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

STATE OF OKLAHOMA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 05-CV-00329-TCK-SAJ**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF OKLAHOMA'S REPLY MEMORANDUM IN FURTHER SUPPORT OF ITS MOTION TO COMPEL GEORGE'S, INC. AND GEORGE'S FARMS, INC. TO RESPOND TO ITS MAY 30, 2006 SET OF REQUESTS FOR PRODUCTION

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. 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 under CERCLA, ("the State"), and for its Reply Memorandum in further support of its Motion to Compel George's, Inc. and George's Farms, Inc. to Respond to its May 30, 2006 Set of Requests for Production [DKT #896] states as follows:

1. The State's discovery requests are relevant to George's Inc.'s and George's Farms, Inc.'s (together "George's") knowledge of the environmental hazards of its business operations, to its conduct in disposing of or releasing the waste generated by its birds, to its relationship with its contract growers, and other aspects of the way it conducted its business during times pertinent to the present action. Given George's blanket objections to the State's discovery requests, the State obviously has not had the opportunity to review the contents of the materials that would be responsive to the State's discovery requests. However, based upon the subject matter of the *City of Tulsa* case, there is no doubt that a large portion of the requested materials would relate to George's <u>conduct</u> in the Eucha / Spavinaw watershed. George's cannot seriously be arguing that

its conduct in the Eucha / Spavinaw watershed is materially different in nature from its conduct in the Illinois River watershed.[1] Put another way, the nature of George's conduct in the Eucha / Spavinaw watershed is not *sui generis*. George's conduct is a core issue in the State's lawsuit. Accordingly, such materials are directly relevant to the State's allegations concerning issues of, *inter alia,* integrator control, intentionality, awareness, and willful and wantonness, and are plainly discoverable.[2]

2. George's has failed to comply with its obligations under Rule 34. Even assuming arguendo that irrelevant materials were covered by the State's discovery requests or that the State's discovery requests were overbroad, George's was under an obligation to produce those documents -- of which there are certainly many -- that are relevant. *See* Fed. R. Civ. P. 34 ("If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts"); *Contracom Commodity Trading Co. v. Seaboard Corp.*, 189 F.R.D. 655, 666 (D. Kan. 1999) ("Despite the overly broad nature of Requests 17 and 19, defendants have the duty to respond to the extent they are not objectionable"); *Daneshvar v. Graphic Technology, Inc.*, 1998 WL 726091, * 3 (D. Kan. Oct. 9, 1998) ("GTI, nevertheless, has the duty to respond to the extent the discovery is not objectionable"); *Mackey v. IBP, Inc.*, 167 F.R.D. 186, 204 (D. Kan. 1996) ("IBP nevertheless must produce responsive documents, to the extent the request is not objectionable").

---

[1] George's focuses its argument largely on questions of injury rather than questions of conduct. Obviously, as to conduct issues the product liability case relied upon by the State in its motion -- *Snowden v. Connaught Labs., Inc.,* 137 F.R.D. 325 (D. Kan. 1991) -- is clearly on point.

[2] George's is plainly aware of what issues are relevant to this lawsuit. For George's to suggest that the burden was on the State at the meet and confer, without precise knowledge of what is contained within the *City of Tulsa* file, to identify the materials contained within the *City of Tulsa* file that would be relevant turns principles of discovery on their head. Indeed, it is the State's contention, as explained in its Motion, that the *City of Tulsa* materials are all potentially relevant.

3. Despite George's futile attempts to paint a picture to the contrary, the State's discovery requests were indeed an honest effort to save all the parties involved time and money. In making its discovery requests, the State believed that it was likely that George's had a preassembled set of the requested materials readily available. Apparently the State was correct in its belief. *See* George's Response [DKT #904] (documents "fill approximately [sic] numerous, voluminous boxes"). Had George's simply made this set available for inspection by the State, it would have been the State, not George's, that would have borne the burden of sifting through any irrelevant materials -- assuming arguendo that any irrelevant materials were to even exist within the production. George's make-weight arguments of burden are thus unpersuasive.

4. George's attempts to limit the State's discovery requests by a statute of limitations ignores the fact that the statute of limitations under Oklahoma law does not run against the State when it is acting, as is the case here, in its sovereign capacity to enforce a public right. *See State v. Tidmore*, 674 P.2d 14, 15 (Okla. 1983) ("We have long-recognized the general rule that statutes of limitations do not operate against the state when it is acting in its sovereign capacity to enforce a public right") (citations omitted); *Oklahoma City Municipal Improvement Authority v. HTB, Inc.*, 769 P.2d 131, 134 (Okla. 1988) ("From these cases we distill the general rule that statutes of limitation shall not bar suit by any government entity acting in its sovereign capacity to vindicate public rights, and that public policy requires that every reasonable presumption favor government immunity from such limitation"). It further ignores the fact that even assuming arguendo that there were an applicable statute of limitations, it is well-established that "[i]n proper circumstances (particularly where such discovery is useful in understanding more recent events) discovery may be allowed about events that occurred at a time when a claim based upon them would be barred by limitations." Wright & Miller, *Federal Practice & Procedure*, § 2009.

