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

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

STATE OF OKLAHOMA'S RESPONSE TO CAL-MAINE FOODS, INC.'S INTERROGATORIES 1, 2, AND 5 AND RESPONSE TO REQUEST 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, (hereinafter "the State") and hereby responds to Cal-Maine Foods, Inc.'s First Set of Interrogatories. By agreement the State is responding to Interrogatories 1, 2, and 5, as well as Requests for Production 1 through 7. The State reserves the right to supplement these responses.

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, the work product doctrine, and / or any other applicable privilege or protection under state or federal law.

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 Cal-Maine, is obtainable from another source that is more convenient, less burdensome or less expensive, or is as accessible to Defendant Cal-Maine as it is to the State. As such, the burden of obtaining such

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sought-after information is substantially the same, or less, for the Defendant Cal-Maine 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" documents for each request. Such discovery requests are thus overly broad and unduly burdensome. It may be impossible to locate "all" documents 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.

ANSWERS AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 1: If You contend that any of the Former Cal-Maine Contract Growers ever stored or applied Litter in any amount or manner which was contrary to any Oklahoma Statute or Oklahoma Regulations or any Arkansas Statute or Arkansas Regulation, identify any such Former Cal-Maine Contract Grower, and, for each, specify the state, place, and nature of the storage or application event(s) and identify the statute(s) and/or regulation(s) which you contend was/were violated.

RESPONSE TO INTERROGATORY NO. 1: The State objects to this interrogatory to the extent it seeks information protected by the attorney client privilege or work product protection. Further, 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 statutes and regulations alleged to have been violated by Cal-Maine or entities for which Cal-Maine is legally responsible are identified in the State's First Amended Complaint (Dkt #18). Cal-Maine's own production of documents contains information regarding its growers and locations of land application. Pursuant to Fed. R. Civ. P. 33(d) the State has produced grower files, which provides additional information regarding Cal-Maine's grower and the location of land application on June 15, 2006, Bates Nos. OKDA0000001-OKDA0010561 and

OKDA0013013-OKDA0021846. The State will further provide all grower files at the Oklahoma Department of Agriculture, Food and Forestry document production. The State continues its investigation of these matters and will supplement this response as the State becomes aware of additional responsive information.

The State does not, and need not, rely for evidence of its case on directly documenting each individual statutory violation, release or application of waste and tracing it from the bird to the injured resource. The State has already provided its particularized sampling data, and will continue to provide additional data as it is developed. Additionally, in those circumstances in which the State will rely on other direct evidence of release of waste at specific times and places to prove this claim, it will supplement its responses with the specific, direct evidence it will use.

The State intends in part to demonstrate violations of these statutes and regulations through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State intends to call expert witnesses at trial who will demonstrate that land application of the Defendants' wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment, and rainfall: (1) washes off the constituents of these wastes and the land applied soils, and they together run off of the area that was land applied and flow into IRW surface waters, and (2) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by, without limitation, the following:

(A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to surface water runoff and seepage and leaching into the groundwater.

Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will demonstrate the "pathway" to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;

(B) Showing that a chemical "finger print" is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendants' waste, the soils on which those wastes are applied, the groundwater and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect runoff and ground waters, and the sediments of Lake Tenkiller;

(C) Conducting Lake Tenkiller core analysis and comparing them with (i) other Lakes and (ii) poultry and waste growth and production;

(D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing with poultry production and waste volume in the IRW;

(E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations of phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. The State has produced documents addressed by the Court's January 5, 2007, Order associated with the State's sampling scheme and will continue these productions on a rolling basis. *See* Exhibit 1 (an index of the State's production). The expert opinions and reports that will show these violations are still being completed and will be provided to the Defendants in accordance with the Court's Order Scheduling Order (Dkt #1075).

INTERROGATORY NO. 2: If You contend that Cal-Maine Foods, Inc. ever stored or applied Litter in any amount or manner which was contrary to any Oklahoma Statute or Oklahoma Regulations or any Arkansas Statute or Arkansas Regulation, specify the date, place and nature of the storage or application event(s) and identify the statute(s) and/or regulation(s) which you contend was/were violated.

