IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

1. 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 NATURAL RESOURCES FOR THE STATE OF OKLAHOMA	
PLAINTIFF	
vs.	**Case No. CV-0329-JOE-SAJ**
1. TYSON FOOD, INC.,	
2. TYSON POULTRY, INC.,	
3. TYSON CHICKEN, INC.,	
4. COBB-VANTRESS, INC.,	
5. AVIAGEN, INC.,	
6. CAL-MAINE FOODS, INC.,	
7. CAL-MAINE FARMS, INC.,	
8. CARGILL , INC.,	
9. CARGILL TURKEY PRODUCTION LLC,	
10. GEORGE'S, INC.	
11. GEORGE'S FARMS, INC.	
12. PETERSON FARMS, INC.,	
13. SIMMONS FOODS, INC., and	
14. WILLOW BROOK FOODS, INC.	
DEFENDANTS	
TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC., AND WILLOW BROOK FOODS, INC.	
THIRD PARTY PLAINTIFFS,	
vs.	
TOWN OF WESTVILLE, et.al.	
Third Party Defendants	

ANSWER AND TO THIRD PARTY COMPLAINT

COMES NOW, Todd Hembree, attorney for Third Party Defendant, the Town of Westville and answers the Third Party Complaint as follows:

Regarding, I. BACKGROUND, Third Party Defendant, Town of Westville (hereinafter "Westville") is without sufficient knowledge of the background and the same are denied.

1. Westville is without sufficient knowledge of the allegations in the first sentence of Paragraph 1 and the same is denied. Westville admits that the State of Oklahoma has filed a complaint alleging the action and damages described in Sentence 2, 3, 4, 5, and 6.

2. Westville is without sufficient knowledge of the allegation in the first sentence of Paragraph 2, and the same is denied. Westville denies that the second sentence, third sentence, and the fourth sentence. Westville also denies the fifth sentence which is the accordingly sentence.

3. Westville denies Paragraph 3.

4. Westville denies the first sentence of Paragraph 4 applies to Westville and questions the numerous allegation in the rural northeast of Oklahoma. Westville is without sufficient knowledge of the second sentence of Paragraph 4 and the same is denied. Westville admits the third sentence of Paragraph 4.

5. Westville is without sufficient information of paragraph 5 of the first and second sentence and the same is denied. Westville admits the third sentence of Paragraph 5.

6. Westville is without sufficient information of the first sentence, second sentence and third sentence of paragraph 6 and the same is denied.

7. Westville is without sufficient information of the first sentence, second sentence and third sentence of Paragraph 7 and the same is denied.

8. Westville is without sufficient information of the first sentence in Paragraph 8 and the same is denied. Westville admits the second sentence of Paragraph 8.

9. Westville is without sufficient information of the first, second, third or fourth sentences in Paragraph 9 and the same is denied.

II. Parties

10. Westville is without sufficient information of Paragraph 10 and neither admits or denies Paragraph 10.

11. Westville is without sufficient information of Paragraph 11 and neither admits or denies Paragraph 11.

12. Westville is without sufficient information of Paragraph 12 and neither admits or denies Paragraph 12.

13. Westville is without sufficient information of Paragraph 13 and neither admits or denies Paragraph 13.

14. Westville is without sufficient information of Paragraph 14 and neither admits or denies Paragraph 14.

15. Westville is without sufficient information of Paragraph 15 and neither admits or denies Paragraph 15.

16. Westville is without sufficient information of Paragraph 12 and neither admits or denies Paragraph 16.

17. Westville is without sufficient information of Paragraph 13 and neither admits or denies Paragraph 17.

18. Westville is without sufficient information of Paragraph 14 and neither admits or denies Paragraph 18.

III. Third Party Defendants

19. Westville is without sufficient information of Paragraph 19 and neither admits or denies Paragraph 19.

20. Westville denies Paragraph 20 and demands strict proof thereof.

21. Westville is without sufficient information of Paragraph 21 and neither admits or denies Paragraph 21.

22. Westville is without sufficient information of Paragraphs 22 through 169 and neither admits or denies Paragraphs 22 through 169.

