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

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,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**05-CV-0329 GKF-SAJ**
	)	
TYSON FOODS, INC., TYSON POULTRY, INC.,	)	
TYSON CHICKEN, INC., COBB-VANTRESS, INC.,	)	
AVIAGEN, INC., CAL-MAINE FOODS, INC.,	)	
CAL-MAINE FARMS, INC., CARGILL, INC.,	)	
CARGILL TURKEY PRODUCTION, LLC,	)	
GEORGE'S, INC., GEORGE'S FARMS, INC.,	)	
PETERSON FARMS, INC., SIMMONS FOODS, INC.,	)	
and WILLOW BROOK FOODS, INC.,	)	
	)	
Defendants.	)	

PETERSON FARMS, INC.'S RESPONSE TO PLAINTIFFS' MOTION TO DETERMINE THE SUFFICIENCY OF DEFENDANT PETERSON FARMS, INC.'S RESPONSES TO PLAINTIFFS' APRIL 20, 2007 REQUESTS TO ADMIT

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Defendant, Peterson Farms, Inc. ("Peterson"), hereby submits its Response to Plaintiffs' Motion to Determine the Sufficiency of Defendant Peterson Farms, Inc.'s Responses to Plaintiffs' April 20, 2007 Requests to Admit (Dkt. # 1249), and requests that the Court deny Plaintiffs' Motion in its entirety. In support of its Response, Peterson states as follows:

I. INTRODUCTION

Contrary to the contention inherent in Plaintiffs' Motion, Rule 36 does not give Plaintiffs license to reduce the theory of their entire case to a series of Requests for

Admissions or to seek admission of inter-related facts that are clearly in dispute in this lawsuit. Rather, Rule 36 places certain specific obligations on a party seeking admissions which Plaintiffs have wholly ignored in their April 20, 2007 Requests for Admission. Plaintiffs simply assume, without supporting authority, that their Requests comply with Rule 36 and the policy underlying it, permitting them to challenge Peterson's objections and responses thereto.

In the Motion before the Court, Plaintiffs' claim no less than thirteen (13) times that they are "entitled to a proper and straightforward answer" to their various Requests for Admission. However, it is plain from Plaintiffs' Motion and the discussion therein regarding Plaintiffs' Requests and the definitions contained in those Requests that their call for a "straightforward answer" is precluded—and, indeed, made impossible—by the argumentative and factually interwoven nature of their Requests. In effect, Plaintiffs' Requests amount to contention interrogatories in the form of leading questions, reducing their entire theory of liability in this lawsuit to its set of Requests. This is an improper use of Rule 36.

For purposes of example, in their Request No. 7, Plaintiffs ask Peterson to "[a]dmit that one or more 'hazardous substance' within the meaning of CERCLA contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied." Clearly, this Request cannot be answered with a simple yes or no. Contrary to Plaintiffs' unfounded contention, the Request is overly broad, burdensome, compound and addresses highly contested issues in the lawsuit.

While this is evident from the face of the Request, it becomes indisputable when you look beyond the words of the Request to include Plaintiffs' vague, ambiguous and cumbersome definitions. Restating Request No. 7 to include the multiple sub-parts of their definitions, Plaintiffs are actually asking Peterson to make the following admission:[1]

> Admit that **[from 1980 to the present]** one or more 'hazardous substance' within the meaning of CERCLA **[including any substance designated pursuant to 33 U.S.C. § 1321(b)(2)(A), or any element, compound, mixture, solution, or substance designated pursuant to 42 U.S.C. § 9602, or any hazardous waste having the characteristics identified under or listed pursuant to 42 U.S.C. § 6921, or any toxic pollutant listed under 33 U.S.C. § 1317(a), or any hazardous air pollutant listed under 42 U.S.C. § 7412, or any imminently hazardous chemical substance or mixture with respect to which the (EPA) has taken action pursuant to 15 U.S.C. § 2606 (*see* the definition of "hazardous substance" in 42 U.S.C. § 9601(14))]** contained in **[poultry excrement, poultry carcasses, feed wastes and/or other waste associated with confinement of poultry feeding or growing operations]** from one or more of **[Peterson Farms, Inc.'s poultry growing operations and/or poultry growing operations under contract with Peterson Farms, Inc.]** that has been spread on land located within the Illinois River Watershed has [been] **[release[d] by leaking, escaping, seeping or leaching of poultry excrement, poultry carcasses, feed wastes and/or other waste associated with confinement of poultry feeding or growing operation, directly or indirectly, into all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through or border upon Oklahoma or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon Oklahoma or any portion thereof]** from the land upon which it has been applied.

