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

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 4:05-cv-00329-TCK-SAJ**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

OBJECTIONS AND RESPONSES OF STATE OF OKLAHOMA TO SEPARATE DEFENDANT COBB-VANTRESS INC.'S SECOND SET OF INTERROGATORIES PROPOUNDED TO PLAINTIFFS

The Plaintiff State of Oklahoma respectfully submits its objections and responses to Separate Defendant Cobb-Vantress, Inc's Second Set of Interrogatories propounded to Plaintiffs. The State maintains records in numerous locations at many agencies and its record review is ongoing. The State shall supplement the following responses and attached privilege logs should additional responsive or privilege-protected documents come to its attention.

GENERAL OBJECTIONS

1. The State objects to these discovery requests to the extent that they seek the discovery of information that is protected by the attorney-client privilege and/or the work product doctrine.

2. The State objects to these discovery requests to the extent that they seek the discovery of information that is already in the possession of defendant, is obtainable from another source that is more convenient, less burdensome or less expensive, or is as accessible to defendant as it is to the State. As such, the burden of obtaining such sought-after information is substantially the same, or less, for defendant

as it is for the State.

3. The State objects to these discovery requests to the extent that they are overly broad, oppressive, unduly burdensome and expensive to answer. Providing answers to such discovery requests would needlessly and improperly burden the State.

4. The State objects to these discovery requests to the extent that they improperly seek identification of "all" items or "each" item of responsive information. Such discovery requests are thus overly broad and unduly burdensome. It may be impossible to locate "all" items or "each" item of responsive information to such discovery requests.

5. The State objects to the extent that discovery sought is unreasonably cumulative or duplicative.

6. The State objects to these discovery requests to the extent that they do not state with the required degree of specificity and particularity what information is being sought. As such, such discovery requests are vague, indefinite, ambiguous and not susceptible to easily discernible meaning.

7. The state objects to these discovery requests to the extent that the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties resources, and the importance of the proposed discovery in resolving the issues.

8. The State objects to these discovery requests to the extent that they improperly attempt to impose obligations on the State other than those imposed or authorized by the Federal Rules of Civil Procedure.

9. The State objects to the definitions of these discovery requests to the extent that they improperly attempt to alter the plain meaning of certain words.

10. By submitting these responses, the State does not acknowledge that the requested information is necessarily relevant or admissible. The State Expressly reserves the right to object to further discovery into

the subject matter of any information provided and to the introduction of such information into evidence.

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 2: Please Identify all reports, studies, Publications, research, sampling data or monitoring data which You contend establishes or tends to establish the contamination, degradation, pollution or any other adverse impact upon any Water Body in the IRW as result of the release of microbial pathogens.

OBJECTIONS AND RESPONSE TO NO. 2: The State objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work production protection.

The State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). As of the date of this response, the State has not determined which experts retained by it or by its counsel will provide expert testimony in this case, and the Court has neither established the times and sequence of disclosure of such expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(C), nor has the Court established a trial date to trigger the obligation of expert disclosure 90 days in advance of trial under that rule. The State will comply with the order of the Court establishing the time of expert disclosures as required by Fed. R. Civ. P. 26. Therefore, the State also objects to this interrogatory to the extent it calls for information which constitutes expert opinions, the disclosure of which is premature.

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege and work product protection is supported by its privilege log. Also, pursuant to LCvR 26.4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action, or if it identifies additional documents subject to a claim of privilege or protection.

The State objects to this interrogatory on the grounds that it improperly seeks identification of "all" items of responsive information, which renders it overly broad, oppressive, unduly burdensome and expensive to answer. It may be impossible to locate "all" items of responsive information to this interrogatory.

The State also objects because the interrogatory is overly broad, burdensome, and seeks information that is as readily available to, known by, and identifiable by the defendant.

Subject to and without waiving general and specific objections, the State contends the following publically available information establish or tend to establish the contamination, degradation, pollution or any other adverse impact upon any Water Body in the IRW as a result of the release of microbial pathogens.

http://www.ose.state.ok.us/documents.html#972
http://www.okcc.state.ok.us/WQ/WQ_reports.htm
http://ok.water.usgs.gov/
http://www.deq.state.ok.us/WQDnew/pubs.html

http://www.owrb.state.ok.us/quality/monitoring/bump.php

http://www.sundarlk.er.usgs.gov//illionoisbasin

Subject to and without waiving general and specific objections, the State contends the following articles establish or tend to establish the contamination, degradation, pollution or any other adverse impact upon any Water Body in the IRW as result of the release of microbial pathogens.

Adamski, J.C., and Steele, K.F. (1988) Agricultural land use effects on groundwater quality in the Ozark Region: Proceedings of Agricultural Impacts on Groundwater Conference, National Water Well Association, Dublin, OH, pp. 593-614.

Blackerby, S.D. (1997) Evaluation of Nonpoint Source Pollution Concentrations Due to Runoff from Agricultural Land Applied with Broiler Litter. M.S. Thesis, Stephen F. Austin State University, Nacogdoches, TX, 100 p.

Edwards, D.R.; Coyne, M.S.; Vendrell, P.F.; Daniel, T.C.; Moore, P.A., Jr.; and Murdoch, J.F. (1997) Fecal Coliform and Streptococcus Concentrations in Runoff from Grazed Pastures in Northwest Arkansas. Journal of American Water Resources Association 33(2):413-422.

Brown, A.V.; Graening, G.O.; Vendrell, P. (1998) Monitoring Cavefish Population and Environmental Quality in Cave Springs Cave, Arkansas. Arkansas Water Resource Center, Publication No. MSC-214.

Edwards, D.R.; Daniel, T.C. (1992) Environmental Impacts of On-Farm Poultry Waste Disposal - A Review. Bioresource Technology 41: 9-33.

Marshall, D.; Brahana, J.V.; Davis, R. (1998) Resuspension of Viable sediment-Bound Enteric Pathogens in Shallow Karst Aquifers in Proceedings of the Joint Meeting of the XXVIII Congress of the International Association of Hydrogeologists and the Annual meeting of the American Institute of Hydrologists on Gambling with Groundwater; physical, chemical, and biological aspects of aquifer-stream relations 28: 179-186.

Whitsett, K.S. (2002) Sediment and Bacterial Tracing in Mantled Karst at Savoy Experimental Watershed, Northwest Arkansas. M.S. Thesis, University of Arkansas, Fayetteville. 66 p.

Davis, R.K.; Hamilton, S; Brahana, J.V. (2005) Escherichia Coli Survival in Mantled Karst Springs and Streams, Northwest Arkansas Ozarks, USA. Journal of the American Water Resources Association. 41(6):1279-1287.

