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ATTORNEY GENERAL
LITIGATION DIVISION

IN THE DISTRICT COURT OF DELAWARE COUNTY
STATE OF OKLAHOMA

In re Statutory Administrative Warrant Allowing Entry to Perform Sampling	))))	**Case No. CV-05-563**

RESPONSE TO MOTION OF JULIE ANDERSON CHANCELLOR AND BILL ANDERSON TO QUASH OR MODIFY ADMINISTRATIVE WARRANT AND FOR EXPEDITED HEARING AND ANSWER BRIEF IN SUPPORT

COMES NOW the State of Oklahoma, ex rel. Oklahoma Department of Agriculture, Food, and Forestry (" the Department"), and respectfully submits the following response and answer brief to the Motion of Julie Anderson Chancellor and Bill Anderson to Quash or Modify Administrative Warrant (collectively, "Respondents").

STATEMENT OF FACTS

On October 18, 2005 the Department made an application for a statutory administrative warrant allowing entry to premises in order to perform soil and litter sampling and testing at barns and land application sites of a poultry feeding operation known as the Julie Anderson a/k/a Julie Anderson Chancellor poultry facility. The application was approved by this Court and the statutory warrant was issued. Before the statutory warrant could be served, Respondents filed a motion to quash. Respondents voluntarily agreed to allow the Department to "sample their fields to determine the soil concentration of the fertilizer nutrients"[1] but stated that the Department's sampling protocols were not allowed by

[1] See paragraph 5 of Respondents' motion.

Oklahoma Registered Poultry Feeding Operations Act ("ORPFOA")[2] and expressed concern that sampling and testing at this time may not conform to strict biosecurity protocols implemented by the Respondents. In addition, Respondents claim a possible outbreak of Infectious Laryngotracheitis ("ILT") disease in the vicinity of their facility.

ARGUMENT AND AUTHORITY

THE DEPARTMENT HAS THE AUTHORITY TO SAMPLE AND TEST

In their motion, Respondents allege that the Department does not have the authority to sample and test for substances other than those listed in 2 O.S. § 8-77.11 (i.e., nutrients limited to nitrogen, phosphate, potash, calcium, magnesium, sulfur, boron, chlorine, cobalt copper, iron, manganese, molybdenum, sodium and zinc)[3] and is required to follow a sampling protocol described in OK NCRS Code 590 and OSU Extension Facts publication F-2207. Respondents also assert that the Department's authority to act under the statutory warrant is limited to emergency situations or to respond to ongoing violations of the law. In fact, the Department's authority is very broad and not at all limited to those situations or to any list of nutrients or sampling protocol. In addition, Respondents consented to inspection, sampling and testing of litter and soil when they registered as operators under ORPFOA. (See 2 O.S. 2001 § 10-9.10(A)(a).

The Oklahoma Constitution in Art. 6 § 31[4] and the Oklahoma Statutes in 2 O.S. § 2-

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[2] 2 O.S. § 2001 10-9.1 et seq.

[3] 2 O.S. §§ 8-77.1 through 8-77.18, collectively known as the Oklahoma Fertilizer Act.

[4] Article 6 § 31 of the Oklahoma Constitution states: "Said Board [of Agriculture] shall be maintained as a part of the State government, and shall have jurisdiction over all matters affecting animal industry and animal quarantine regulation."

4(A)(7)[5] state that the State Board of Agriculture and the Department have jurisdiction over all matters affecting animal industry, animal health, and animal quarantine, including jurisdiction over poultry and poultry litter.[6] The Department has general authority under 2 O.S. § 2-14(A) to enter any premises "for the purpose of implementing the Oklahoma Agricultural Code and rules promulgated thereof." The Department also has the authority under 2 O.S. § 2-14(B) "to carry out all necessary and proper actions to determine compliance with the Oklahoma Agricultural Code including, but not limited to inspection and collecting and submitting samples for analysis."[7]

The Department is also authorized to enter the premises of a poultry feeding operation to determine whether there are any violations of ORPFOA[8] and has the authority under the Oklahoma Poultry Waste Applicators Certification Act ("OPWACA") to take samples of poultry waste and soil at application sites, whether or not they are associated with

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[5] 2 O.S. § 2-4(A)(7) states: "The State Board of Agriculture shall have the power to: A.7 Have jurisdiction over all matters affecting animal industry, animal health, and animal quarantine."