This Request is incomprehensible and Peterson can answer it, if at all, only through a highly technical and detailed discussion addressing each of the numerous alleged facts, assumptions and arguments built into the Request. Request No. 7 and the

[1] This version of Request No. 7 incorporates as bolded type the definitions of the defined terms used in most, if not all, of Plaintiffs' April 20, 2007 Requests for Admission.

incorporated definitions require Peterson to admit or deny *at least* 768 combinations of fact. In short, the "straightforward answer" demanded in Plaintiffs' Motion is an impossibility, or at least an overly burdensome impracticality, created by Plaintiffs themselves.

In any event, because Plaintiffs drafted Requests for Admission containing compound and argumentative premises, incapable of a "straightforward answer," they should be precluded from challenging the sufficiency of Peterson's responses to those Requests. Nonetheless, in its responses, Peterson admitted what it could admit, denied what it could deny, and objected to everything else after making the reasonable inquiry required of it. Plaintiffs should not now be permitted the opportunity to challenge the sufficiency of those answers simply because Peterson did not fall into the trap that is their Requests for Admissions.

II. ARGUMENT AND AUTHORITY

A. The Court must first determine the sufficiency of Plaintiffs' Requests for Admission under Rule 36 before it can evaluate the sufficiency of Peterson's answers

In their Motion, Plaintiffs mischaracterize the dispute now before the Court. The issue regarding Plaintiffs' April 20, 2007 Requests for Admission and Peterson's responses thereto is not a question of the putative insufficiency of Peterson's responses, but rather a question of the insufficiency of Plaintiffs' Requests. Indeed, determining the sufficiency, or lack thereof, of Plaintiffs' April 20, 2007 Requests for Admission is a *threshold* matter that must be addressed before considering Plaintiffs' complaints that Peterson has not answered the Requests in the manner they would have preferred. *See Herrera v. Scully*, 143 F.R.D. 545, 549 (S.D.N.Y. 1992). In this regard, each of

Plaintiffs' thirteen (13) requests substantially deviate from the prerequisites of a proper request for admission codified with "steep specificity" within the text of Rule 36 and case law interpreting it. *See Henry v. Champlain Enters., Inc.*, 212 F.R.D. 73, 76 (N.D.N.Y. 2003).

Foremost, a Rule 36 request for admission is not a discovery device like interrogatories under Rule 33 or requests for production of documents under Rule 34. *See Henry*, 212 F.R.D. at 77; *Dubin v. E.F. Hutton Group Inc.*, 125 F.R.D. 372, 375 (S.D.N.Y. 1989); *see also Tuvalu v. Woodford*, 2006 WL 3201096, at *6 (E.D. Cal. Nov. 2, 2006). The primary purpose of a Rule 36 request is to limit factual issues for trial, as opposed to eliciting additional facts and information from a party. *See Henry*, 212 F.R.D. at 77; *Hurt v. Coyne Cylinder Co.*, 124 F.R.D. 614, 615 (W.D. Tenn. 1989) ("The purpose of a request for admissions generally is not to discover additional information concerning the subject of the request, but to force the opposing party to formally admit the truth of certain facts . . .").