RESPONSE TO INTERROGATORY NO. 2:

The State incorporates its objections and response to Interrogatory No.1 as if fully stated herein.

INTERROGATORY NO. 5: State separately by year for each year from 1952 to the present that total tonnage (or other quantified measure) of Litter You, through any agency or instrumentality, authorized, by permit or otherwise, to be applied to land within that part of the Illinois River Watershed situated in Oklahoma.

RESPONSE TO INTERROGATORY NO. 5: The State objects to this interrogatory to the extent it seeks information protected by the attorney client privilege or work product protection. Further, 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 objects to this interrogatory inasmuch it is premised on an erroneous premise, and therefore it is impossible to respond to as framed. Specifically, the State does not "authorize" (and has never authorized) a "total tonnage (or other quantified measure) of Litter" "to be applied to land within that part of the Illinois River Watershed situated in Oklahoma." Rather, current Oklahoma state law allows Litter to be applied to land in Oklahoma in accordance with the Oklahoma Registered Poultry Feeding Operations Act ("Act"), 2 O.S. § 10.9 et. seq. The Act provides, among other things, that applicators follow their animal waste management plan, not allow the Litter to not run-off, and otherwise not cause pollution. Additionally, Oklahoma state law has long provided that Litter cannot be land applied where it causes pollution of any waters of the state, where it is placed or caused to be placed in a location where it is likely to cause pollution of any air, land or waters of the state, or where it otherwise causes a nuisance or trespass.

Subject to and without waiver of these objections, and pursuant to Rule 33(d), the State refers you to the following documents which indicate the amount of litter generated or applied in the Illinois River Watershed:

1. Coordinated Watershed and Restoration Protection Strategy for Oklahoma's Impaired Scenic Rivers (Per SB 972) 2002, 2004-2006 Update located at http://www.environment.ok.gov/.

2. Basin-Wide Pollution Inventory for the Illinois River Comprehensive Basin Management Program located at: (http://www.okcc.state.ok.us/WQ/WQ_reports/REPORT043.pdf).
3. Peacheater Creek 319 Demonstration Project-Oklahoma Conservation Commission-Information relating to Peacheater Creek and the Illinois River monitoring project were located in OCC WQ Box 10C.
4. Bates Nos. OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846, produced on June 15, 2006, which show the amount of litter which the growers report applying in the Illinois River Watershed.

RESPONSES TO REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: If You answered Interrogatory No. 1 in the affirmative, produce all Documents or other material which in any manner demonstrate that such storage or application events as are specified in the interrogatory occurred.

RESPONSES TO REQUEST FOR PRODUCTION NO. 1: The State objects to this Request on the ground set forth in its Response to Interrogatory No. 1. Further, Cal-Maine is aware of who its own growers are and have produced such to the State. Without waiving its objections, the State will produce responsive documents at the ODAFF document production. See also Exhibit 1 (index of the State's Court Ordered production)

REQUEST FOR PRODUCTION NO. 2: If You answered Interrogatory No. 2 in the affirmative, produce all Documents or other materials which in any manner demonstrate that such storage or application events are specified in the interrogatory occurred.

RESPONSES TO REQUEST FOR PRODUCTION NO. 2:

See response to Request No.1

REQUEST FOR PRODUCTION NO. 3: Produce all Documents or other materials, including permits, which in any manner reflect or specify the tonnages (or other quantified measure) of Litter authorized by You, by permit or otherwise, to be applied to land within that part of the Illinois River Watershed situated in Oklahoma for every year from 1952 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

See Response to Interrogatory No. 5.