5. The State would not object to an *in camera* review of the requested joint defense agreements(s) to determine whether it does in fact contain information protected from discovery and if so, such information can be redacted and the remainder of the agreement(s) can be produced. *See, e.g., Breon v. Coca-Cola Bottling Co. of New England*, 232 F.R.D. 49, 55 (D. Conn. 2005) ("It is not proper to withhold an entire document from discovery on grounds that a portion of it may be privileged. Where a document purportedly contains some privileged information, the unprivileged portions of the document must be produced during discovery. The proper procedure in such instances is to redact the allegedly privileged communication, and produce the redacted document"). For George's to contend that discovery of such agreement(s) is irrelevant ignores the fact that, except in certain circumstances (e.g., pursuant to a valid joint defense agreement), the disclosure of attorney-client privileged materials to a third party waives the privilege. The State is entitled to review any joint defense agreement(s) to understand its claimed parameters and to evaluate whether the sharing of attorney-client privileged materials has been consistent with a legitimate joint defense agreement.

CONCLUSION

For all of the above reasons, the State of Oklahoma respectfully requests the Court to compel Defendants George's, Inc. and George's Farms, Inc. to respond to the State's May 30, 2006 set of requests for production and produce the requested documents forthwith.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
Attorney General
Kelly H. Burch OBA #17067
J. Trevor Hammons OBA #20234
Robert D. Singletary OBA #19220
Assistant Attorneys General
State of Oklahoma
2300 North Lincoln Boulevard, Suite 112
Oklahoma City, OK 73105
(405) 521-3921

C. Miles Tolbert OBA #14822
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, Ok 73118
(405) 530-8800

/s/ M. David Riggs
M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Douglas A. Wilson OBA #13128
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
Riggs, Abney, Neal, Turpen,
Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

James Randall Miller, OBA #6214
David P. Page, OBA #6852
Louis Werner Bullock, OBA #1305
Miller Keffer & Bullock
222 S. Kenosha
Tulsa, Ok 74120-2421
(918) 743-4460

Frederick C. Baker
(admitted *pro hac vice*)
Elizabeth C. Ward
(admitted *pro hac vice*)
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Motley Rice, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 2006, I electronically transmitted the attached document to the following:

Jo Nan Allen jonanallen@yahoo.com, bacaviola@yahoo.com
Robert Earl Applegate hm@holdenokla.com rapplegate@holdenokla.com
Tim Keith Baker tbakerlaw@sbcglobal.net
Sherry Bartley sbartley@mwsgw.com
Douglas L. Boyd dboyd31244@aol.com
Vicki Bronson vbronson@cwlaw.com, lphillips@cwlaw.com
Paula M Buchwald pbuchwald@ryanwhaley.com, loelke@ryanwhaley.com
Michael Lee Carr hm@holdenokla.com mcarr@holdenokla.com
Bobby Jay Coffman bcoffman@loganlowry.com
Lloyd E. Cole, Jr colelaw@alltel.net, gloriaeubanks@alltel.net; amy_colelaw@alltel.net
Angela Diane Cotner AngelaCotnerEsq@yahoo.com
Reuben Davis; rdavis@boonesmith.com
John Brian DesBarres mrjbdb@msn.com, JohnD@wcalaw.com
Delmar R Ehrich dehrich@faegre.com, kcarney@faegre.com; qsperrazza@faegre.com
John R Elrod jelrod@cwlaw.com, vmorgan@cwlaw.com
William Bernard Federman wfederman@aol.com; law@federmanlaw.com,
ngb@federmanlaw.com
Bruce Wayne Freeman bfreeman@cwlaw.com, lcla@cwlaw.com
Ronnie Jack Freeman jfreeman@grahamfreeman.com
Robert W George robert.george@kutakrock.com, donna.sinclair@kutakrock.com
Tony Michael Graham tgraham@grahamfreeman.com, <B! R
James Martin Graves jgraves@bassettlawfirm.com
Michael D Graves mgraves@hallestill.com, jspring@hallestill.com; smurphy@hallestill.com
Thomas James Grever tgrever@lathropgage.com
Jennifer Stockton Griffin jgriffin@lathropgage.com
Carrie Griffith griffithlawoffice@yahoo.com
Michael Todd Hembree hembreelaw1@aol.com, traesmom_mdl@yahoo.com
Theresa Noble Hill thillcourts@rhodesokla.com, mnave@rhodesokla.com
Philip D Hixon Phixon@jpm-law.com,
Mark D Hopson mhopson@sidley.com, dwetmore@sidley.com; joraker@sidley! .com
Thomas Janer SCMJ@sbcglobal.net; tjaner@cableone.net; lanaphillips@sbcglobal.net
Stephen L Jantzen sjantzen@ryanwhaley.com, mantene@ryanwhaley.com;
loelke@ryanwhaley.com
Mackenzie Lea Hamilton Jessie maci.tbakerlaw@sbcglobal.net, tbakerlaw@sbcglobal.net;
macijessie@aol.com
Bruce Jones bjones@faegre.com, jintermill@faegre.com; bnallick@faegre.com
Jay Thomas Jorgensen jjorgensen@sidley.com, noman@sidley.com
Raymond Thomas Lay rtl@kiralaw.com, dianna@kiralaw.com; niccilay@cox.net
Krisann Kleibacker Lee kklee@faegre.com, mlokken@faegre.com
Nicole Marie Longwell Nlongwell@jpm-law.com, ahubler@jpm-law.com