[6] 2 O.S. § 1-1 et seq. describes the Oklahoma Agricultural Code, and the powers of the State Board of Agriculture and the Department are shown in 2 O.S. § 2-4 et seq.

[7] 2 O.S. 2001 § 2-14 states:

> A. The State Board of Agriculture or its authorized agents shall have the authority to enter any premises or mode of transportation during reasonable hours for the purpose of implementing the Oklahoma Agricultural Code or rules promulgated pursuant thereto.
>
> B. The Board or its authorized agents shall have the authority to carry out all necessary and proper actions to determine compliance with the Oklahoma Agricultural Code including, but not limited to, conducting investigations, opening any bundle, package, or container of agricultural products, examining and making photocopies of records or documents, examining devices, and collecting and submitting samples for analysis.
>
> C. If any person refuses, denies or interferes with any right of access, the Board shall have the right to apply to and obtain from a district court an administrative or other warrant as necessary to enforce the right of access and inspection.

[8] 2 O.S. 2001 §10-9-10(A)(1)(a) states: "The State Board of Agriculture or its authorized agents are empowered to enter upon the premises of any poultry feeding operation for the purpose of investigating complaints as to the

a poultry feeding operation, in order to determine their concentration.[9] When the Respondents refused to allow the Department to come onto their farm and obtain samples of poultry litter and soil according to the Department's sampling protocol, the Department was authorized to obtain the statutory warrants from the Court to enforce its right of access and inspection. (See 2 O.S. § 2-14(C) in footnote 7). Furthermore, 27A O.S. § 1-3-101(D)(1)(h) (2005 Supp.) [10] empowers the Department to enforce Oklahoma's water quality standards with respect to point source discharges and non-point source runoff from animal waste.[11] Finally, Respondents' registration of their poultry feeding operation constitutes consent for entry upon the premises by the State Board of Agriculture or its agents.[12]

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operation or to determine whether there are any violations of the Oklahoma Registered Poultry Feeding Operations Act"

[9] 2 O.S. § 2001 10-9.16 et. seq. describes the Oklahoma Poultry Waste Applicators Certification Act. 2 O.S. 2001 § 10-9-20 (C) states "The Department may take samples of poultry waste and soil at application sites in order to determine their concentration. The work of each applicator may be inspected at the application site of each applicator to determine whether or not the work is performed according to the provisions of the Oklahoma Poultry Waste Applicators Certification Act."

[10] 27A O.S. § 1-3-101(D)(1)(a) & (h) (2005 Supp.) states that "The Oklahoma Department of Agriculture, Food, and Forestry shall have the following jurisdictional areas of environmental responsibility except as provided in paragraph 2 of this subsection: [a] point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste....(h) utilization and enforcement of Oklahoma water quality standards and implementation documents."

[11] Although the Respondents stated that the Department has not promulgated any rules related to enforcement of Oklahoma water quality standards, the Department promulgated rules in OAC 35:45-1-1 et seq. specifying how the Department utilizes and enforces the Oklahoma's water quality standards for surface water and groundwater. Related statutes also grant authority to the Department to protect the waters of the state from pollution resulting from poultry operations. For example, 2 O.S. Section 10-9.7(B)(4) states that poultry waste handling, treatment, management and removal shall: (a) not create an environmental or public health hazard; (b) not result in contamination of waters of the state; (c) conform to such other handling, treatment and management and removal requirements deemed necessary by the State Department of Agriculture to implement the Oklahoma Registered Poultry Feeding Operations Act. 2 O.S. Section 10-9.7(C)(6)(c) also prohibits discharges and runoff from poultry operations. OAC 35:45-1-7(d)(1) shows that water quality standards apply to poultry operations and describes the Department's practice to analyze soil and other data to determine that an operation is in compliance

[12] 2 O.S. 2001 § 9-10(A)(2)(a) states "Registration of a poultry feeding operation pursuant to the Oklahoma Registered Poultry Feeding Operations Act shall be deemed to constitute consent for entry upon the premises of such operation by the Board or its agents for the purpose of implementing the provisions of this subsection."

