RHODES, HIERONYMUS, JONES, TUCKER & GABLE, P.L.L.C.
LAWYERS

ONEOK Plaza
100 West 5th Street, Suite 400
Tulsa, Oklahoma 74103-4287
Telephone (918) 582-1173
Fax (918) 592-3390
www.rhodesokla.com

Mailing Address
P.O. Box 21100
Tulsa, Oklahoma 74121-1100

Chris L. Rhodes, III
Bert M. Jones
John H. Tucker
Jo Anne Deaton
Dan S. Folluo
Ann E. Allison
Andrew D. Downing
Bradley A. Jackson
Colin H. Tucker
Kerry R. Lewis

Leslie J. Southerland
Nathan E. Clark
Theresa Noble Hill
Margaret M. Clarke
Carlye O. Jimerson
Bradley S. Sheils
Lindsey J. McDowell
Denelda L. Richardson
Maria E. Cervantes

Hal Crouch (1902-1947)
Chris L. Rhodes (1902-1966)
E. D. Hieronymus (1908-1994)
George W. Gable (1918-2000)

— Est. 1931 —

Daniel D. Draper, III
James D. Johnson
Of Counsel

RhodesHieronymus
OKLAHOMA

Reply to: Theresa Noble Hill
thill@rhodesokla.com

August 2, 2007

Via Email Only

Robert A. Nance
Riggs, Abney, Neal, Turpen, Orbison & Lewis
5801 Broadway Extension, Suite 101
Oklahoma City, OK 73118

J. Trevor Hammons
State of Oklahoma
Assistant Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

EXHIBIT
5

Re: *State of Oklahoma v. Tyson*
Our File No. 1790-2

Dear Bob and Trevor:

We are optimistic that the progress made during our July 19, 2007 meet and confer will continue towards a mutually-agreeable resolution of the issues raised in your Motion to Compel against the Cargill Defendants as contemplated by the Court's Order. The purpose of this letter is to set forth our understanding of the status of the State's requests for supplementation as explained during the meet and confer:

I. The State's Requests for Supplementation of Documents on the Basis of Time:

A. Contract Grower Files. For IRW contract growers during the time period 2002-present, the Cargill Defendants produced responsive documents dating back to 1986. Upon our review of documents available, we believe that there are additional Contract Grower Files

which include documents dated as early as 1978. However, we are still attempting to identify which of these files relate to pre-2002 contract growers with fields located in the IRW. We understand that the State requests all Contract Grower Files for the contract growers in the IRW that are available.

B. **Flock Evaluation Reports.** For contract growers during the time period 2002-present and for Cargill-owned breeder farms in the IRW, the Cargill Defendants produced responsive documents dating back to 2002. Upon our review of the documents readily available, we believe that there are additional Flock Evaluation Reports for IRW contract growers and breeder farms back to 1991. There may be additional documents located in storage that are dated prior to 1991. We understand that the State requests all Flock Evaluation Reports for IRW contract growers and breeder farms that are available.

C. **Environmental Audits.** For contract growers during the time period 2002-present and for Cargill-owned breeder farms in the IRW, the Cargill Defendants produced responsive documents dating back to 2002. We advised that we found these documents in individual employee's files. To date, we have produced all Environmental Audits for farms located in the IRW that we have been able to locate. If additional documents are found to be available, we understand that the State requests Environmental Audits for IRW farms available without any limitation as to time.

D. **Documents relating to Breeder Farms.** During the meet and confer, the Cargill Defendants confirmed that their document responses encompassed both farms owned and operated by contract growers as well as breeder farms owned and operated by the Cargill Defendants. Obviously the contract grower files are inapplicable to the breeder farms. However, we address in sections B and C above flock evaluation reports and environmental audits to the extent they pertain to the breeder farms.

E. **Other Categories to be Determined.** During the meet and confer, the State's requests for document production without regard to date was confined to a discussion of the contract grower files, flock

evaluation reports and breeder farms. However, the State reserved the question of whether there were other categories of documents (as described in the Cargill Defendants' production cover letters and detailed index provided to the State) from which the State would like documents produced prior to 2002. Examples of other potential categories include 1) Prime Cost Files; 2) Feed Formulas; 3) Job Tickets; 4) Micro Tickets; 5) Mixing Sheets; 6) Run Reports; 7) Usage Reports; 8) Batching/Pelleting Sheets; 9) Feed Ticket Sales Invoices; 10) Ingredient Usage Summaries; 11) Production Reports; 12) Receiving Tickets/Lab Certifications; or 13) Miscellaneous Tickets/Sales Invoices. It is our understanding that the State will get back to us in the near future with its proposed additional categories for consideration, if any.