In order to serve their purpose while avoiding misuse, requests for admissions should be phrased in a simple, direct and concise manner and "limited to singular relevant facts," which lend the requests to an *unqualified* "yes" or "no" answer. *See Henry*, 212 F.R.D. at 77; *Diederich v. Department of Army*, 132 F.R.D. 614, 619 (S.D.N.Y. 1990); *Dubin*, 125 F.R.D. at 375. This standard requires that the request for admission "be drafted in such a manner that the response can be ascertained by a mere examination of the request." *Diederich*, 132 F.R.D. at 619; *see Henry*, 212 F.R.D at 77; *Dubin*, 125 F.R.D. at 375.

Accordingly, the requesting party must refrain from incorporating into its requests materials or definitions which "unjustly casts upon the defendants the burden of determining at their peril what portion of the incorporated material contain relevant matters of fact which must either be admitted or denied." *S.E.C. v. Micro-Moisture Controls*, 21 F.R.D. 164, 166 (S.D.N.Y. 1957). Indeed, a requesting party who serves such complicated and factually interwoven requests for admissions does so at its own peril, to wit: "Where it is evident that multiple, interdependent issues are contained in one request, *defendant may deny the entire statement if one fact, on which the remainder of the request is premised, is denied*." *Diederich*, 132 F.R.D. at 621 (emphasis added); *see Audiotext Communications Network, Inc. v. US Telecom, Inc.*, 1995 WL 625744, at *5 (D. Kan. Oct. 5, 1995). In other words, if the responding party can deny any one of the interwoven facts, it may properly deny the entire request. *Id.*

With this fundamental purpose in mind, it is self-evident that Rule 36 does not permit or otherwise contemplate that a party would use a request for admission to "establish 'facts which are obviously in dispute' . . . or to ask the party to admit facts of which he or she has no special knowledge." *Tuvalu*, 2006 WL 3201096, at *7 (quoting *Lakehead Pipe Line Co v. American Home Assur. Co.*, 177 F.R.D. 454, 458 (D. Minn. 1997)) (citations omitted). Similarly, "[r]equests are not appropriate for argument. *They should not put forward the requester's legal or factual contentions on the premise that, in the requester's view, they ought to be admitted*." *Audiotext*, 1995 WL 625744, at *2 (citing WILLIAM W. SCHWARZER ET AL, CIVIL DISCOVERY AND MANDATORY DISCLOSURE: A GUIDE TO EFFICIENT PRACTICE 5-4—5-5 (2d ed. 1994)).

Where a party's requests for admission seek facts or opinions beyond a simple confirmation of a single point, venturing into the contentions contained in the party's pleading or the theory of its case, the request effectively amounts to a disguised interrogatory. *See Audiotext*, 1995 WL 625744, at *3-4, 7. As stated by the *Audiotext* court, "[i]nformation concerning contentions of a party should be elicited through the proper discovery device. Contention interrogatories in the guise of requests for admission generally serve no purpose other than to circumvent Fed. R. Civ. P. 33(a)." *Id.* at *7. Such practices amount to a clear abuse of discovery practice and procedure. *See Misco, Inc. v. United States Steel Corp.*, 784 F.2d 198, 205 (6th Cir. 1986).

Nevertheless, in answering requests which deviate from those seeking confirmation of a singular fact, the responding party may object to the request, providing the reasons for the objection, and/or set forth the reasons that the requests can neither be admitted nor denied. Fed. R. Civ. P. 36(a). However, the responding party bears the burden of reasonable inquiry into information known or reasonably attainable by the party. *Id*. In other words, the responding party must make a reasonable effort to inquire of persons and documents with the party's control. *See Henry*, 212 F.R.D. at 78. This "reasonable inquiry" standard does not, under any circumstances, require the responding party to take on the requesting party's burdens of proof, persuasion or otherwise. *See Dubin*, 125 F.R.D. at 375.

Measured against these standards, Plaintiffs' April 20, 2007 Requests for Admission do not pass the threshold inquiry of sufficiency mandated by Rule 36. First, as discussed below, Plaintiffs' Requests contain numerous interwoven facts that render them incapable of a "straightforward answer." Second, Plaintiffs' Requests effectively

seek admission of liability as opposed to singular facts. Use of Rule 36 for such purposes is a clear abuse of discovery procedure. Thus, because Plaintiffs' Requests themselves are deficient, their instant Motion should be denied.