Dara D. Mann dmann@faegre.com, kolmscheid@faegre.com
Teresa Brown Marks teresa.marks@arkansasag.gov, dennis.hansen@arkansasag.com
Linda C Martin lmartin@dsda.com, mschooling@dsda.com
Archer Scott McDaniel, Smcdanie l@jpm-law.com, jwaller@jpm-law.com
Robert Park Medearis , Jr medearislawfirm@sbcglobal.net
Charles Livingston Moulton charles.moulton@arkansasag.gov, Kendra.jones@arkansasag.gov
John Stephen Neas, steve_neas@yahoo.com
George W Owens gwo@owenslawfirmpc.com, ka@owenslawfirmpc.com
Chris A. Paul cpaul@jpm-law.com
Michael Andrew Pollard mpollard@boonesmith.com, kmiller@boonesmith.com
Marcus N Ratcliff mratcliff@lswsl.com, sshanks@lswsl.com
Robert Paul Redemann@rredemann@pmrlaw.net, scouch@pmrlaw.net
Randall Eugene Rose rer@owenslawfirmpc.com, ka@owenslawfirmpc.com
Patrick Michael Ryan pryan@ryanwhaley.com, jmickle@ryanwhaley.com;
kshocks@ryanwhaley.com
Laura E. Samuelson lsamuelson@lswsl.com; lsamuelson@gmail.com
Robert E Sanders rsanders@youngwilliams.com,
David Charles Senger dsenger@pmrlaw.net, scouch@pmrlaw.net
Jennifer Faith Sherrill jfs@federmanlaw.com, law@federmanlaw.com; ngb@federmanlaw.com
Michelle B. Skeens hm@holdenokla.com mskeens@holdenokla.com
William Francis Smith bsmith@grahamfreeman.com
Monte W Strout strout@xtremeinet.net
Colin Hampton Tucker chtucker@rhodesokla.com, scottom@rhodesokla.com
John H Tucker jtuckercourts@rhodesokla.com
R Pope Van Cleef ! , Jr popevan@robertsonwilliams.com, kirby@robertsonwilliams.com;
kmo@robertsonwilliams.com
Kenneth Edward Wagner kwagner@lswsl.com, sshanks@lswsl.com
David Alden Walls wallsd@wwhwlaw.com, lloyda@wwhwlaw.com
Timothy K Webster twebster@sidley.com, jwedeking@sidley.com; ahorner@sidley.com
Terry Wayen West terry@thewestlawfirm.com,
Dale Kenyon Williams, Jr. kwilliams@hallestill.com, jspring@hallestill.com;
smurphy@hallestill.com
Edwin Stephen Williams steve.williams@youngwilliams.com
J Ron Wright ron@wsfw-ok.com, susan@wsfw-ok.com
Lawrence W Zeringue lzeringue@pmrlaw.net, scouch@pmrlaw.net
N. Lance Bryan; lbryan@dsda.com
Gary V. Weeks, gweeks@bassettlawfirm.com
Thomas C. Green; tcgreen@sidley.com

I hereby certify that on this 25th day of September, 2006, I served the foregoing document by U.S. Postal Service on the following:

Jim Bagby
RR 2, Box 1711
Westville, OK 74965

Jerry Maddux
Selby Connor Maddux Janer
P.O. Box Z
Bartlesville, OK 74005-5025

Gordon W. Clinton
Susann Clinton
23605 S GOODNIGHT LN
WELLING, OK 74471

Eugene Dill
P O BOX 46
COOKSON, OK 74424

Marjorie Garman
5116 Highway 10
Tahlequah, OK 74464

James C. Geiger
Address unknown

G. Craig Heffington
20144 W SIXSHOOTER RD
COOKSON, OK 74427

Cherrie House
William House
P O BOX 1097
STILWELL, OK 74960

James Lamb, Dorothy Gene Lamb &
James R. & Doroth Jean Lamb dba
Strayhorn Landing Marina
Route 1, Box 253
Gore, OK 74435

John E. and Virginia W. Adair
Family Trust
Rt. 2, Box 1160
Stillwell, OK 74960

Doris Mares
P O BOX 46
COOKSON, OK 74424

Donna S Parker
Richard E. Parker
34996 S 502 RD
PARK HILL, OK 74451

Kenneth Spencer
Jane T. Spencer
Rt. 1, Box 222
Kansas, OK 74347

David R. Wofford
Robin L. Wofford
Rt 2, Box 370
Watts, OK 74964

C Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 NORTH CLASSEN
OKLAHOMA CITY, OK 73118

/s/ M. David Riggs
M. David Riggs