The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ. P. 26(e).

INTERROGATORY NO. 3: Please describe in detail all actions or measures which You believe or contend will be necessary to address, ameliorate or remediate the injury to the IRW which You allege has been caused by the acts or omissions of the defendants in this Lawsuit, and in doing so for each action or measure, state the time period You contend the action or measures will be necessary, the locations of or geographic scope You propose for the implementation of each such action or measure, the estimated cost for each such action or measure. Also, please Identify all Documents Related to alleged necessary actions or measures.

OBJECTIONS AND RESPONSE TO NO. 3: The State objects to this interrogatory to the extent that it seeks the discovery of information that is protected by the attorney client privilege and / or the work product doctrine.

The State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). As of the date of this response, the State has not determined which experts retained by it or by its counsel will provide expert testimony in this case, and the Court has neither established the times and sequence of disclosure of such expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(C), nor has the Court established a trial date to trigger the obligation of expert disclosure 90 days in advance of trial under that rule. The State will comply with the order of the

Court establishing the time of expert disclosures as required by Fed. R. Civ. P. 26. Therefore, the State also objects to this interrogatory to the extent it calls for information which constitutes expert opinions, the disclosure of which is premature.

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel.

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege and work product protection is supported by its privilege log. Also, pursuant to LCvR 26.4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action, or if it locates additional documents subject to a claim of privilege or protection.

The State further objects to this interrogatory in that it improperly seeks "all" actions or measures to remediate injury, etc., and is, therefore, overly broad and unduly burdensome. It may be impossible to describe "all" measures "in detail" at this time of this response, and doing so is overly broad and unduly burdensome and the burden and expense of the discovery outweighs its likely benefit taking into account the needs of the case and the importance of the proposed discovery in resolving the issues.

Subject to and without waiving any general or specific objections, the State states that one or more of the following measures, without limitation, may be necessary to address, ameliorate or remediate injury

to the IRW caused by acts or omissions of the defendants. The following measures do not include all necessary measures nor others needed to assess and monitor, rather than remediate, those injuries:

1) Limit land application of poultry waste and ensure no discharge or runoff of waste or pollutants to the surface waters and groundwaters of the IRW.

2) Undertake activities necessary to prevent pollutants from being discharged to groundwater and surface waters of the IRW from land application sites, such as creating riparian buffers and field buffers/filter strips, removal actions, waste amendment, or land treatment.

3) Restoration, remediation, treatment or enhancement of riparian habitat, surface water bodies, sediments, or wetlands in the IRW.

4) Other measures which may appear necessary as assessment and discovery goes forward.

The nature of the activities and measures necessary to address, ameliorate or remediate the injury and the length of time necessary for such actions to continue will depend on the results of further assessment, the final determination of necessary actions to remediate and restore the IRW and the effectiveness of the actions. The locations, scope and costs of such measures will also depend on many factors including those listed above.

The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ P. 26(e).

INTERROGATORY NO. 4: To the extent the State is seeking to recover damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the acts or omissions of the defendants in this Lawsuit, please:

(a) Identify all natural resources which You contend have been injured, lost or destroyed to

such a degree that the State believes it is entitled to damages for the cost of replacing or restoring such natural resources;

(b) state all facts which You believe support a claim that the injury to each identified natural resource is of a nature and magnitude sufficient to support a claim for damages to replace or restore each such natural resource;

(c) provide the amount of estimated costs the State believes would be necessary to replace or restore the natural resource; and

(d) describe the methodology You have used or intend to use to arrive at an estimate of these costs or damages.

OBJECTION AND RESPONSE TO NO. 4: The State objects to this interrogatory on the ground that it seeks information protected by the attorney-client privilege and / or work product protection.

The State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). As of the date of this response, the State has not determined which experts retained by it or by its counsel will provide expert testimony in this case, and the Court has neither established the times and sequence of disclosure of such expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(C), nor has the Court established a trial date to trigger the obligation of expert disclosure 90 days in advance of trial under that rule. The State will comply with the order of the Court establishing the time of expert disclosures as required by Fed. R. Civ. P. 26

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by

its counsel.

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege and work product protection is supported by its privilege log. Also, pursuant to LCvR 26.4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action or if the State identifies additional documents subject to a claim of privilege or protection.

The State further objects that the request seeking "all natural resources" injured or "all facts" supporting claims etc., because such request is overly broad, unduly burdensome and the burden and expense of the discovery outweighs its likely benefit taking into account the needs of the case and the importance of the proposed discovery in resolving the issues. The State's investigation of the injury to its natural resources is ongoing.

Subject to and without waiving the general and specific objections, acts or omissions of the defendants have injured natural resources, including but not limited to, the land, surface waters, sediments underlying surface waters (including streams, rivers, and lakes), drinking water, ground water, and biota of the IRW to such a degree that the State is entitled to damages for the cost of replacing, restoring and/or acquiring the equivalent to such natural resources, and to compensate the State for their lost use and enjoyment. The amount of compensation necessary to restore, replace or acquire the equivalent of the injured resources, and to compensate for their lost use, and the methodology being used is a matter of

expert opinion for which discovery is not yet appropriate and is objected to.

In further response to this Interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business records being provided to this Defendant. Identification of such business records will occur on a rolling basis as the State's review of its business records proceeds.

The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ. P. 26(e).

INTERROGATORY NO. 5: Please Identify by name of owner, Name of operator and address each and every parcel of real property which You contend constitutes a "Facility" for purposes of the claims asserted by You under Counts One and Two of the Complaint including those properties where You contend hazardous substances were released or disposed onto or otherwise came to be located. (See, Amended Complaint, 70-89.)

RESPONSE TO INTERROGATORY NO. 5: The State objects to this interrogatory to the extent that it seeks the discovery of information that is protected by the attorney client privilege and/or the work product doctrine.

The State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). As of the date of this response, the State has not determined which experts retained by it or by its counsel will provide expert testimony in this case, and the Court has neither established the times and sequence of disclosure of such expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(C), nor has the Court established a trial date to trigger the obligation

of expert disclosure 90 days in advance of trial under that rule. The State will comply with the order of the Court establishing the time of expert disclosures as required by Fed. R. Civ. P. 26. Therefore, the State also objects to this interrogatory to the extent it calls for information which constitutes expert opinions, the disclosure of which is premature.

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel.

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege and work product protection is supported by its privilege log. Also, pursuant to LCvR 26.4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action, or if the State identifies additional documents subject to a claim of privilege or protection.