B. Plaintiffs' Requests for Admission do not comply with the requirements of Rule 36 because they are compound and seek admission of facts which are obviously in dispute in this matter

1. Plaintiffs' Requests for Admission are compound and cannot be answered with a "straightforward answer"

Plaintiffs' April 20, 2007 Requests for Admission cannot be answered with a simple yes or no. Each of the Requests contains one or more of the definitions which Plaintiffs contend are appropriate for its Rule 36 requests. However, each of the definitions contain numerous, interwoven facts, which are then incorporated into the individual Requests. Consequently, each of the Requests is compound and will not reasonably support a yes or no answer.

For example, the definition of "poultry waste" contains at least four separate elements: (1) poultry excrement; (2) poultry carcasses; (3) feed wastes; and (4) other waste associated with confinement of poultry. The fact that Plaintiffs claim to have adapted the definition from the Oklahoma Act does not resolve the difficulty in responding to a Request employing this definition, as Peterson must measure the contentions Plaintiffs set forth in each Request against each element of their definitions. Further, contrary to Plaintiffs' assumption, the mere fact that they purport to adapt their definitions from statutes or regulations does not insulate them from a meritorious attack when the definitions, as applied to the Request, result in compound and overly broad statements, which cannot be simply admitted or denied.

The definition of "phosphorous" contains at least three elements: (1) phosphorous (presumably elemental phosphorous); (2) phosphate; and (3) other phosphorous compounds. Plaintiffs' arguments in their Motion in defense of this definition are a bit disingenuous. They claim that because certain documents use the term "phosphorus" in a discussion of poultry litter, Peterson should simply admit the correctness of their definition. But the truth is that it is common parlance in writing and discussion of agronomics and environmental considerations to use the term "phosphorus." But Peterson expects that the testimony in this matter will be that when these authors and speakers refer to "phosphorus" in this context, they are actually referring to one or more phosphorus compounds that are ubiquitous in the environment. Plaintiffs are well aware of the distinction between common usage and the legal significance of this term, yet they propounded Requests employing the term in an underhanded attempt to have Peterson admit an element of CERCLA liability. In responding, Peterson interpreted the term, not in the parlance, but in the legal and scientific sense, *i.e.*, elemental phosphorus. Elemental phosphorus cannot exist in the open environment, and it certainly is not a component of poultry litter. Furthermore, Peterson's legal position is that phosphorus compounds are not listed "hazardous substances," and therefore, Peterson properly objected to each Request incorporating this defined term.

The definition of "run-off" contains at least eight separate elements: (1) direct leaking; (2) indirect leaking; (3) direct escaping; (4) indirect escaping; (5) direct seeping; (6) indirect seeping; (7) direct leaching; and (8) indirect leaching. This does not even consider the number of possibilities raised by Plaintiffs' use of the term "release," which is a term defined under CERCLA to include twelve additional types of events. 42 U.S.C.

§ 9601(22).[2] To further complicate matters, the "run-off" definition incorporates the four elements contained in the "poultry waste" definition and at least twelve additional elements contained in the "waters of the State" definition.[3]

Plaintiffs' arguments in defense of the manner in which they defined the term "pathogens" is axiomatic of the entire set of Requests. Plaintiffs contend that it should be a simple matter for Peterson to accept their definition as they claim to have derived it from the EPA's website. Assuming for the moment that it was Peterson's obligation in responding to these Requests to search the World Wide Web for all possible explanations for Plaintiffs' terms, the simple fact is that the definition provided to Peterson in the Requests covered all possible "bacteria, viruses, or parasites that can cause disease in humans, animals and plants." The breadth of such a Request is frankly, unfathomable to Peterson. It is patently unreasonable to expect Peterson to research all possible organisms that "can cause disease," then apply this research to the balance of the inquiry. Plaintiffs' Requests using this term, like so many of Plaintiffs' other defined terms, effectively transforms a request for admission into a highly technical contention

[2] Again, Plaintiffs claim that their definition of "run-off" is sufficient simply because it was adapted from the Oklahoma Agricultural Code. First, this does not eliminate the ambiguity and compounding effect the definition creates when combined with other defined terms in the context of the specific Requests. Further, Peterson assumes Plaintiffs' counsel are aware of legal terms of art, and therefore, Peterson interprets this definition as having significance under Plaintiffs' CERCLA claims as well.