REQUEST FOR PRODUCTION NO. 4: If You answered Interrogatory No. 6 in the affirmative, produce all Documents or other materials, including the notices themselves, which reflect the imposition of any restrictions or the issuance of public health warnings as specified in that interrogatory.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: The State objects to this request on the grounds set forth in its response to Interrogatory No. 6. Without waiving its objections, the State refers Defendant to:

1. USGS Prepared in Cooperation with the Arkansas Soil and Water Conservation Commission – Phosphorus and Nitrogen Concentrations and Loads at Illinois River South of Siloam Springs, Arkansas, 1997 – 1999. OSRC 2-10

2. USGS National Water-Quality Assessment Program – Water-Quality Assessment of the Ozark Plateaus Study Unit, Arkansas, Kansas, Missouri, and Oklahoma – Nutrients, Bacteria, Organic Carbon, and Suspended Sediment in Surface Water, 1993-95 OSRC 2-11

3. USGS Preliminary Analysis of Phosphorus Concentrations and Fecal-Indicator Bacteria Counts at Selected Sites in the Illinois River Basin in Oklahoma, 1997-2001. OSRC Log 2-13

4. Coordinated Watershed and Restoration Protection Strategy for Oklahoma's Impaired Scenic Rivers (Per SB 972) 2002, 2004-2006 Update located at http://www.environment.ok.gov/.

5. Oklahoma's Beneficial Use Monitoring Program – Final Report 1998 OSRC Log 2-15

6. Oklahoma's Beneficial Use Monitoring Program – 1999 Final Report OSRC Log 2-16

7. Oklahoma's Beneficial Use Monitoring Program raw data given at the OWRB document production and located in the sliding filing cabinets.

8. Nelson, M, Cash, W, Trost, K, Purtle, J. (2005) Illinois River 2004 Pollutant Loads at Arkansas Highway 59 Bridge. Arkansas Water Resources Center MSC-325.

9. Nelson, M, Cash, W, Trost, K,Purtle, J. (2006) Illinois River 2005 Pollutant Loads at Arkansas Highway 59 Bridge Arkansas Water Resources Center MSC-332.

10. Oklahoma Department of Environmental Quality (1998 -2004), Water Quality Assessment Integrated Reports. http://www.deq.state.ok.us

11. Public Water Supply reports located on the SDWIS (Public Water Supply Reports) database are too numerous to list herein, however, the State refers you to the indexes given to you at the Oklahoma Department of Environmental Quality which list all the public water supplies in the Illinois River watershed. Furthermore, if you simply choose one of the four counties in the watershed on the SDWIDS search page you can pull up all the public water supplies and see all their reporting and violation data.

12. USGS Surface Water Data for the Illinois River Basin, Water Quantity and Quality parameters located at: http://ar.water.usgs.gov/sun/data-bin/get_data?control=multiple&groupnm=illinois

13. OWRB Water Quality Data Viewer, all stations in the Illinois River Watershed, including Lake Tenkiller, located at: http://www.owrb.ok.gov/maps/server/wims.php

14. Oklahoma Department of Environmental Quality Fact Sheet, "Water, Swimming in Oklahoma's Lakes, Rivers, and Streams" located at: http://www.deq.state.ok.us/fact sheets/water/swimming.pdf

Additional electronically stored state agency water quality data will be produced pursuant to the ESI Order issued on December 5, 2006 (DKT # 996). The State will supplement this response as additional data responsive to this question is identified.

REQUEST FOR PRODUCTION NO. 5: If You answered Interrogatory No. 7 in the affirmative, produce all Documents or other materials which reflect, explain, or demonstrate any such failures as specified in that interrogatory.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: The State objects to this Request on the grounds set forth in its Response to Interrogatory No. 7.

REQUEST FOR PRODUCTION NO. 6: If You answered Interrogatory No. 8 in the affirmative, produce all Documents or other materials which reflect, explain, or demonstrate any estimate, assessment, or quantification as specified in that interrogatory, including the results of any such estimate, assessment, or quantification.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: The State objects to this Request on the grounds set forth in its Response to Interrogatory No. 8.