The State further objects to this interrogatory in that it improperly seeks "each and every" item of responsive information and is, therefore, overly broad and unduly burdensome. It may be impossible to locate "each and every" item of responsive information to such discovery requests. The State further objects to this interrogatory to the extent it misstates the State's allegations and the law pertaining to the term "facility." As Poultry Integrator Defendant Cobb-Vantress, Inc. should be well aware, the term "facility" is given a broad reading under CERCLA. For instance, 42 U.S.C. § 9601(9) defines "facility"

as "(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel." The case law similarly gives the term "facility" a broad reading. See, e.g., *Sierra Club v. Seaboard Farms, Inc.*, 387 F.3d 1167, 1174 (10th Cir. 2004) ("Both sides agree that the circuits that have applied the defined term 'facility' have done so with a broad brush"; holding that entire farm complex, rather than each individual lagoon, barn and land application area contained within farm complex, constituted a "facility" for purposes of CERCLA); *United States v. Township of Brighton*, 153 F.3d 307, 313 (6th Cir. 1998) ("[t]he words of the statute suggest that the bounds of a facility should be defined by the bounds of the contamination. However, an area that cannot be reasonably or naturally divided into multiple parts or functional units should be defined as a single 'facility,' even if it contains parts that are non-contaminated. Were this not the case, the statute would have defined a facility as 'those parts of a site' with contamination") (emphasis in original) (citations omitted); *Sierra Club, Inc. v. Tyson Foods, Inc.*, 299 F.Supp.2d 693, 708-09 (W.D. Ky. 2003) ("[c]ourts have consistently interpreted the term 'facility' broadly. . . . [W]hen multiple sources of hazardous substances are grouped together, the facility encompasses the entire area and extends to 'the bounds of the contamination.' . . .'[F]acility' for reporting purposes, cleanup purposes or any other statutory purpose extend under the case law to the bounds of the contamination").

Consistent with the definition of "facility" found in 42 U.S.C. § 9601(9) and the relevant case law, the State has alleged that the entire IRW constitutes a "facility." See FAC, ¶¶ 72 & 81. This is because

poultry waste has been deposited, stored, disposed of or placed, or otherwise come to be located, throughout the lands, waters and sediments of the IRW due to poultry growing operations, poultry waste handling operations, and poultry waste disposal activities (including, but not limited to, the land application of poultry waste) occurring within the IRW, and due to run-off, discharge and leaching of poultry waste from these operations and activities. The geographic boundaries of the IRW are publicly available to Poultry Integrator Defendant Cobb-Vantress from a variety of sources. Moreover, materials reflecting these geographical boundaries have previously been previously provided by counsel for the State to counsel for Poultry Integrator Defendant Petersons, Inc., which was presumably shared with counsel for all other Defendants. See, e.g., April 4, 2006 letter from L. Bullock to S. McDaniel. Further, identification of the "name of owner, name of operator and address [of] each and every parcel of real property" within the entire IRW is, the State believes, reflected in public records and would be hugely time-consuming and expensive for the State to secure and compile this information in order to respond to this portion of the interrogatory. The State thus objects to this portion of the interrogatory in that it seeks the discovery of information that is obtainable from another source that is more convenient, less burdensome or less expensive, and is as accessible to Poultry Integrator Defendant Cobb-Vantress as it is to the State. As such, the burden of obtaining such sought after information is substantially the same, or less, for Poultry Integrator Defendant Cobb-Vantress as it is for the State. The State also objects to this portion of the interrogatory in that it is overly broad, oppressive, harassing, unduly burdensome and expensive to answer. Providing answers to such discovery requests would needlessly and improperly burden the State.

In further response to this Interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business

records being provided to this Defendant. Identification of such business records will occur on a rolling basis as the State's review of its business records proceeds.

Also, again consistent with the definition of "facility" found in 42 U.S.C. § 9601(9) and the relevant case law, the State has alleged that "the grower buildings, structures, installations and equipment, as well as the land to which the poultry waste has been applied" within the IRW constitute "facilities." See FAC, ¶¶ 72 & 81. The "name of owner, name of operator and address [of] each and every parcel of real property" of where there are poultry grower buildings, structures, installations and equipment, as well as of where there is land to which the poultry waste has been applied is believed to already be in the possession of the Poultry Integrator Defendants through their own records, through documents requested from the State pursuant to one or more Open Records Act requests, and / or through documents the State in producing pursuant to Fed. R. Civ. P. 26(a). Indeed, the State is currently seeking information pertaining to the location and ownership of the Poultry Integrator Defendants' operations in the IRW in discovery directed to the Poultry Integrator Defendants pursuant to Fed. R. Civ. P. 33. See State's April 20, 2006 Discovery Requests. Thus, the State objects to this portion of the interrogatory in that it seeks the discovery of information that is already in possession of Poultry Integrator Defendant Cobb-Vantress and / or is obtainable from another source (e.g., one or more of the other Poultry Integrator Defendants) that is more convenient, less burdensome or less expensive, and is as accessible to Poultry Integrator Defendant Cobb-Vantress as it is to the State. As such, the burden of obtaining such sought after information is substantially the same, or less, for Poultry Integrator Defendant Cobb-Vantress as it is for the State. The State also objects to this portion of the interrogatory in that it is overly broad, oppressive, harassing, unduly burdensome and expensive to answer. Providing answers to such discovery requests would needlessly and

improperly burden the State.

In further response to this Interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business records being provided to this Defendant. Identification of such business records will occur on a rolling basis as the State's review of its business records proceeds.

Subject to and without waiving any of its general or specific objections, as to identification of "each and every parcel of real property" where poultry waste has been applied in the IRW, it is believed by the State that the Poultry Integrator Defendants are already in possession of this information through their own records, through documents requested from the State pursuant to one or more Open Records Act requests and / or through documents the State is producing pursuant to Fed. R. Civ. P. 26(a). Thus, the State objects to this portion of the interrogatory in that it seeks the discovery of information that is already in possession of Poultry Integrator Defendant Cobb-Vantress and / or is obtainable from another source (e.g., one or more of the other Poultry Integrator Defendants) that is more convenient, less burdensome or less expensive, and is as accessible to Poultry Integrator Defendant Cobb-Vantress as it is to the State. As such, the burden of obtaining such sought after information is substantially the same, or less, for Poultry Integrator Defendant Cobb-Vantress as it is for the State. The State also objects to this portion of the interrogatory in that it is overly broad, oppressive, harassing, unduly burdensome and expensive to answer.