THE DEPARTMENT'S AUTHORITY IS NOT LIMITED BY RESPONDENTS' PREFERENCES

Respondents rely upon the Oklahoma's Fertilizer Act ("Act") as a basis for limiting the authority of the Department to conduct sampling and testing under the warrants. Their interpretation of the Act completely misses the mark. The statutes and rules referred to in their motion as limiting the authority of the Department are not applicable to poultry litter because litter is an "unmanipulated animal manure" and, as such, is exempt from the Act. (See 2 O.S. § 8-77.11(2004) and Oklahoma Agricultural Code ("OAC") §§ 35:30-20-22(a) and (b)).[13] Respondents further claim that ORPFOA limits the Department's sampling and testing to only those nutrients specified in the Oklahoma Fertilizer Act. ORPFOA however, does not limit the scope, type and quantity of sampling and testing required by the poultry operators and the Fertilizer Act does not apply to litter. ORPFOA does state that poultry feeding operations "shall perform soil testing on each land application and poultry waste testing [...] to determine: 1. Soil pH and plant available nutrients including, at a minimum, nitrogen, phosphorous and potassium" implying that Respondents can sample and test for substances other than nitrogen, phosphorus and potassium and that the Department could

[13] 2 O.S. §§ 8-77.1 through 8-77.18, collectively known as the Oklahoma Fertilizer Act, "provide assurances to the consumer that fertilizer products are properly identified, and that the quality represented by the manufacturer is accurate as well as for regulation of the storage, use, and application of fertilizer to protect the consumer and the environment." These statutes apply to commercial fertilizer, fertilizer packages and fertilizer labels and are not intended to apply to raw poultry litter. As shown in 2 O.S. § 8-77.3(10), "Fertilizer" means any substance containing one or more recognized plant nutrients which are used for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, and wood ashes." 2 O.S. § 8-77.11(2004) cited by Respondents refers to the State Board of Agriculture's authority to determine the commercial value of fertilizers and is not remotely related to the sampling, testing and identification of nutrients in poultry litter. OAC §§ 35:30-29-22(a) and (b) are rules related to the Oklahoma Fertilizer Act and are thus not applicable to poultry litter. These rules describe the guarantee requirements for plant nutrients used in commercial fertilizers.

require them to do so (See 2 O.S. §§ 10-9.7(C)(3), (D)(2) and (E)(1)(a) and (b)).[14]

Respondents correctly state that under 2 O.S.§ 10-9.10(A)(1)(a) the Department may investigate complaints as to the operation or to determine whether there are any violations of ORPFOA. Although Respondents claim that they are in compliance with ORPFOA and represent that their poultry litter contains the nutrients recited by them and no other harmful or injurious substances, the Department lacks sufficient knowledge to verify their claim of compliance. The Department has not performed the sampling and testing ordered by the statutory warrant. In order to protect the environment and the people of Oklahoma, the Department has the authority and the obligation to sample and test for nutrients and to determine if harmful or injurious substances are present in the poultry litter.

Respondents claim that ORPFOA and OPWACA require the Department to follow the sampling and testing protocols shown in OK NRCS Code 590, at 590-2 (Feb. 2004) and OSU Extension Facts publication F-2207 when sampling soil and poultry litter. Respondents make this claim because they do not want the Department to sample for substances other than those substances listed as nutrients in these publications. Respondents would have this Court accept that only substances defined by them as nutrients and no other potentially harmful substances are ever found in poultry litter. These publications, however, do not limit the scope of sampling to nutrients or any other preference specified by Respondents. The

