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

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

STATE OF OKLAHOMA'S RESPONSE TO CAL-MAINE FOODS, INC.'S INTERROGATORIES 3, 4, AND 6-9

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 3, 4, 6 through 9. 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 sought-after information is substantially the same, or less, for the Defendant Cal-Maine as it is

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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

INTERROGATORY NO. 3: Do You contend that any Litter which was stored or applied within that part of the Illinois River Watershed situated in Oklahoma in full compliance with Oklahoma Statutes and Oklahoma Regulations applicable at the time of the storage or application has caused You any injury for which You seek any relief in this action?

RESPONSE TO INTERROGATORY NO. 3: The State objects to this Interrogatory in that it is vague and ambiguous as to the meaning of the term "full compliance." The State further objects to this Interrogatory in that it is vague and ambiguous inasmuch as it fails to identify which instances of storage or application that it purports to be in "full compliance with Oklahoma Statutes and Oklahoma Regulations." Further, it is vague and ambiguous inasmuch as it improperly characterizes the relief that the State is seeking.

Subject to and without waiver of its objections, the State responds: yes.

INTERROGATORY NO. 4: Do You contend that any Litter which was stored and/or applied within that part of the Illinois River Watershed situated in Arkansas in full compliance with Arkansas Statutes and Arkansas Regulations applicable at the time of the storage or application has caused You any injury for which You seek any relief in this action?

RESPONSE TO INTERROGATORY NO. 4: The State objects to this Interrogatory in that it is vague and ambiguous as to the meaning of the term "full compliance." The State further objects to this Interrogatory in that it is vague and ambiguous inasmuch as it fails to identify

which instances of storage or application that it purports to be in "full compliance with Arkansas Statutes and Arkansas Regulations." Further, it is vague and ambiguous inasmuch as it improperly characterizes the relief that the State is seeking.

Subject to and without waiver of its objections, the State responds: yes.

INTERROGATORY NO. 6: Have You ever, because of any condition which in any manner related to or resulted from the land application of Litter, imposed any public access restrictions or issued any public health warnings in conjunction with any health hazard perceived by You to exist now or at any time in the past for persons making bodily contact with water in any stream or river within that part of the Illinois River Watershed situated in Oklahoma, and for any such restriction or warning, state the reason for each restriction or warning, and the date and substance of each restriction or warning. If You have not imposed any such restriction or issued any such public health warning, please say so plainly.

RESPONSE TO INTERROGATORY NO. 6: The State objects to this Interrogatory in that it is vague and overly broad as to the terms "any condition." The State objects to the term "ever" as it vague and unduly burdensome. Subject to and without waiving its objections, the State has issued state-wide warnings on swimming in contaminated waters, which include the waters of the Illinois River Watershed.

The State regularly notifies the public of violations of water quality standards in the Illinois River Watershed including but not limited to, O.A.C. 785:45-5-16 which defines the Primary Body Contact Recreation beneficial use as ". . .direct body contact with the water where a possibility of ingestion exists. In these cases the water shall not contain chemical, physical or biological substances in concentrations that are irritating to skin or sense organs or are toxic or cause illness upon ingestion by human beings" and establishes limitations on bacteria

concentrations to protect this beneficial use. The State has given notice to the public of violations of these and other standards through reports on websites and has also made them available at the official offices of the State. **See for example S.B 972 Report at www. enviroment.ok.gov/documents.hmtl972, 2004 Water Quality Assessment Integrated Report at www.deq.state.ok.us and Beneficial Use Monitoring Program Reports at www.owrb. state.ok.us.** For example, the 2005 SB 972 Report shows that the Barren Fork, Illinois River and Flint Creek are not meeting their assigned Primary Body Contact Beneficial Use because of E.coli, Fecal Coliform and Enterococci concentrations or their assigned Aesthetics Beneficial Use. This means, without limitation, that biological substances in the Barren Fork, Flint Creek and the Illinois River are in such concentrations that are "irritating to skin or sense organs or are toxic or cause illness upon ingestion by humans" and that the Aesthetic assigned beneficial use is not being met as well. Further, the Oklahoma Department of Environmental Quality has published a fact sheet entitled "Water, Swimming in Oklahoma's Lakes, Rivers, And Streams." This fact sheet informs swimmers, in part, to: (1) Avoid Swimming in polluted water; (2) Avoid swimming in water with a green surface scum ;(3) Avoid swimming after a heavy rain and (3) Avoid swallowing water while swimming.