In further response to this Interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business records being provided to this Defendant. Identification of such business records will occur on a rolling basis as the State's review of its business records proceeds.

The State reserves all rights to supplement and correct the information contained in this interrogatory pursuant to Fed. R. Civ. P. 26(e).

INTERROGATORY NO. 6: Please Identify all costs of removal or remediation action incurred by the United States Government or a State or an Indian Tribe consistent with or not inconsistent with the National Contingency Plan for which the State seeks to recover in this Lawsuit.

ANSWER TO NO. 6: The State objects to this interrogatory to the extent that it seeks the discovery of information that is protected by the attorney client privilege and/or the work product doctrine.

The State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). As of the date of this response, the State has not determined which experts retained by it or by its counsel will provide expert testimony in this case, and the Court has neither established the times and sequence of disclosure of such expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(C), nor has the Court established a trial date to trigger the obligation of expert disclosure 90 days in advance of trial under that rule. The State will comply with the order of the Court establishing the time of expert disclosures as required by Fed. R. Civ. P. 26. Therefore, the State also objects to this interrogatory to the extent it calls for information which constitutes expert opinions, the disclosure of which is premature.

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel.

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege

and work product protection is supported by its privilege log. Also, pursuant to LCvR 26.4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action, or if the State identifies additional documents subject to a claim of privilege or protection.

The State is without reliable knowledge regarding whether the United States Government or an Indian Tribe has incurred removal or remediation costs consistent with or not inconsistent with the National Contingency Plan. The State has incurred removal or remediation costs that are not inconsistent with the National Contingency Plan. 42 U.S.C. § 9607(a)(4)(A). The following list of removal or remediation costs is not exhaustive and the State reserves the right to supplement as the State continues to review its records and to incur response costs.

1. Illinois River Watershed Implementation Program (1996)
2. Illinois River: Monitoring Small Watersheds to Assess WQ (1992)
3. Illinois River and Baron Fork Watershed Implementation Program (1999)
4. Tenkiller Clean Lakes Study
5. Periphyton/biological monitoring
6. Costs incurred for the monitoring, assessment and evaluation of the release or threat of release of hazardous substances from Defendants activities in the Illinois River Watershed.
7. State share of cost sharing measures to implement management practices to limit

phosphorus pollution and migration within the IRW.

8. Costs incurred evaluating, assessing and/or implementing any removal or remedial action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release.

The State reserves the right to supplement and correct the information contained in this interrogatory pursuant to Fed. R. Civ. P. 26(e).

INTERROGATORY NO. 7: Please Identify any other necessary costs of response incurred by any person consistent with or not inconsistent with the National Contingency Plan for which the State Seeks to recover in this lawsuit.

OBJECTIONS AND RESPONSE TO NO.7: See the State's Objections and response to Interrogatory No. 6, which are incorporated herein. The State is without knowledge whether any other person has incurred any other necessary costs of response consistent with or not inconsistent with the National Contingency Plan. The State reserves the right to supplement and correct the information contained in this interrogatory pursuant to Fed. R. Civ. P. 26(e).

INTERROGATORY NO. 8: Please Identify all assessments, studies or evaluations of alleged environmental or health injuries, threats or endangerments which the State has conducted and for which the State will seek to recover costs from the defendants in this Lawsuit.

OBJECTIONS AND RESPONSE TO NO. 8: The State objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work production protection.

The State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). As of the date of this response, the

State has not determined which experts retained by it or by its counsel will provide expert testimony in this case, and the Court has neither established the times and sequence of disclosure of such expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(C), nor has the Court established a trial date to trigger the obligation of expert disclosure 90 days in advance of trial under that rule. The State will comply with the order of the Court establishing the time of expert disclosures as required by Fed. R. Civ. P. 26. Therefore, the State also objects to this interrogatory to the extent it calls for information which constitutes expert opinions, the disclosure of which is premature.

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel.

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege and work product protection is supported by its privilege log. Also, pursuant to LCvR 26.4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action, or if the State identifies additional documents subject to a claim of privilege or protection.

The State objects to this interrogatory on the grounds that it improperly seeks identification of "all" items of responsive information, which renders it overly broad, oppressive, unduly burdensome and expensive to answer. It may be impossible to locate "all" items of responsive information to this

interrogatory.

In further response to this Interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business records being provided to this Defendant. Identification of such business records will occur on a rolling basis as the State's review of its business records proceeds.

The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ. P. 26(e).

INTERROGATORY NO. 9: Please identify by name and Chemical Abstracts Survey Registry Number ("CASRN") each hazardous substance You contend any Tyson Defendant has released or disposed of in the IRW for which You contend the [sic] any Tyson Defendant is liable under CERCLA, 42 U.S.C. § 9607 et seq.

OBJECTIONS AND RESPONSE TO NO. 9: The State objects to this interrogatory to the extent it seeks information protected by the attorney client privilege and / or the work product doctrine.

The State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). As of the date of this response, the State has not determined which experts retained by it or by its counsel will provide expert testimony in this case, and the Court has neither established the times and sequence of disclosure of such expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(C), nor has the Court established a trial date to trigger the obligation of expert disclosure 90 days in advance of trial under that rule. The State will comply with the order of the Court establishing the time of expert disclosures as required by Fed. R. Civ. P. 26. Therefore, the State

also objects to this interrogatory to the extent it calls for information which constitutes expert opinions, the disclosure of which is premature.

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel.

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege and work product protection is supported by its privilege log. Also, pursuant to LCvR 26.4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action, or if the State identifies additional documents subject to a claim of privilege or protection.

The State further objects to this interrogatory on the ground that it is premature; the State's investigation of Tyson Defendant's conduct is on-going, and as such it is not possible to identify "each" hazardous substance that Tyson Defendant has released or disposed of in the IRW for which the State contends Tyson Defendant is liable. The State reserves all rights to supplement this interrogatory answer pursuant to Fed. R. Civ. P. 26(e). The State also objects to this interrogatory to the extent it calls for expert opinions, the disclosure of which is premature. The State also objects to this interrogatory insofar as it improperly attempts to narrow the scope of "hazardous substances" to only those chemicals specifically named on List 302.4. As explained in *City of Tulsa v. Tyson Foods, Inc.*, 258 F.Supp.2d 1263,