[14] 2 O.S. §§ 10-9.7(C)(3), (D)(2) and (E)(1)(a) and (b), describe the minimum reporting, sampling and testing requirements that must be met by the poultry feeding operators. None of these statutes limit the scope, type and quantity of sampling and testing required by the poultry operators and in fact imply that the operators could sample and test above the requirements. For example, 2 O.S. §§ 10-9.7 (D)(1) and (2) state that "Every poultry feeding operation located in a non-nutrient-limited watershed and non-nutrient-vulnerable ground-waters shall perform soil testing on each land application and poultry waste testing at least once every three (3) years to determine: 1. Soil pH and plant available nutrients including, at a minimum, nitrogen, phosphorous and potassium; 2. Poultry waste nutrient concentrations and moisture," indicating that the poultry operators could test for substances other than nitrogen, phosphorus and potassium without limit if so desired.

publications are technical guidelines, not Oklahoma statutes or rules, and do not have the force of law in Oklahoma. The Department's sampling and testing authority is not limited by or to these publications and can extend beyond Respondents' limited list of nutrients and the sampling protocol preferred by and referred to by Respondents.

PROPER STANDARD OF REVIEW FOR ADMINISTRATIVE WARRANTS

The Department's statutory warrant to obtain soil and litter sampling and testing was properly submitted to the Court accompanied by an affidavit attesting to the facts in the application. The Department's intent "to enter the premises in order to perform soil and litter sampling and testing at the barns and land application sites"[15] is an inspection done as "part of the normal regulatory duties of the Department as part of implementing the Oklahoma Registered Poultry Feeding Operations Act and the Oklahoma Poultry Waste Applicators Act."[16]

The warrant was issued *ex parte* by the Court and is a necessary tool to be used by agencies so as to ensure that reasonable regulatory purposes are accomplished. For this end, statutory administrative warrants shall be issued *ex parte* and executed without delay and without prior notice. *Donovan v. Hackney*, 769 F.2d 650 at 653 (U.S. Court of Appeals, 10th Circuit 1985). Although courts in other jurisdictions struggle to determine the satisfactory method to challenge the validity of an administrative warrant and the Oklahoma Supreme Court has not ruled on this issue, the District Court in the Western District of Oklahoma considered the question in *Hackney* and reasoned that one should challenge a warrant after complying with the warrant and not by refusing to allow an agency to complete an

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[15] See paragraph 1 of the application.

[16] See paragraph 2 of the application.

inspection. *Donovan v. Hackney*, 583 F.Supp. 773, (U.S. District Court, W.D. of Oklahoma 1984). In *Hackney*, an employer refused to allow an OSHA inspection after being served with a search warrant and filed a motion to quash the warrant. The District Court upheld the warrant and ruled that a "challenge to the validity of an OSHA search warrant must be raised after inspection has occurred and could not be raised by counterclaim in [a] contempt proceeding." (*Id.* citing *Hackney*) Upon review, the 10th Circuit Court upheld in part the ruling of the District Court, stating: "By choosing to refuse to comply with Occupational Safety and Health Administration inspection warrant and seeking motion to quash, employer ran risk of being held in contempt and being assessed costs." (*Id.* citing *Hackney*). The 10th Circuit Court made reference to an opinion of the 3rd Circuit Court in *Babcock and Wilcox v. Marshall*, 610 F.2d 1128 (3rd Cir. 1979), which states:

> (1) [a] plant owner's motion to quash warrant, which motion was made after warrant was fully executed, was appealable, but was moot; (2) once Administration inspection has been conducted, plant owner must exhaust its remedies in administrative tribunal before it may seek relief in federal courts raising constitutional challenges to such inspection; and (3) direct review of issuance of civil warrant may be obtained before Administration inspection only by resisting entry, moving to quash warrant, risking contempt, and, if necessary, acting expeditiously to appeal.

In this present case, Respondents filed a motion to quash or modify as a means to challenge the validity of the Department's administrative warrants. The Department acknowledges Respondents' right to a hearing, but asserts that Respondents have not provided this Court with any persuasive evidence that the warrant is invalid. The grounds to review an administrative warrant have been generally limited to a review of the warrant and its application only:

> Upon a proper showing by a party challenging an administrative warrant, the court may hold an evidentiary hearing on the truthfulness of the facts

> presented to the magistrate; this hearing is for [the] limited purpose of allowing the challenging party to prove by a preponderance of the evidence that the warrant application contains false statements, or that material omissions were made deliberately or with reckless disregard for the truth" (citing *Donavan v. Hackney, Inc.*, 583 F. Supp. 773).