Accordingly, the State has given notice of water quality violations including, but not limited to, Primary Body Contact Recreation and Aesthetics beneficial uses, and has warned the public not to swim in such polluted waters. The State reserves the right to supplement this Interrogatory as additional responsive information is identified.

INTERROGATORY NO. 7: If you believe that the State of Arkansas has failed in any respect to fulfill any obligation it has or has ever had under the Arkansas River Basin Compact, or that Arkansas has failed to fulfill any obligation imposed by the Arkansas-Oklahoma

Arkansas River Compact Commission, identify each such obligation and failure, and explain the action(s) or inaction(s) by Arkansas that you believe constitute each such failure. If you do not believe that any such failures have occurred, please say so plainly.

RESPONSE TO INTERROGATORY NO. 7: The State objects to this Interrogatory as being overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence in that (1) it is not limited to the Illinois River Watershed; the Arkansas River Basin Compact pertains to the Arkansas River Basin, of which the Illinois River Watershed is but one part; and (2) it is not limited in time or scope, but rather inquires as to whether the State of Arkansas "has failed *in any respect* to fulfill *any obligation* it *has or has ever had* under the Arkansas River Basin Compact." (Emphasis added).

The State further objects to this Interrogatory on the ground that is it not relevant to any claims or defenses in this litigation. Further, whether the State of Arkansas has or has not fulfilled the obligations imposed upon it by the Arkansas-Oklahoma Arkansas River Compact is irrelevant inasmuch as the provisions of the Compact are not determinative as to whether the Poultry Integrator Defendants have violated the law, or as to whether the Poultry Integrator Defendants' actions and practices have contaminated and / or degraded the natural resources of the Illinois River Watershed.

INTERROGATORY NO. 8: State whether, before this action was filed, You made or attempted to make any estimate, assessment, or quantification of any potential adverse social or financial consequences that could be suffered by family farmers who are contract growers for any of the defendants if You are successful in any aspect of this litigation. If You did not make or attempt to make any such estimate, assessment, or quantification, please say so plainly.

RESPONSE TO INTERROGATORY NO. 8: The State objects to the term "family

farmers who are contract growers" in this Interrogatory as vague, ambiguous and argumentative. For the purposed of this response, the State will construe this phrase to mean "persons and / or businesses that are contract growers." The State further objects on the basis that the phrase "estimate, assessment, or quantification" is vague and ambiguous. The State further objects to this Interrogatory on the ground that is it not relevant to any claims or defenses in this litigation. This case is about the conduct of the Poultry Integrator Defendants and the effect of that conduct on the environment of Oklahoma. Consideration by the fact-finder of any potential social or financial effect of a verdict in civil litigation on non-parties is improper. In any event, the State has consistently taken the position with respect to this litigation that it is the Poultry Integrator Defendants, and not the contract growers, that must bear all costs associated with the proper management of poultry waste. Further, it is the Poultry Integrator Defendants whose conduct, policies, and practices have resulted in contamination and/or degradation of the natural resources of the Illinois River Watershed.

INTERROGATORY NO. 9: State whether, before this action was filed, You made or attempted to make any estimate, assessment, or quantification of any potential adverse consequences to the economy of Oklahoma or the economy of Arkansas that could be suffered if You are successful in any aspect of this litigation. If You did not make or attempt to make any such estimate, assessment, or quantification, please say so plainly.

RESPONSE TO INTERROGATORY NO. 9: The State objects to the phrase "estimate, assessment, or quantification" as being vague and ambiguous. The State further objects to this Interrogatory on the ground that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and that it is, therefore, irrelevant. This case is about the conduct of the Defendants and the effect of that conduct on the environment of Oklahoma.

Consideration by the fact-finder of any potential economic effect of a verdict in a civil litigation on non-parties is improper.

Respectfully Submitted,

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I hereby certify that on this 30th day of April, 2007, the foregoing document was electronically transmitted to the following:

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D. Sharon Gentry

VERIFICATION

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) ss:
COUNTY OF OKLAHOMA)

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

Miles Tolbert
Secretary of the Environment
State of Oklahoma

Signed and subscribed to before me on this 30th day of April, 2007

Notary Public

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

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