1283-85 (N.D. Okla. 2003), vacated pursuant to settlement, CERCLA is a remedial statute that courts construe liberally to effectuate its broad response and reimbursement goals. Consistent with these goals and the mandated liberal construction, the term "hazardous substances" means not only chemicals specifically named on List 302.4, but also chemical compounds, chemical forms and chemical combinations of those chemicals specifically named on List 302.4. Id.; see also *B.F. Goodrich Co. v. Murtha*, 958 F.2d 1192, 1201 (2d Cir. 1992) ("Liability under CERCLA depends only on the presence in any form of listed hazardous substances"). Subject to and without waiving its general or specific objections, the State contends that a Tyson Defendant has released or disposed of in the IRW:

Substance	CASRN
Aluminum compounds	-
Arsenic and compounds	-
Ammonia	7664417
Ammonium and compounds	-
Cadmium and compounds	-
Chromium and compounds	-
Copper and compounds	-
Lead and compounds	-
Manganese compounds	-
Nickel and compounds	-
Nitric acid	7786-81-4
Nitrogen oxides	-

Nitrosamines	-
Phosphorus and compounds	-
Phosphoric acid	7664382
Polynuclear Aromatic Hydrocarbons	-
Radionuclides	-
Selenium and compounds	-
Sodium compounds	-
Sulfuric acid	7664939
Thiourea	62566
Unlisted hazardous waste characteristic of reactivity	
Zinc and compounds	-
Iron compounds	-

The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ. P. 26(e).

INTERROGATORY NO. 10: Please Identify and describe each applicable or relevant and appropriate ("ARAR") you have met in complying with the National Contingency Plan.

OBJECTIONS AND RESPONSE TO NO.10: The State objects to this Interrogatory because Defendant has exceeded the limit of 25 interrogatories or discrete subparts found in Fed. R.Civ. P. 33(a). After conferring in good faith with counsel for Defendant, counsel for Defendant has, without agreeing with the State''s count of interrogatories or discrete subparts, designated this interrogatory as one which, if not posed, would, by the State''s count, reduce the total number of interrogatories and discrete subparts to

25 for this Defendant. The parties have agreed that the State has not waived its objection to the number of interrogatories and discrete subparts posed by responding to any other interrogatory. See Email exchange between Robert George and Robert Nance, Exhibit 1 attached hereto for the full text of the agreement of the parties.

INTERROGATORY NO. 11: Please Identify by date and subject matter, each opportunity for public comment afforded by the State in compliance with the National Contingency Plan.

OBJECTIONS AND RESPONSE TO NO. 11: The State objects to this interrogatory on the grounds that it vague and overly broad, which renders it oppressive, unduly burdensome and expensive to answer. It may be impossible to identify "each" opportunity for public comment. The State further objects to this Interrogatory because it is irrelevant and not calculated to lead to admissible evidence, because the State is not required to afford opportunity for public comment in compliance with the National Contingency Plan. However, the pollution of the IRW by the Poultry Integrator Defendants has been the subject of many public meetings and much public comment and discussion, the timing and subject matter of which the State cannot presently compile.

The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ. P. 26(e).

INTERROGATORY NO. 12: Please Identify all persons who You expect to call as a witness in the trial of this Lawsuit or during any evidentiary hearing conducted in the Lawsuit.

OBJECTIONS AND RESPONSE TO NO. 12: The State objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege and / or work production protection.

The State objects to this interrogatory to the extent that it seeks information known or opinions held

by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). As of the date of this response, the State has not determined which experts retained by it or by its counsel will provide expert testimony in this case, and the Court has neither established the times and sequence of disclosure of such expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(C), nor has the Court established a trial date to trigger the obligation of expert disclosure 90 days in advance of trial under that rule. The State will comply with the order of the Court establishing the time of expert disclosures as required by Fed. R. Civ. P. 26. Therefore, the State also objects to this interrogatory to the extent it calls for information which constitutes expert opinions, the disclosure of which is premature.

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel.

Without waiving the foregoing objections, the State has not determined which persons it will call as witnesses in the trial of this action or during any evidentiary hearing conducted in this action, but will supplement this interrogatory as required by any applicable scheduling or case management order and/or by the Federal Rules of Civil Procedure.

The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ. P. 26(e).

INTERROGATORY NO. 13: Identify all recorded statements (whether written, audio taped, videotaped or otherwise recorded in any way) from any person, which Relate to the subject matter of this Lawsuit.

OBJECTIONS AND ANSWER TO NO. 13: The State objects to this interrogatory to the extent it seeks the discovery of information that is protected by the attorney client privilege and/or the work product doctrine. The State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel.

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege and work product protection is supported by its privilege log. Also, pursuant to LCvR 26.4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action, or if the State identifies additional documents subject to a claim of privilege or protection.

The State objects to this interrogatory on the grounds that it improperly seeks identification of "all" items of responsive information and that the term "Relate" renders it overly broad, oppressive, unduly burdensome and expensive to answer. It may be impossible to locate "all" items of responsive information to this interrogatory.

The State objects to the extent that discovery sought is unreasonably cumulative or duplicative to the extent that such information has previously been provided to Defendant in connection with the State's

initial disclosures.

Subject to and without waiving its objections, the State has taken the depositions of Betty Anderson, Bill Anderson, Julie Anderson Chancellor, Franklin Glenn, Jim Pigeon, and Joel Reed in Oklahoma County District Court Case No. CV-2005-8975. The State also has in its possession the deposition of Secretary of Agriculture Terry Peach in Oklahoma County District Court Case No. CV-2005-8975 and depositions taken from the *City of Tulsa vs. Tyson Foods, Inc. et al.*, 258 F.Supp. 1263. Understanding the term "statements" to mean depositions, affidavits and signed witness statements, the State is unaware of any other recorded statements that have been taken by the State. Discovery is ongoing. The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ. P. 26(e).

INTERROGATORY NO. 14: Identify any consent, decrees, agreed judicial or administrative orders, or settlement agreements obtained by You during the three years preceding the Lawsuit against or with any Person or Entity relating to their responsibility for the proper management and disposal of wastes to the IRW. With respect to each provide the full name of the person(s) or Entity and the date of the settlement agreement, decrees or order and describe the consideration received in each such settlement agreement decree or order.

OBJECTIONS AND RESPONSE TO NO 14: The State objects to this interrogatory on the grounds that it improperly seeks identification of "any" or "all" items of responsive information, which renders it overly broad, oppressive, unduly burdensome and expensive to answer. It may be impossible to locate "any" or "all" items of responsive information to this interrogatory.

In further response to this Interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business records being provided to this Defendant. Identification of such business records will occur on a rolling

basis as the State's review of its business records proceeds.