23. Westville specifically denies Paragraph 170.

IV. Jurisdiction and Venue

24. Westville admits the first sentence of Paragraph 171. Westville denies the second sentence and states that a normal lagoon is maintained under Oklahoma DEQ rules and regulations. Westville denies the third sentence as they have no acts or omissions that would require a law suit to be brought against Westville. Westville denies the fourth sentence as they have not contributed to the Illinois River problems and are not a responsible party. Westville admits that the Court has jurisdictional over the issues of this case, but denies any liability as a defendant.

25. Westville admits jurisdiction in Paragraph 172, but denies any activity on property in Oklahoma that would cause any liability.

26. Westville admits that the Illinois River Watershed is situated in the Northern District, but denies the third party claims alleged in paragraph 173.

27. Westville is without sufficient information of paragraphs 174 through 195 to admit or deny.

28. Westville denies Paragraph 196.

29. Westville admits Paragraph 197 and asserts that Westville is not responsible for or contributed to any pollution in the Illinois River.

30. Westville is without sufficient information in paragraph 198 and 199 regarding Watts and Tahlequah to admit or deny notice against those cities, but do admit notice was made against Westville and that Westville did not respond.

31. Westville denies Paragraph 200 as it applies to Westville.
32. Westville denies Paragraph 201 as it applies to Westville.

33. Westville is without sufficient information of Paragraph 202 and neither admits or denies the Paragraph.

34. Westville denies Paragraph 203.

35. Westville is without sufficient information of Paragraph 204 and neither admits or denies the Paragraph.

36. Westville denies Paragraph 205.

37. Westville denies Paragraph 206.

38. Westville denies Paragraph 207 as it applies to the Town of Westville as a Third Party Defendant.

39. Westville denies Paragraph 208 as it applies to the Town of Westville as a Third Party Defendant.

40. Westville denies Paragraph 209 and further alleges that it has not released any hazardous substances.

41. Westville denies Paragraph 210, denies any releases, any tests or other activities it would be responsible for and denies any responsibility for any damages to the Defendant.

42. Westville denies Paragraph 211, denies any responsibility for paying for future response costs of Third Party Plaintiffs.

43. Westville is without sufficient information of Paragraph 212 and neither admits or denies the Paragraph.

44. Westville is without sufficient information of Paragraph 213 and neither admits or denies the Paragraph.

45. Westville is without sufficient information of Paragraph 214 and neither admits or denies the Paragraph.

46. Westville denies Paragraph 215.

47. Westville denies Paragraph 216 and any liability for respective share of damages.

48. Westville is without sufficient information of Paragraph 217 and neither admits or denies the Paragraph.

49. Westville is without sufficient information of Paragraph 218 and neither admits or denies the Paragraph.

50. Westville denies Paragraph 219 and any responsibility for release of some of the same constituents of poultry liter.

51. Westville denies Paragraph 220.

52. Westville denies Paragraph 221 as it applies to the Town of Westville. They deny that that Westville should be responsible for any injunctive relief, clean-up, assessment or remediation efforts.

53. Westville denies the Prayer for Relief and asks that the Court award attorney fees and costs for having to defend this lawsuit.

AFFIRMATIVE DEFENSES

54. Westville, Third Party Defendant further asserts that Westville is entitled to the defenses of estoppel, laches, failure to timely file, contributory negligence, assumption of risk and that Third Party Plaintiff has failed to state a claim upon which relief can be granted and further asserts any other affirmative defenses available from facts developed during discovery.

55. Wherefore, Third Party Defendant, the Town of Westville, prays that Third Party Plaintiffs take nothing on their Petition and that the Third Party Defendant, the Town of Westville be awarded reasonable attorney fees and costs.

Therefore the Town of Westville requests damages for nuisance, trespass and filing a frivolous lawsuit and all attorney fees and costs of defending this lawsuit and all other and further relief as it is just and appropriate.

Town of Westville, Third Party Defendant

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Dated: February 10, 2006.

CERTIFICATE OF SERVICE

I certify that on the 10th day of February, 2006, I mailed a copy of the Answer and Counter claim to the following

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