American Jurisprudence Inspection, 42 Am Jur.2d Inspection Laws § 20 (2005).

Furthermore, *American Jurisprudence Second* amplifies this principle in its practice guide as follows:

> The propriety of the issuance of an administrative warrant is reviewed by what was presented to the issuing court, not what is known after the hearing upon it; (citing *Marshall v. Horn Seed Co., Inc.*, 509 F. Supp. 1) the traditional requirement that the review of a warrant be confined to the "four corners" of the application is applicable to the review of administrative inspection warrants." (citing *Donavan v. Hackney, Inc.*, 583 F. Supp.773).

American Jurisprudence Inspection, 42 Am Jur.2d Inspection Laws § 20 (Practice Guide 2005)

Respondents must prove by a preponderance of the evidence that the statutory warrant, application, or the affidavit contains false statements or that material omissions were made deliberately or with reckless disregard for the truth. In the *Donavan* case, the District Court referred to the United States Supreme Court decision in *Franks v. Delaware,* 438 U.S. 154, 98 S. Ct. 2674, stating:

> [T]he Supreme Court reaffirmed the position that review of a search warrant must be limited to examination of the materials presented to the magistrate, in the absence of intentional or grossly negligent false statements made to the issuing magistrate. Although *Franks* involved warrant review in a criminal case, it is generally accepted that the same reasoning applies to administrative inspection warrants. See, e.g., *West-Point-Pepperill, Inc. v. Donovan,* 689 F.2d 950, 959(11th Cir. 1982); *Marshall v. Horn Seed Co., Inc.*, 647 F.2d 96, 100 (10th Cir. 1981). Thus, the traditional requirement that review of the warrant be confined to the "four corners" of the application is applicable to review of administrative inspection warrants.

Respondents have not alleged or provided evidence that the Department's warrant, application or affidavit contain any intentional or grossly negligent false statements, or contain any material omissions that were made deliberately or with reckless disregard for the truth, so Respondents' motion should not stand.

Respondents are also limited in their challenge to the information contained in the statutory warrant, the application, and the related affidavit and cannot raise any extraneous issues or claims. (*Id.*, citing *Hackney).* In ruling on the validity of an administrative warrant, a reviewing court shall only consider the information provided to the issuing judge (See *Marshall v. Horn Seed Co, Inc.* 647 F.2d 96,104 (10th Cir. 1981)). The reviewing court shall be limited to the four corners of the warrant application, affidavit and warrant. (*Id., citing Marshal); In re Hackney, Inc., and Wayne Schwedland*, Not Reported in F.Supp., 1982 WL 119251(W.D.Okla.). Thus Respondents cannot challenge the statutory warrants by alleging that the biosecurity protocols are deficient or that the sampling protocol is improper in reference to the OK NRCS Code and the OSU Extension Facts publications because these matters are outside the four corners of the warrant, application and affidavit.

Respondents appear to claim that the Department can only enter a poultry operation under ORPFOA in response to an on-going violation of the law, implying that the Department must have probable cause to obtain a statutory warrant, as is the case for a criminal search warrant. The standard for obtaining an administrative warrant, however, is not that strict. An administrative warrant is justified simply when the purpose is to fulfill a reasonable legislative or administrative standard, as when conducting an inspection. *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 98 S.Ct. 1816. Probable cause of a particular or certain violation is not required or necessary for an administrative warrant to be issued.

As shown in the affidavit, the Department had a reasonable basis for applying for the statutory warrant. In 2005, the Department developed a plan to sample and test poultry litter and soil from poultry operations throughout the Illinois River watershed. The Department's criteria for selecting poultry operations for sampling and testing was based upon their inclusion in the watershed and whether they owned multiple fields upon which litter had been applied. On April 25, 2005, the Department met with Respondents to ask for their voluntary compliance in the sampling and testing program. On May 3, 2005, the Department invited poultry operators in the watershed, including Julie Anderson Chancellor, to a meeting to discuss the program and ask for their voluntary participation. On May 18, 2005, the Department notified the operators that the Department would begin to schedule sampling and testing, and the Department selected the Respondents' farm as one of the poultry operations in Delaware County that met the Department's sampling and testing criteria. The administrative warrant was then obtained when Respondents refused to allow the Department to carry out its sampling and testing program.