Respectfully submitted,

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

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)
Riggs, Abney, Neal, Turpen, Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

Robert A. Nance (OBA #6581)
D. Sharon Gentry (OBA #15641)
Riggs, Abney, Neal, Turpen, Orbison & Lewis
Paragon Building, Suite 101
5801 Broadway Extension
Oklahoma City, OK 73118
(405) 843-9909

J. Randall Miller (OBA #6214)
Louis W. Bullock (OBA #1305)
David P. Page (OBA #6852)
Miller, Keffer & Bullock, PC
222 South Kenosha Avenue
Tulsa, OK 74120
(918) 743-4460

Frederick C. Baker (admitted pro hac vice)
Elizabeth C. Ward (admitted pro hac vice)
Motley Rice LLC
28 Bridgeside Boulevard
P.O. Box 1792
Mt. Pleasant, SC 29465
(843) 216-9000

William H. Narwold (admitted pro hac vice)
Motley Rice LLC
One Corporate Center
20 Church Street, 17th Floor
Hartford, CT 06103
860-882-1682t

Attorneys for the State of Oklahoma

June 15, 2006

VERIFICATION

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

I, Miles Tolbert, being of legal age, hereby depose and state that I have read the foregoing responses to interrogatories and that they are true and correct, to the best of my knowledge and belief, and and that I furnish such responses based on consultation with representatives of the State of Oklahoma based on documents identified as of the date of this response.

Miles Tolbert
Secretary of the Environment
State of Oklahoma

Signed and subscribed to before me on this 15th day of June, 2006.

Notary Public

JOYCE K. BOYD
NOTARY PUBLIC
02017963
EXP. 11/9/06
IN AND
FOR
STATE OF OKLAHOMA
OKLAHOMA COUNTY

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2006, I electronically transmitted the foregoing document to the following ECF registrants or via United States Mail postage prepaid to the following:

- Jo Nan Allen jonanallen@yahoo.com, bacaviola@yahoo.com
- Frederick C Baker fbaker@motleyrice.com, mcarr@motleyrice.com; fhmorgan@motleyrice.com
- Tim Keith Baker tbakerlaw@sbcglobal.net
- Douglas L Boyd dboyd31244@aol.com
- Vicki Bronson vbronson@cwlaw.com, lphillips@cwlaw.com
- Paula M Buchwald pbuchwald@ryanwhaley.com, loelke@ryanwhaley.com
- Louis Werner Bullock LBULLOCK@MKBLAW.NET, NHODGE@MKBLAW.NET; BDEJONG@MKBLAW.NET
- 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
- W A Drew Edmondson fc_docket@oag.state.ok.us, drew_edmondson@oag.state.ok.us; suzy_thrash@oag.state.ok.us.
- Delmar R Ehrich dehrich@faegre.com, kcarney@faegre.com; ; qsperrazza@faegre.com; kklee@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
- Richard T Garren rgarren@riggsabney.com, dellis@riggsabney.com
- Dorothy Sharon Gentry sgentry@riggsabney.com, jzielinski@riggsabney.com
- Robert W George robert.george@kutakrock.com, donna.sinclair@kutakrock.com
- Tony Michael Graham tgraham@grahamfreeman.com,
- 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
- John Trevor Hammons thammons@oag.state.ok.us, Trevor_Hammons@oag.state.ok.us; Jean_Burnett@oag.state.ok.us
- 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
- Kelly S Hunter Burch fc.docket@oag.state.ok.us, kelly_burch@oag.state.ok.us; jean_burnett@oag.state.ok.us
- 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@yahoo.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 C. Kleibacker Lee kklee@faegre.com, mlokken@faegre.com
- Raymond Thomas Lay rtl@kiralaw.com, dianna@kiralaw.com, niccilay@cox.net
- Nicole Marie Longwell Nlongwell@jpm-law.com, ahubler@jpm-law.com
- Dara D. Mann dmann@faegre.com, kolmscheid@faegre.com
- Teresa Brown Marks teresa.maks@arkansasag.gov, dennis.hansen@arkansasag.gov
- Linda C Martin lmartin@dsda.com, mschooling@dsda.com
- Archer Scott McDaniel Smcdaniel@jpm-law.com, jwaller@jpm-law.com
- Robert Park Medearis , Jr medearislawfirm@sbcglobal.net
- James Randall Miller rmiller@mkblaw.net, smilata@mkblaw.net; clagrone@mkblaw.net
- Robert Allen Nance rnance@riggsabney.com, jzielinski@riggsabney.com
- William H. Narwold bnarwold@motleyrice.com
- John Stephen Neas steve_neas@yahoo.com
- George W Owens gwo@owenslawfirmpc.com, ka@owenslawfirmpc.com
- David Phillip Page dpage@mkblaw.net, smilata@mkblaw.net
- K. Clark Phipps ECF@ahm-law.com, cphipps@ahn-law.com
- Marcus N. Ratcliff mratcliff@lswsl.com, sshanks@lswsl.com
- Robert Paul Redemann rredemann@pmrlaw.net, scouch@pmrlaw.net

- Melvin David Riggs driggs@riggsabney.com, pmurta@riggsabney.com
- 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
- 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
- Elizabeth C. Ward lward@motleyrice.com
- Sharon K. Weaver sweaver@riggsabney.com, msmith@riggsabney.com
- Timothy K. Webster twebster@sidley.com, jwedeking@sidley.com; ahorner@sidley.com
- Gary V. Weeks gweeks@bassettlawfirm.com
- Terry Wayen West terry@thewestlawfirm.com
- Adam Scott Weintraub adlaw@msn.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
- Douglas Allen Wilson Doug_Wilson@riggsabney.com, pmurta@riggsabney.com
- J. Ron Wright ron@wsfw-ok.com, susan@wsfw-ok.com
- Lawrence W. Zeringue lzeringue@pmrlaw.net, scouch@pmrlaw.net

VIA U.S. Mail

- Jim Bagby
  RR 2, Box 1711
  Westville, OK 74965
- Gordon W. Clinton
  23605 S GOODNIGHT LN
  WELLING, OK 74471
- 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
  RT 1 BOX 222
  KANSAS, OK 74347
- Thomas C. Green
  Sidley Austin Brown & Wood LLP
  1501 K ST NW
  WASHINGTON, DC 20005

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

- Cherrie House
  P.O. Box 1097
  Stilwell, OK 74960

- William House
  P.O. Box 1097
  Stilwell, OK 74960

- John E. and Virginia W. Adair Family Trust
  RT 2 BOX 1160
  STILWELL, OK 74960

