MAHA” Movement

- Moment vs. Movement – does it have staying power?
- Though prompted on the federal level, most tangible law has come from the state level.
- Federal level actions:
 - Synthetic color additives “phase out” plan
 - Dietary Guidelines for Americans, 2025 – 2030.
 - SNAP waivers granted
 - SNAP stocking standards changed



State “MAHA” Actions

- Not all of these actions would be considered “MAHA,” but all cover MAHA food-related priorities.
- States that have banned food with certain ingredients (ex. color additives) from school meals – TN, UT, NE, DE, AX, TX, LA, WV, CA
- Texas and Louisiana create labeling disclosure requirements for foods with certain ingredients
- California and West Virginia ban foods with certain ingredients from being sold in their state.
- California defines ultra-processed foods
- States receiving waivers to restrict certain foods from SNAP eligibility
- On my radar:
 - New York GRAS bill, S. 1239
 - Iowa MAHA bill, HF 2676



MAHA in the Courts

- West Virginia food additive ban and Texas labeling law are both found to be “likely unconstitutional,” and cannot be enforced as litigation is ongoing.
 - West Virginia – Court found that plaintiffs were likely to succeed on the claim that the ban was unconstitutionally vague.
 - Texas – Court found that the disclosure requirement was likely a content-based regulation that violated the freedom of speech.
- Lawsuit brought against 5 states with SNAP waivers to restrict eligible foods.
 - Colorado, Iowa, Nebraska, Tennessee, and West Virginia.
 - Claiming that USDA violated the Administrative Procedures Act by exceeding their statutory authority to approve waivers, failing to offer proper notice and comment periods, and acting in an arbitrary and capricious manner.
- San Francisco lawsuit against food manufacturers.
 - Claiming that nine food manufacturers designed UPFs to be addictive, intentionally marketed their products to children, and are the driving factor behind a public health crisis in SF.
 - Recently, remanded back to state court.



On my radar: Federal MAHA Actions

- GRAS reform
- UPF definition
- Implementation of the DGA
- Front of Package labeling rule

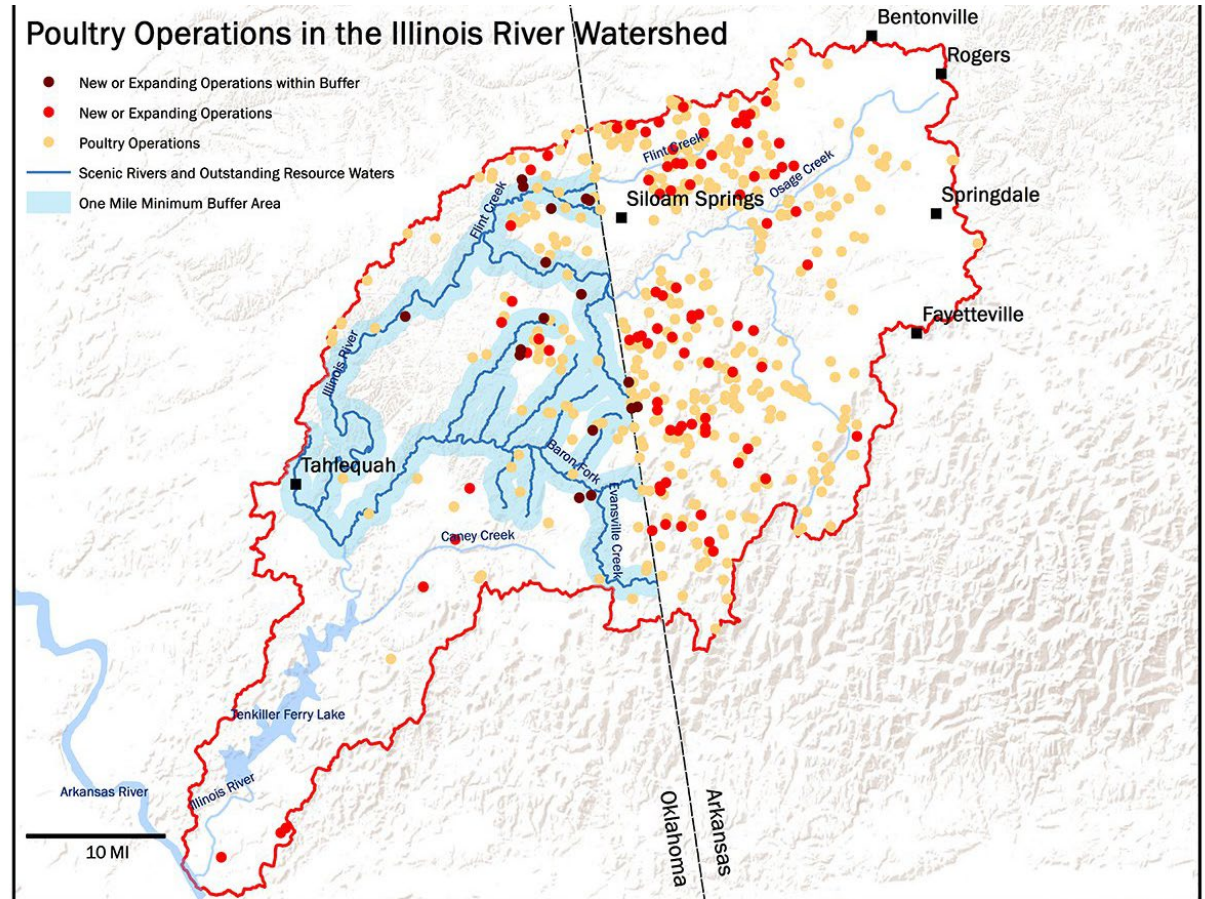
- Preemption language out of Congress?