Through this letter, the Cargill Defendants confirm that, if confined to the contract grower files, flock evaluation reports and environmental audits, as discussed above, they may withdraw their burdensomeness objection with regard to date limitation. However, we are not able to make a final determination regarding cost and burden until we have the State's complete list of proposed categories.

II. The State's Requests for Supplementation of Documents on the Basis of Geography:

A. **Sample Flock Evaluation Report / Environmental Audit.** We understand that the State is not requesting Flock Evaluation Reports and Environmental Audits of farms outside the IRW. The State is requesting a blank form or specimen Flock Evaluation Report or Environmental Audit used at live turkey production complexes outside the IRW.

B. **Sample Grower Contract.** We understand that the State does not request copies of the Cargill Defendants' contracts with growers in non-IRW complexes. However, the State requests a blank form grower contract used at live turkey production complexes outside the IRW.

C. **Grower Manuals, Guides, or Hand-outs.** We understand that the State requests general information provided to growers outside of the IRW such as grower manuals, guides or handouts. The State is

not requesting farm-specific information outside the IRW. *See* Request for Production 84. Though not discussed during the meeting, the Cargill Defendants construe this request not to include correspondence with non-IRW growers.

D. **Best Management Practices and Nutrient Management Plans.** We understand that the State requests general information about best management practices, including nutrient management, which is available at live turkey production complexes outside of the IRW. The State is not requesting farm-specific practices or farm-specific nutrient management plans outside the IRW. *See* Requests for Production Nos. 62 and 65. Though not discussed during the meet and confer, the Cargill Defendants construe this request not to include correspondence with non-IRW growers regarding best management practices and nutrient management.

E. **Reports, Analyses, Treatises.** We understand that the State requests general analytical reports demonstrating corporate knowledge relating to: 1) the potential effects of run-off from land-application of poultry litter, Requests for Production Nos. 9, 12, 15, 21, 27, 30, 33, and 36; and 2) the use, management, handling, storages, disposal, transport, land-application and alternative uses of poultry litter, Requests for Production Nos. 39, 42, 45, 48, 51, 54, 57, and 69. We understand that the State is requesting general reports, but not raw data or correspondence specific to any particular location.

F. **Cargill Standards and Practices.** We understand that the State is seeking general information, not farm-specific, relating to Cargill's standards and practices in other live turkey production complexes relating to 1) statements, directives or instructions pertaining to the design, specifications, construction, modification and/or maintenance of poultry growing houses, Request for Production No. 76; 2) statements, directives or instructions pertaining to the ownership, handling, storage, management, transport and/or disposal of poultry litter, Request for Production No. 80; 3) statements, directives or instructions pertaining to the ownership of birds; and 4) the amount of "poultry manure" produced per bird. Though not discussed during the meet and confer, the Cargill Defendants construe this request not to include correspondence with non-IRW growers regarding these subjects.

Through this letter, the Cargill Defendants confirm that, if confined to documents described above, they may withdraw their burdensomeness objection with regard to geographic limitation. However, we reserve final determination regarding cost and burden until we are certain our understanding of the State's narrowing of its requests is correct.

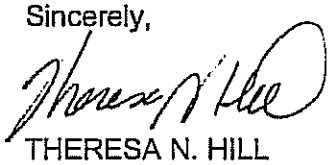
III. Other Requests

A. **Production Numbers.** Does the State continue to request the total production of birds for the Springdale complex as a whole without any limitation as to time and without any limitation as to turkey production in the Illinois River Watershed? Please advise.

B. **Records Custodian 30(b)(6).** In compliance with the Court Order, we look forward to receipt of your Notice for a Rule 30(b)(6) deposition relating to the search for responsive documents so that we can ensure that we designate the proper person. Upon receipt of your Notice, we will promptly provide you with proposed dates.

Please advise us immediately if we have misunderstood any of the State's Requests. We look forward to further discussions upon receipt of the State's confirmation of additional documents it is seeking.

Sincerely,



THERESA N. HILL

TNH:law