- Dorothy Gene Lamb
  Route 1, Box 253
  Gore, OK 74435

- James Lamb
  Route 1, Box 253
  Gore, OK 74435

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

- Doris Mares
  P O BOX 46
  COOKSON, OK 74424

- Donna S Parker
  34996 S 502 RD
  PARK HILL, OK 74451

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

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

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

Robert A. Nance

Robert A. Nance

Bob Nance

From: George, Robert W [Robert.George@KutakRock.com]
Sent: Friday, June 02, 2006 9:49 AM
To: Bob Nance; Kelly_Burch@oag.state.ok.us; Trevor_Hammons@oag.state.ok.us; Richard Garren
Cc: Jay Jorgensen; Webster, Timothy K.; Burns, Bryan; sjantzen@ryanwhaley.com; Patrick Ryan; Hopson, Mark D.
Subject: RE:

Bob,

You have accurately stated our agreement. I look forward to receiving the State's discovery responses. After reviewing those responses, I will determine whether a motion to compel responses to Tyson Poultry, Inc., Interrogatory No. 2, Tyson Foods, Inc., Interrogatories 2 and 9, and Cobb-Vantress Inc. Interrogatory 10 is necessary. I will, of course, confer with you in one final attempt to resolve the State's objections to these and other discovery requests before filing such a motion.

From: Bob Nance [mailto:rnance@riggsabney.com]
Sent: Wednesday, May 31, 2006 4:40 PM
To: George, Robert W.; Kelly_Burch@oag.state.ok.us; Trevor_Hammons@oag.state.ok.us; Richard Garren
Subject:

Robert, this is to confirm our agreement today regarding interrogatories you have submitted to the State on behalf of your clients Tyson Poultry, Inc., Tyson Foods, Inc., Cobb-Vantress, Inc. and Tyson Chicken, Inc. The State contends that you have submitted more than 25 interrogatories or discrete subparts for each of these clients except Tyson Chicken, Inc. You disagree with our count of the interrogatories and subparts. We have conferred in good faith and arrived at an agreement which preserves all of our respective positions on the interrogatory count issue. On behalf of your clients, you will not withdraw any of the interrogatories or subparts. However, you designated Tyson Poultry, Inc., Interrogatory No. 2, Tyson Foods, Inc., Interrogatories 2 and 9, and Cobb-Vantress Inc. Interrogatory 10 as interrogatories which, if not posed, would, by the State's count (to which you retain your disagreement), reduce the total number of interrogatories and discrete subparts to 25 for each of these three Defendants. The State will present its objections and responses to all interrogatories except the four designated interrogatories. The State will not presently answer the four designated interrogatories, but will present its objections to these designated interrogatories, including the objection that they exceed the limit of 25 interrogatories and discrete subparts. By doing so, you agree that the State has not waived its objection to the number of interrogatories and discrete subparts posed by responding to the others. If you wish to pursue responses to these designated interrogatories, you will move to compel and the State will respond, and retains the right to argue that it has already provided more than the Rules require.

Additionally, you agreed to allow the State an additional week to present its responses and objections to all the interrogatories posed by your clients. These responses and objections will be due on June 8, 2006. By agreeing to this enlargement of time you are not waiving any claim or objection you may wish to present upon receipt of our responses and objections.

Please respond by email to confirm this is our agreement.

Robert A. Nance
RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS

EXHIBIT
1

5801 Broadway Extension, Suite 101
Oklahoma City, OK 73118
Telephone: (405) 843-9909
Facsimile: (405) 842-2913
rnance@riggsabney.com

==========

Confidentiality Notice: The information contained in and transmitted with this communication is strictly confidential, is intended only for the use of the intended recipient, and is the property of Riggs, Abney et al. Law Firm or its affiliates and subsidiaries. If you are not the intended recipient, you are hereby notified that any use of the information contained in or transmitted with the communication or dissemination, distribution or copying of this communication is strictly prohibited by law. If you have received this communication in error, please immediately return this communication to the sender and delete the original message and any copy of it in your possession.

==========

ANY FEDERAL TAX ADVICE CONTAINED IN THIS MESSAGE SHOULD NOT BE USED OR REFERRED TO IN THE PROMOTING, MARKETING OR RECOMMENDING OF ANY ENTITY, INVESTMENT PLAN OR ARRANGEMENT, NOR IS SUCH ADVICE INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY A TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE.

This E-mail message is confidential, intended only for the named recipient(s) above and may contain information that is privileged, attorney work product or otherwise protected by applicable law. If you have received this message in error, please notify the sender at 402-346-6000 and delete this E-mail message. Thank you.

State of Oklahoma, et al. v. Tyson Foods, Inc., et al.

Privilege Log

	Date	Author	Is Author a Lawyer?	Recipient(s)	Type of Document	General Subject Matter of the Document	Privilege Asserted *FRCP*	Bates Number(s)
280	2004/11/15	Lithochimeia, Inc.	No	Stratus Consulting, Inc., Miller Keffer Bullock Pedigo LLC, Landreth Law Firm	e-mail	correspondence regarding manure-borne estrogens	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
281	2005/04/12	Landreth Law Firm	Yes	Landreth Law Firm, Miller Keffer Bullock Pedigo LLC, Oklahoma Office of the Attorney General	e-mail	correspondence regarding damages and remediation	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
282	2005/03/29	Oklahoma Office of the Attorney General	Yes	Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc., Landreth Law Firm	e-mail	correspondence regarding arsenic from poultry litter	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
283	2005/01/27	Miller Keffer Bullock Pedigo LLC	Yes	Lithochimeia, Inc., Stratus Consulting, Inc., Camp Dresser & McKee, Inc., HydroQual (cc: Oklahoma Office of the Attorney General, Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc., Motley Rice LLC, Landreth Law Firm)	e-mail	correspondence regarding re-damage proof and evidence issues	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
284	2005/01/18	Miller Keffer Bullock Pedigo LLC	Yes	Stratus Consulting, Inc., Lithochimeia, Inc., Camp Dresser & McKee, Inc.	e-mail	correspondence regarding and attaching draft Items of Proof	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
285	2005/01/07	Miller Keffer Bullock Pedigo LLC	Yes	Landreth Law Firm	e-mail	correspondence regarding settlement issues	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none

State of Oklahoma, et al. v. Tyson Foods, Inc., et al.