REQUEST FOR PRODUCTION NO. 7: If you answered Interrogatory No. 9 in the affirmative, produce all Documents or other materials which reflect, explain, or demonstrate any estimate, assessment, or quantification as specified in that interrogatory, including the results of any such estimate, assessment, or quantification.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: The State objects to this Request on the grounds set forth in its Response to Interrogatory No. 9.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
Attorney General
Kelly H. Burch OBA #17067
J. Trevor Hammons OBA #20234
Tina Lynn Izadi OBA #17978
Assistant Attorneys General
State of Oklahoma
313 N.E. 21st St.
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
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
Louis Werner Bullock, OBA #1305
Miller Keffer & Bullock
222 S. Kenosha
Tulsa, Ok 74120-2421
(918) 743-4460

David P. Page, OBA #6852
Bell Legal Group
222 S. Kenosha
Tulsa, OK 74120
(918) 398-6800

Frederick C. Baker
(admitted *pro hac vice*)
Lee M. Heath
(admitted *pro hac vice)*
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(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 18th day of May, 2007, I electronically transmitted the attached document to the following:

Frederick C Baker fbaker@motleyrice.com, mcarr@motleyrice.com; fhmorgan@motleyrice.com

Michael R. Bond michael.bond@kutakrock.com, amy.smith@kutakrock.com

Vicki Bronson vbronson@cwlaw.com, lphillips@cwlaw.com

Paula M Buchwald pbuchwald@ryanwhaley.com

Louis Werner Bullock lbullock@mkblaw.net, nhodge@mkblaw.net; bdejong@mkblaw.net

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, etriplett@faegre.com; ; qsperrazza@faegre.com

John R Elrod jelrod@cwlaw.com, vmorgan@cwlaw.com

Bruce Wayne Freeman bfreeman@cwlaw.com, lclark@cwlaw.com

D. Richard Funk rfunk@cwlaw.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, sue.arens@kutakrock.com; amy.smith@kutakrock.com

James Martin Graves jgraves@bassettlawfirm.com, Tgrever@lathropgage.com

Jennifer Stockton Griffin jgriffin@lathropgage.com

John Trevor Hammons thammons@oag.state.ok.us, Trevor_Hammons@oag.state.ok.us; Jean_Burnett@oag.state.ok.us

Lee M Heath lheath@motleyrice.com

Theresa Noble Hill thillcourts@rhodesokla.com, mnave@rhodesokla.com

Philip D Hixon phixon@mcdaniel-lawfirm.com

Mark D Hopson mhopson@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

Stephen L Jantzen sjantzen@ryanwhaley.com, mantene@ryanwhaley.com; loelke@ryanwhaley.com

Bruce Jones bjones@faegre.com, dybarra@faegre.com; jintermill@faegre.com; cdolan@faegre.com

Jay Thomas Jorgensen jjorgensen@sidley.com

Raymond Thomas Lay rtl@kiralaw.com, dianna@kiralaw.com

Nicole Marie Longwell Nlongwell@@mcdaniel-lawfirm.com

Archer Scott McDaniel smcdaniel@mcdaniel-lawfirm.com

James Randall Miller rmiller@mkblaw.net, smilata@mkblaw.net; clagrone@mkblaw.net

Charles Livingston Moulton Charles.Moulton@arkansasag.gov, Kendra.Jones@arkansasag.gov

Robert Allen Nance rnance@riggsabney.com, jzielinski@riggsabney.com

William H Narwold bnarwold@motleyrice.com

George W Owens gwo@owenslawfirmpc.com, ka@owenslawfirmpc.com

David Phillip Page dpage@edbelllaw.com, smilata@edbelllaw.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; amcpherson@ryanwhaley.com