OK v. AR

The Chicken Litter Case



Map: Environmental Working Group <https://bit.ly/2FBsKdl>

Poultry Production in the NW AR/NE OK (2023)

- Significant poultry industry in the IRW- Northwest Arkansas and Northeast Oklahoma.
 - Millions of birds raised annually
 - Hundreds of thousands of tons of poultry litter generated each year
- Statistics pulled from 6/17/25 court order:



	Arkansas*	Oklahoma**
Poultry Houses	1,733	419
Bird Capacity (per flock)	19,086,239	8,741,500
Waste Generated (tons per year)	307,539	55,992

* Due to AR privacy laws, AR numbers reflect all of Washington and Benton counties, not just those houses located in the IRW

**** Includes only poultry production in IRW



Poultry Production- A Vertically Integrated Industry

Integrators (Tyson, Cargill, Simmons, etc.)

- Own the birds
- Own/produce feed
- Provide veterinary services
- Control processing & marketing

Contract Growers

- Own poultry houses & equipment
- Provide labor, utilities, maintenance
- Raise birds under contract; paid by efficiency of gain (feed conversion to live weight)

Waste Generation

- Litter produced at grower farms
- Growers typically own litter
- Integrators historically disclaimed ownership of litter
- Spread on fields for use as fertilizer



Background:

- 1970: Scenic Rivers Act
 - Oklahoma designated the Illinois River (among others) a scenic waterway as part of the 1970 Oklahoma Scenic Rivers Act.
- Effect: Allowed for additional protections of designated waterways
- Main standard at issue:
 - Phosphorus criteria of .037 mg/L

A. The Oklahoma Legislature finds that some of the free-flowing streams and rivers of Oklahoma possess such unique natural scenic beauty, water conservation, fish, wildlife and outdoor recreational values of present and future benefit to the people of the state that it is the policy of the Legislature to preserve these areas for the benefit of the people of Oklahoma. For this purpose there are hereby designated certain "scenic river areas" to be preserved as a part of Oklahoma's diminishing resource of free-flowing rivers and streams.

B. The areas of the state designated as "scenic river areas" shall include:

1. The Flint Creek and the Illinois River above the confluence of the Barren Fork Creek in Cherokee, Adair and Delaware Counties;

2. The Barren Fork Creek in Adair and Cherokee Counties from the present alignment of Highway 59 West to the Illinois River;

3. The Upper Mountain Fork River above the 600-foot elevation level of Broken Bow Reservoir in McCurtain and LeFlore Counties;

4. Big Lee's Creek, sometimes referred to as Lee Creek, located in Sequoyah County, above the 420-foot MSL elevation, excluding that portion necessary for a dam to be built in the State of Arkansas with a crest elevation of no more than the 420-foot MSL elevation. The Oklahoma Water Resources Board shall make such classifications, designations or adjustments to Oklahoma's water quality standards as required to allow the impoundment of water by said dam; and

5. Little Lee's Creek, sometimes referred to as Little Lee Creek, located in Adair and Sequoyah Counties, beginning approximately four (4) miles east-southeast of Stilwell, Oklahoma, and ending at its conjunction with Big Lee's Creek approximately two (2) miles southwest of Short, Oklahoma.

C. The term "scenic river area" as used in the Scenic Rivers Act is defined as the stream or river and the public use and access areas located within the area designated.



2005

- OK AG Drew Edmondson files a federal lawsuit against 14 poultry companies, accusing them of polluting the Illinois River watershed with chicken litter and seeking damages.

Sept.
2009

- Trial begins

Feb.
2010

- After 52 trial days, both parties finish their cases
- Final arguments made.