Privilege Log

	Date	Author	Is Author a Lawyer?	Recipient(s)	Type of Document	General Subject Matter of the Document	Privilege Asserted *FRCP*	Bates Number(s)
286	2004/12/07	Stratus Consulting, Inc.	No	Landreth Law Firm (cc: Miller Keffer Bullock Pedigo LLC)	e-mail	correspondence regarding Federal Register document FRL-7845-7, "Notice of Proposed NPDES General Permit for Discharges From Concentrated Animal Feeding Operations (CAFOs) in New Mexico, Oklahoma, and on Indian Lands in New Mexico and Oklahoma"	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
287	2005/04/13	Stratus Consulting, Inc.	No	Landreth Law Firm, Miller Keffer Bullock Pedigo LLC (cc: Oklahoma Office of the Attorney General)	e-mail	correspondence regarding damage and remediation	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
288	2005/04/12	Stratus Consulting, Inc.	No	Miller Keffer Bullock Pedigo LLC, Landreth Law Firm (cc: Oklahoma Office of the Attorney General)	e-mail	correspondence regarding damage and remediation	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
289	various dates in 2004	various authors including those from the Oklahoma Office of the Attorney General and Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc.	Yes	various	log of e-mails	correspondence regarding damages	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
290	2004/12/07	Oklahoma Office of the Attorney General	Yes	Motley Rice LLC (cc: Landreth Law Firm, Miller Keffer Bullock Pedigo LLC, Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc., Oklahoma Office of the Attorney General,	e-mail	correspondence attaching draft chart regarding damages	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
291	2004/11/18	Oklahoma Office of the Attorney General	Yes	Stratus Consulting, Inc., Landreth Law Firm (cc: Miller Keffer Bullock Pedigo LLC)	e-mail	correspondence regarding Oklahoma Department of Agriculture enforcement	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none

State of Oklahoma, et al. v. Tyson Foods, Inc., et al.

Privilege Log

	Date	Author	Is Author a Lawyer?	Recipient(s)	Type of Document	General Subject Matter of the Document	Privilege Asserted *FRCP*	Bates Number(s)
292	2004/11/17	Oklahoma Office of the Attorney General	Yes	Landreth Law Firm, Stratus Consulting, Inc. (cc: Miller Keffer Bullock Pedigo LLC)	e-mail	correspondence regarding Oklahoma Eastern Shore Monitoring Program	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
293	2004/09/20	Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc.	Yes	Motley Rice LLC, Oklahoma Office of the Attorney General, Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc., Landreth Law Firm, Miller Keffer Bullock Pedigo LLC	memorandum	Memorandum regarding alternative remedies for repairing the environmental damage to the Illinois River Watershed and Lake Tenkiller and other affected Eastern Oklahoma watersheds	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
294	2004/05/16	Landreth Law Firm	Yes	Landreth Law Firm	e-mail	correspondence attaching Illinois River Damages spreadsheet	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
295	2004/11/29	Stratus Consulting, Inc.	No	Motley Rice LLC, Oklahoma Office of the Attorney General, Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc., Landreth Law Firm, Miller Keffer Bullock Pedigo LLC	presentation	presentation entitled "Oklahoma Poultry Litigation"	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
296	various dates in 2004	various authors including those from Landreth Law Firm and Stratus Consulting, Inc.	Yes, in part	Motley Rice LLC, Oklahoma Office of the Attorney General, Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc., Landreth Law Firm, Miller Keffer Bullock Pedigo LLC	log of notes and presentation portions	Damages Presentation 11/29/2004 - 11/30/2004	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
297	undated	Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc.	Yes	Motley Rice LLC, Oklahoma Office of the Attorney General, Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc., Landreth Law Firm, Miller Keffer Bullock Pedigo LLC	typed notes	typed notes on 11/29/04 Stratus Presentation	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none

State of Oklahoma, et al. v. Tyson Foods, Inc., et al.

Privilege Log

	Date	Author	Is Author a Lawyer?	Recipient(s)	Type of Document	General Subject Matter of the Document	Privilege Asserted *FRCP*	Bates Number(s)
298	2004/12/21	Miller Keffer Bullock Pedigo LLC	Yes	Stratus Consulting, Inc.	e-mail	correspondence regarding proposed sampling	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	none
299	2003/04/04	Oklahoma Conservation Commission	No	Oklahoma Conservation Commission	e-mails	e-mails regarding monitoring agreement with Arkansas	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	0002801 - 0002803
300	2002/07/23	Oklahoma State University	No	Oklahoma Office of the Attorney General	draft Scope of Work	draft Scope of Work submitted to Attorney General's office estimating or establishing threshold phosphorus in IRW using SWAT	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	0002904-0002906
301	2002/04/28	Oklahoma Water Resources Board	No	Derek Smithee, Phillip Moershel, Jon Craig, Mark Derichsweiler, Oklahoma Conservation Commission, Oklahoma Office of the Attorney General, Ed Fite, Teena Gunter, Susan Krug, Dan Parrish, Michelle Sutton, Mike Smolen, Chris Bruehl (and cc: Duane Smith, Mark Coleman, Kristye Kirkshores, Mike Thralls)	e-mail	correspondence attaching handwritten annotations and also attaching document regarding possible implementation actions for phosphorus control	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	0002909 - 0002915
302	1997/07/30	Oklahoma Office of the Attorney General	Yes	Oklahoma Scenic Rivers Commission, Oklahoma Department of Environmental Quality, Oklahoma Water Resources Board, Oklahoma Conservation Commission, Oklahoma Secretary of the Environment	fax	correspondence regarding citizens' suit	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	0003264 - 0003267

State of Oklahoma, et al. v. Tyson Foods, Inc., et al.

Privilege Log

	Date	Author	Is Author a Lawyer?	Recipient(s)	Type of Document	General Subject Matter of the Document	Privilege Asserted *FRCP*	Bates Number(s)
303	2002/08/06	Oklahoma Conservation Commission	No	Margaret Blevins	e-mail	correspondence regarding bacterial data request	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	0002695
304	2005/03/31	Oklahoma Conservation Commission	No	Margaret Blevins	e-mail	correspondence regarding a reference stream	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	0002717
305	2005/04/05	Margaret Blevins	No	Oklahoma Conservation Commission	e-mail	correspondence regarding a reference stream	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	0002718
306	2004/09/21 - 2004/09/22	various (including Oklahoma Conservation Commission, Dan Storm, Margaret Blevins)	No	various (including Oklahoma Conservation Commission, Dan Storm, Margaret Blevins)	e-mails	correspondence regarding reference streams	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	0002739
307	2005/03/31	Oklahoma Conservation Commission	No	Oklahoma Conservation Commission	e-mails	correspondence regarding water quality sites	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	0002756 - 0002757
308	2004/10/14	Oklahoma Office of the Attorney General	Yes	Oklahoma Conservation Commission	letter	correspondence regarding data on Illinois River and other listed watersheds	attorney work product Fed. R. Civ. P. 26(b)(3)&(4) and attorney-client privilege	0002762