Robert E Sanders rsanders@youngwilliams.com,

David Charles Senger dsenger@pmrlaw.net, scouch@pmrlaw.net; ntorres@pmrlaw.net

Colin Hampton Tucker chtucker@rhodesokla.com, scottom@rhodesokla.com

John H Tucker jtuckercourts@rhodesokla.com, lwhite@rhodesokla.com

Elizabeth C Ward lward@motleyrice.com

Sharon K Weaver sweaver@riggsabney.com, lpearson@riggsabney.com

Timothy K Webster twebster@sidley.com, jwedeking@sidley.com

Terry Wayen West terry@thewestlawfirm.com,

Edwin Stephen Williams steve.williams@youngwilliams.com

Douglas Allen Wilson Doug_Wilson@riggsabney.com, pmurta@riggsabney.com

Elizabeth Claire Xidis cxidis@motleyrice.com

Lawrence W Zeringue lzeringue@pmrlaw.net, scouch@pmrlaw.net

I hereby certify that on this 18th day of May, 2007, I served the foregoing document by U.S. Postal Service on the following:

Thomas C Green
Sidley Austin Brown & Wood LLP
1501 K ST NW
WASHINGTON, DC 20005

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

P. Joshua Wisley
Conner & Winters
211 E. Dickson St.
Fayetteville, Ok 72701

D. Sharon Gentry

D. Sharon Gentry

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 ~~supplemental~~ responses to these interrogatory and that they are true and correct, to the best of my knowledge and belief, and that I furnish such supplemental responses based on consultation with the 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 18th day of May, 2007

Notary Public

My Commission Expires:
11/09/10
My Commission Number:
02017963

JOYCE K. BOYD
NOTARY
02017963
EXP. 11/09/10
PUBLIC
STATE OF OKLAHOMA

5/14/2007

State of Oklahoma v Tyson, et al
Plaintiff's Document Production Index

Bates range	Description	Date Prod'd	Box
STOK 0001-1037	Field books	02-01-07	1
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STOK 3796-6450	A&L Reports	02-01-07	3
STOK 6451-8516	A&L Reports	02-01-07	4
STOK 8517-11188	A&L Data Evaluation Reports	02-01-07	5
STOK 11189-13839	A&L Data Evaluation Reports	02-01-07	6
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STOK 14367-14521	Emails / blank supplement data	02-01-07	7
STOK 14522-14606	Food Protech	02-01-07	7
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STOK 15176-15305	GLEC sediment toxicity	02-01-07	7
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STOK 16496-16497	Soil sampling plans aerial photos: LAL17 Lofton	02-01-07	9
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STOK 16515-16517	Soil sampling plans aerial photos: LAL12 McGarrah	02-01-07	9
STOK 16518-16519	Soil sampling plans aerial photos: LAL11 Wofford	02-01-07	9
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STOK 16532-16534	Soil sampling plans aerial photos: LAL7 Pigeon	02-01-07	9
STOK 16535-16536	Soil sampling plans aerial photos: LAL5 Anderson	02-01-07	9
STOK 16537-16597	Field sheets: Field Instrument Calibration Logs	02-01-07	8
STOK 16598-16778	Barney original soils and litter	02-01-07	8
STOK 13779-16850	Field sheets: 2006 biological	02-01-07	8
STOK 16851-16942	Field sheets: 2005 stream habitat	02-01-07	8
STOK 16943-17146	Field sheets: 2005 biological	02-01-07	8
STOK 17147-17250	Field sheets: Lake Tenkiller profile data sheets	02-01-07	8
STOK 17251-17406	Aquatic Research data: CDM001-42 thru -69	02-01-07	8
STOK 17407-17551	Aquatic Research data: CDM001-01 thru -41	02-01-07	8
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STOK 17650-17690	Discharge Measurement Forms	02-01-07	8
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STOK 17724-18056	LAL COC's received by CDM: 2006	02-01-07	8
STOK 18057-18084	LAL COC's received by CDM: 2005	02-01-07	8
STOK 18085-18128	Water COC received by CDM: 2006	02-01-07	8
STOK 18129-18300	Jan Stevenson Data Folder #2	02-01-07	8
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STOK 18518-18540	USGS Data	02-01-07	8
STOK 18541-18764	EML Data: 233292-259309	02-01-07	8
STOK 18765-18984	EML Data: 225284-233290	02-01-07	8
STOK 18985-19197	EML Data: 215478-225279	02-01-07	8
STOK 19198-19414	EML Data: 153505-214398	02-01-07	8
STOK 19415-19416	EMPA	02-01-07	8
STOK 19417-19446	EOF-05 (edge of field 2005)	02-01-07	10
STOK 19447-19460	EOF 05-06 (edge of field 2005-2006)	02-01-07	10
STOK 19461-19482	Tenkiller 2004 Field Book	02-01-07	10
STOK 19483-19500	Lake Seds	02-01-07	10
STOK 19501-19557	Tenkiller Sub-bottom Notes	02-01-07	10
STOK 19558-19572	IRW Coring Field Book	02-01-07	10
STOK 19573-19649	Tenkiller Core #1	02-01-07	10
STOK 19650-19772	Tenkiller Core #2	02-01-07	10
STOK 19773-19857	Tenkiller Core #3	02-01-07	10
STOK 19858-20056	Tenkiller Core #4	02-01-07	10
STOK 20057-20071	Diatoms	02-01-07	10
STOK 20072-20401	Manure Sampling Field Books 2006	02-01-07	10
STOK 20402-20438	Biosep	02-01-07	10
STOK 20439-20440	Air photos ("to be downloaded to defendant's drive as .tiff files received")	02-01-07	10