- Plaintiff (OK) claims:

- Defendants disposed of hazardous substances (in the form of chicken litter) in the IRW
 - Phosphorous etc
- Integrators were vicariously liable for the grower's actions in spreading the litter
- Each defendant is a potentially responsible party
 - Joint and several responsibility

- Defendant (poultry company) claims:

- Growers are independent contractors, and contractually responsible for waste disposal
- Poultry litter is beneficial fertilizer
- Disposal is already regulated by states, their actions in AR were legal in that state
- Other sources contribute to bacteria and phosphorus
 - Karst topography (sinkholes, subsurface flow) made it difficult to link the litter to the pollution

2023: A Ruling

- Jan 2023: Ruling in favor of OK/against integrators
 - 219 pages (180 pages of fact-finding)
 - Recognized poultry litter as key non-point source



- Reasoning:
 - Companies could be held vicariously liable for grower wrongs b/c
 - they “knew or should have known no later than the late 1990s that their growers’ land application of litter was a primary source of the excess phosphorus in the waters of the IRW”
 - Defendants can be held responsible for nuisance claims b/c
 - they imported phosphorus-laden feed into the watershed, even though they “have known or should reasonably have known since at least the mid-to-late 1980s” that the litter would then be used in a way that caused injury to the waters of the IRW.
 - “The court concludes all defendants [the poultry companies], by their conduct, have unreasonably interfered with the public’s right to the use and enjoyment of the waters of the IRW (Illinois River watershed) in Oklahoma”





Consequences:

contamination are created by the poultry waste application. 2 Okla. Stat. § 10-9.7(B)(4)(a) and (B)(4)(b).⁵²

96. This court has concluded that defendants' conduct in both Oklahoma and Arkansas constitutes a public nuisance and a trespass on the waters in the Oklahoma portion of the IRW. Although Arkansas has a regulatory scheme pertaining to the management of poultry waste, that scheme must yield to the law set forth in *Cameron* and its progeny. Moreover, it is axiomatic that Arkansas cannot "permit" nonpoint source pollution of Oklahoma's waters.

IV. Conclusion

For the foregoing reasons, the court finds in favor of the State and against defendants on the State's claims of statutory public nuisance, federal common law nuisance, trespass, for violation of 27A Okla. Stat. § 2-6-105, and for violation of 2 Okla. Stat. § 2-18.1.

The Court Clerk shall substitute the current relators pursuant to Fed. R. Civ. P. 25(d), as set forth in footnote 1 above.

The Environmental Protection Agency has recognized that nutrient pollution caused by phosphorus is one of America's most widespread, costly, and challenging environmental problems. The parties are hereby directed to meet and attempt to reach an agreement with regard to remedies to be imposed in this action. On or before March 17, 2023, they shall advise the court whether they have been able to do so. The agreed remedies, if any, must be approved by the court. In the event the parties are unable to reach an accord, the court shall enter judgment.



June 2025



- Question for the Court:
 - Have conditions in IRW “materially changed” enough that it is unfair to still hold the poultry companies responsible for litter application?
- Findings:
 - Phosphorus continues to injure the Illinois River and Lake Tenkiller
 - Defendant companies have continued poultry operations and generated poultry waste throughout the IRW
 - Both continued application and “legacy phosphorus” is affecting water quality
 - Phosphorus run-off from litter application continues to be a significant source of injury to the IRW
 - The continuing actual and ongoing injury to the waters of the IRW constitutes irreparable harm
 - Conditions are not “materially changed”



December
2025

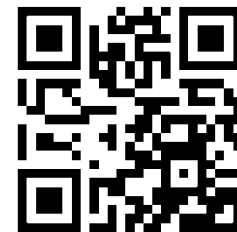


- Remedies:
 - Fines of \$10,000 per violation to the OK DEQ Revolving Fund
 - Not as much as OK had asked for
 - Companies are responsible for cleanup costs
 - Paid for by poultry companies with an evergreen fund, starting with a balance of 10 million
 - Special master to be appointed to oversee remediation efforts and update the court regularly.
 - Remediation will run at least 30 years
 - Companies cannot place birds with growers who are not in compliance
 - Companies are responsible for removal/storage/transport/disposal of litter
 - Injunction restricting land application of poultry waste to 2 tons of waste per acre
 - Or less, if testing shows that the phosphorus levels for that property are over an agronomically acceptable level
 - Joint and several liability
 - Attorney's fees



2026

- OK AG announces several settlements with integrators to resolve issues in the case
 - January 2026- Settlement with George’s
 - Amount: \$5 million payment to Oklahoma.
 - Terms: Progressively reduce the application of litter as fertilizer to 20% of the litter produced.
 - February 2026- Settlement with Tyson and Cargill
 - Amount: \$19 million from Tyson; \$6.5 million from Cargill
 - Terms:
 - Progressively reduce the application of litter as fertilizer to
 - Pay into a fund for a Special Master to monitor compliance and bear all costs associated with litter removal;
 - Pay into a fund for remediation of the Illinois River Watershed
- April 2026- Judge rejected all settlements
 - Insufficient in \$\$ and time to remedy/fix harm
 - If accepted, it would give incentives to companies to “roll the dice” and see if they get a bad verdict before negotiating





At the Moment

- Appeals pending:
 - Appeal of foundational ruling (all companies)
 - Appeal of rejection of settlement (companies at issue joined by OK AG & OK Sec. of Energy)
- Will undoubtedly affect growers in the region as companies plan for future with limited disposal
 - Also affect others associated with local production/processing
- Bigger picture (common law)
 - TMDL process is not sufficient to protect from NPS pollution
 - Model for other challenges to land application
 - Integrators responsible for actions of independent contractors/growers



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