The Department is the regulatory and enforcement authority for agriculture in the State of Oklahoma and may use all modes of inquiry and investigation traditionally employed or useful to execute the authority granted to it by the legislature, including the sampling and testing protocols adapted for Respondents' property. *Dow Chemical Company v. United States,* 476 U.S. 227, 106 S. Ct. 1819. In *Dow,* the EPA was denied right of entry to inspect a chemical plant, and completed its inspection by taking aerial photographs of the plant. Dow brought suit in Federal District Court alleging that the EPA's inspection violated the Fourth Amendment and was beyond its statutory investigative authority. Dow claimed that the EPA's inspection and photograph's violated their privacy right with respect to their

intellectual property and trade secrets. The Supreme Court upheld the authority of the EPA, stating:

> Congress has vested in EPA certain investigatory and enforcement authority, without spelling out precisely how this authority was to be exercised in all the myriad circumstances that might arise in monitoring matters relating to clean air and water standards. When Congress invests an agency with enforcement and investigatory authority, it is not necessary to identify explicitly each and every technique that may be used in the course of executing the statutory mission. [...]Regulatory or enforcement authority generally carries with it all the modes of inquiry and investigation traditionally employed or useful to execute the authority granted. Environmental standards such as clean air and clean water cannot be enforced only in libraries and laboratories, helpful as those institutions may be.

In actions analogous to the EPA in *Dow*, the Department is authorized to employ all the modes of inquiry and investigation traditionally employed or useful to execute its authority, including sampling and biosecurity protocols proposed for sampling and testing on Respondents' farm.

THE DEPARTMENT'S BIOSECURITY PROTOCOLS ARE AUTHORITATIVE

Respondents question whether the Department's biosecurity protocols are consistent with the biosecurity measures they allege are required for access to flocks on their farm. Respondents' questions related to biosecurity and ILT disease, however, are not relevant to these proceedings, being outside the "four corners" of the warrant, application and affidavit. Respondents' questions and concerns, although irrelevant, must not be allowed to interfere with the authority of the State Veterinarian and the Department. The State Veterinarian is the recognized authority on animal diseases in Oklahoma. The Department is also the official agency of the state responsible for the control of animal diseases and is authorized to take action to prevent the spread of animal diseases and related threats to agriculture in general

and the poultry industry in this particular case.[17] The Department is thus the authority on poultry diseases (including the ILT disease)[18] and the risks posed by disease to poultry operations. The State Veterinarian, and the Department's veterinarians, program officers and inspectors are all trained in proper biosecurity protocols and experienced in following correct and proper procedures while inspecting, sampling and testing at poultry farms and in poultry barns. Department inspectors and veterinarians make hundreds of inspections of poultry operations in Oklahoma every year. Many of these inspections occur during emergency situations arising from poultry diseases. The State Veterinarian and Department are thus the authority on biosecurity protocols in the State of Oklahoma.

In this present case, the Department has developed specific biosecurity protocols for the sampling and testing program that are equivalent to Respondents' protocols and sufficient to allow their farm to be sampled even under conditions where disease is present. ILT disease has not been found on Respondents' farm or on any other farm where statutory warrants were issued by this Court. The Department addressed Respondents' concerns in the affidavit and in discussions with Respondents' counsel, and has assured Respondents that the Department's inspectors will follow appropriate biosecurity protocols while sampling and

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[17]See Art. 6 § 31 of the Oklahoma Constitution. See also 2 O.S. § 6-2, which states that "The State Board of Agriculture shall be the official livestock and poultry disease control agency of the State of Oklahoma. The Board shall have authority to promulgate and enforce rules governing the handling, sale, and use of vaccines, antigens, and other biological products used in connection with livestock or poultry. " As the official control agency of the state, the Department has the authority to develop and implement appropriate biosecurity protocols for sampling and the authority to determine if and when an ILT outbreak precludes sampling and testing on Respondents' farms.