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STOK 20441-20761	Manure Sampling Field Books 2006 (duplicate)	02-01-07	10
OK-PL 0001-1825	Steele – ground truthing field notebooks	02-08-07	1
OK-PL 1826-3327	Steele – ground truthing field notebooks	02-08-07	2
OK-PL 3328-3946	Steele – ground truthing field notebooks	02-08-07	3
OK-PL 3947-4332	Sediment Investigation station field notes	02-08-07	3
OK-PL 4333-4743	Investigation field notes of photo sites and J.L.Sharp investigation	02-08-07	3
OK-PL 4744-5863	Continuation of field notes re waste investigation	02-08-07	4
OK-PL 5864-5946	Sediment Investigation station field notes	02-08-07	3
STOK 20762-20970	Standard Operating Procedures	02-08-07	4
STOK 20971-21644	Sampling Results : Individual Growers	02-18-07 (Williams)	1
STOK 21645-22210	Standard Operating Procedure drafts	03-08-07	1
STOK 22211-22219	SOP 4-2 re Sediment Sampling of Tenkiller and earlier version of SOP 4-2	03-08-07	1
OK-PL 5947-12675	Photos referenced in investigation files	03-08-07	1
STOK 22220-22824	A&L Analytical Laboratories data (including chain of custody)	04-01-07	1
STOK 22825-23337	Data review of A&L data	04-01-07	1
STOK 23338-23356	Analytical report re GEL data	04-01-07	1
STOK 23357-23395	GEL Laboratory chain of custody	04-01-07	1
STOK 23396-23754	Analytical reports re GEL data	04-01-07	1
STOK 23755-23793	GEL Laboratory chain of custody	04-01-07	1
STOK 23794-24162	Analytical reports re GEL data	04-01-07	1
STOK 24163-24218	EML bacteria data (including chain of custody)	04-01-07	1
STOK 24219-24267	Aquatic Research data (including chain of custody)	04-01-07	1
STOK 24268-24280	Aquatic Research data review	04-01-07	1
STOK 24281-24481	Lake Tenkiller photos 4-17-07	05-01-07	1
STOK 24482-24493	EML bacteria reports	05-01-07	1
STOK 24494-24519	Aquatic Research data review reports	05-01-07	1
STOK 24520-24526	Aquatic Research phosphorous reports	05-01-07	1
STOK 24527-24616	A&L data report	05-01-07	1
STOK 24617-24687	A&L review report	05-01-07	1
OK-PL 12676-12762	Team 01, March 2007	05-01-07	1
OK-PL 12763-12811	Team 02, March 2007	05-01-07	1
OK-PL 12812-13366	Photos	05-01-07	1