[18] ILT disease, although a serious concern, is not a zoonotic disease or a threat to human health. The disease exists in two strains, the vaccine strain that arises as a low-grade form of infection caused by vaccination for the disease and the field strain that is virulent and a threat to poultry mortality. At this time, the Department believes as a result of preliminary test results that all confirmed cases of ILT in Oklahoma are vaccine strain and not the more serious field strain of ILT. The Department is conducting further tests to confirm this belief,

testing at their facility.[19]

CONCLUSION

The warrant at issue was properly obtained and the sampling and testing permitted by the warrant is within the Department's regulatory authority. Respondents have failed to show that the warrant application contains false statements or that material omissions were made deliberately or with reckless disregard for the truth. Respondents have also failed to show that the Department's sampling protocol and its plan to sample and test for substances other than nutrients are unlawful or unreasonable. The State Veterinarian and the Department are the lawful authority on ILT disease and biosecurity protocols for the State of Oklahoma, and have assessed the threat posed by ILT disease to poultry operations in Delaware County and determined that the Respondents' farm can be safely sampled and tested according to the statutory warrant issued by this Court.

WHEREFORE, the Department respectfully requests that the Court deny the Respondents' motion to quash or modify administrative warrant, and allow the Department to proceed with the inspection, testing and sampling ordered by the Court in the statutory administrative warrants allowing entry to perform sampling.

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but has determined at this time that poultry operations in Delaware County can be safely inspected, sampled, and tested according to the statutory warrants using the biosecurity protocols developed by the Department.

[19] See the biosecurity potocols and related affidavit from the State Veterinarian, Dr. Becky Brewer-Walker, shown herein in Exhibit "A"

Respectfully submitted,

David D. Leavitt, OBA # 15800
James Woodruff, OBA # 11579
Office of the General Counsel
Oklahoma Department of Agriculture, Food, and Forestry
2800 N. Lincoln Blvd.
Oklahoma City, OK 73105-4298
(405) 522-4668

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2005, a true and correct copy of the above and foregoing was mailed, postage prepaid, to:

Stephen L. Jantzen, Esq.
Patrick M. Ryan, Esq.
Paula M. Buchwald, Esq.
Ryan, Whaley & Coldiron, P.C.
119 N. Robinson, Suite 900
Oklahoma City, OK 73102

Stratton Taylor, Esq.
Mark Antinoro, Esq.
Clint Russell, Esq.
P. O. Box 309
Claremore, OK 74018

Michael Graves, Esq.
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.
320 S. Boston Ave., Suite 400
Tulsa, OK 74103

Janet Burns
JANET BURNS

Exhibit "A"

IN THE DISTRICT COURT OF DELAWARE COUNTY
STATE OF OKLAHOMA

In re Statutory Administrative Warrant	)
Allowing Entry to Perform Sampling	)
	)
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AFFIDAVIT IN SUPPORT OF APPLICATION
FOR STATUTORY ADMINISTRATIVE WARRANT
ALLOWING ENTRY FOR INSPECTION

I, Becky Brewer-Walker, D.V.M., being duly sworn upon my oath, do depose and say:

1. I am the State Veterinarian and the Director of the Animal Industry Services Division, of the Oklahoma Department of Agriculture, Food, and Forestry (Department) and a duly authorized representative of the State Board of Agriculture for the purpose of carrying out the Oklahoma Agricultural Code (Code).

2. The State Veterinarian is the recognized authority on animal diseases in Oklahoma regulated by the Oklahoma Agricultural Code. The Department is also the official agency of the state responsible for the control of said animal diseases and is authorized to take action to prevent the spread of said animal diseases and related threats to agriculture in general and the poultry industry in this particular case.

3. The State Veterinarian is the authority on poultry diseases regulated by the Oklahoma Agricultural Code, including Infectious Laryngotracheitis disease ('ILT"), and the risks posed by said diseases to poultry operations.

4. The State Veterinarian is the authority on animal health biosecurity protocols related to the Oklahoma Agricultural Code in the State of Oklahoma.

The statements herein are made upon personal knowledge.

5. The State Veterinarian, and the Department's veterinarians, program officers and inspectors are trained in appropriate proper biosecurity protocols and are experienced in following correct and proper procedures while inspecting, sampling and testing at poultry farms and in poultry barns.

6. Department inspectors and veterinarians perform hundreds of inspections of poultry operations in Oklahoma every year. Many of these inspections occur during emergency situations arising from poultry diseases.

7. The Department has developed specific biosecurity protocols that are equivalent to biosecurity programs developed by Tyson Chicken, Inc., George's, Inc., Cobb-Vandress, Inc. and Simmons Foods, Inc. The Department's protocols and guidelines, attached herein, are sufficient to allow poultry operations to be safely sampled even under conditions where disease is present.

8. ILT disease has not been found on the poultry farms owned where statutory warrants were issued by this Court.

9. ILT disease, although a serious concern, is not a zoonotic disease or a threat to human health. The disease exists in two strains, the vaccine strain that arises as a low-grade form of infection caused by vaccine usage and the field strain that is virulent and is frequently accompanied by increased poultry mortality. Field strain ILT has an adverse affect upon the state's poultry export market. At this time, the Department believes as a result of preliminary test results that all confirmed cases of ILT in Oklahoma are vaccine strain and not the more serious field strain. The Department is conducting further tests to confirm this belief. All ILT outbreaks in Oklahoma in recent years have been confirmed as caused by the vaccine strain of ILT.

10. The Department has determined at this time that poultry operations in Delaware County can be safely inspected, sampled, and tested according to the statutory warrants using the biosecurity protocols developed by the Department.

Becky Brewer-Walker, D.V.M
State Veterinarian and Director
State Board of Agriculture
Oklahoma Department of Agriculture,
Food, and Forestry

Before me, an authorized agent of the Board, in and for said County and State, on this 3rd day of November, 2005, personally appeared Becky Brewer-Walker, D.V.M, and stated that the facts set forth in this Affidavit are true and correct to the best of her knowledge and belief.

NOTARY PUBLIC SEAL
CATHY L. CLINTON
Notary Public
State of Oklahoma
Commission # 00020309 Expires 12/22/08

Cathy L. Clinton
District Judge or Notary Public

EXHIBIT "A"

POULTRY PREMISE ENTRY BIOSECURITY PROTOCOLS FOR REGULATORY PERSONNEL

The steps you take entering a premise makes a difference and can have a significant impact on the well-being of the operation. It is important to follow proper Biosecurity measures because poultry, animal and plant diseases are spread in numerous ways between farms and ranches including through human contact and vehicle movement.

1) **Follow any Biosecurity Guidelines established by the facility you are visiting.**
2) **Prepare your supplies, clothing and vehicle before your visit.**

   -Disposable coveralls (TYVEK).
   -Disposable boot covers or easily disinfected boots.
   -Task suitable disposable gloves.
   -Long handled scrub brush to clean boots if you use them.
   -Suitable disinfectant (10% Bleach, Vircon) mixed as directed.
   -Bucket or container to mix disinfectant solutions.
   -Water for mixing if needed
   -Hand held sprayers for tire cleaning if needed.
   -Trash bags and ties.

3) **Keep "dirty" used suits, boot covers, Etc, separate from clean supplies in your vehicle (double trash bagged).**
4) **DO NOT DRIVE ONTO POULTRY PREMISE IF AT ALL POSSIBLE.**
5) **Park at gate or facility entrance if at all possible.**
6) **Wear TYVEK COVERALLS when on premise.**
7) **Wear easily disinfected boots or preferably disposable boot covers. REMEMBER ALL MUD AND ORGANIC MATERIAL MUST BE CLEANED FROM TIRES AND BOOTS FOR DISINFECTANTS TO WORK.**
8) **Put your protective clothing on before you enter the premise.**
9) **Use suitable disposable gloves.**
10) **Place all contaminated TYVEK, boot covers and gloves in a trash bag as you exit the premise, seal the bags and take it with you for proper disposal later.**
11) **If you have driven onto the premise you must clean all mud and organic material from your vehicle and its tires, then properly spray with disinfectant prior to going onto public roadway.**
12) **Properly contain your samples so as to prevent contamination of other farms.**