[3] Plaintiffs argue that Peterson is required to accept their contention that they have standing with regard to every puddle, spring, well, and pond in the entire Oklahoma portion of the IRW, and therefore, Peterson must accept that all of these privately-owned waters are "waters of the State." However, Peterson contends that Plaintiffs do not possess the standing they alleged, and therefore, as it was founded upon a legal question ultimately for the Court, Peterson was entitled to object to the term.

interrogatory, which is both objectionable and incapable of being answered by an admission or denial.

As illustrated, Peterson cannot simply look at the language of the individual Requests to respond to them with a simple yes or no. Instead, were Peterson to provide the responses to the Requests submitted by Plaintiffs, it must wade through the seemingly endless combinations of facts contained in each of Plaintiffs' Requests. As noted above, Request No. 7 contains *at least* 768 combinations of factual assertions for which Plaintiffs expect Peterson to provide a "straightforward answer." The following table illustrates that each of Plaintiffs' Request impose a similarly insurmountable burden on Peterson:[4]

[4] Those Requests marked with an asterisk contain other undefined terms, which increase the possible factual combinations exponentially. For instance, Requests Nos. 2 and 7 require Peterson to review the hundreds of CERCLA-listed "hazardous substances" in order to formulate a response. Request No. 13 requires Peterson to review the Animal Waste Management Plans ("AWMP") of the independent farmers with whom it contracts to determine who among them, if any, are in violation of their respective plans. Even were Peterson to engage in this exercise, without knowing what portion of the AWMP was violated, if any, the fact of a violation does nothing to narrow the issues for trial of this lawsuit. For example, were a poultry grower delinquent in some manner of record keeping required under his or her AWMP, which would be a technical violation, that fact does nothing to narrow any issue that Plaintiffs must prove to prevail on any one of the ten counts in their Complaint or any amended version thereof.

Request No.	"Poultry Waste"[5]	"Your Operations"	"Phosphorous"	"Pathogens"	"Run-off"	"Waters of State"	*Possible Combinations*
1	4	2					**8**
2*	4	2					**8**
3	4	2		12			**96**
4	4	2	3				**24**
5	4	2			8	12	**768**
6	4	2			8	12	**768**
7*	4	2			8	12	**768**
8	4	2		12	8	12	**9216**
9	4	2	3		8	12	**2304**
10	4		3				**12**
11	4			12			**48**
12	4		3				**12**
13*		2					**2**
TOTAL FACTS TO BE AMDITTED OR DENIED							**14034**

Accordingly, in order for Peterson to provide Plaintiffs with the "straightforward answers" it requests, Peterson would have to admit or deny in the neighborhood of 14,000 facts interwoven into Plaintiffs' thirteen Requests for Admissions. Plaintiffs cannot reasonably complain that Peterson has not answered the Requests in the manner they had hoped. The Requests, as drafted, simply and clearly do not lend them to the "straightforward answer" Plaintiffs' are seeking. Moreover, even a reasonable inquiry on the part of Peterson will not correct the significant deficiencies in Plaintiffs' Requests.

That said, however, if Plaintiffs desire a single straightforward answer to each of their Requests, Peterson can accommodate with a denial of each based on the simple rule set forth in the *Diederich* and *Audiotext* cases: if any *one* of the facts interwoven into a request can be denied, the entire request can properly be denied. For example, Peterson can deny that it owns any poultry growing operations within the Illinois River Watershed (i.e., "your poultry growing operations"), so it can properly deny Plaintiffs' Requests No. 1-9 and 13. Peterson can also deny that a poultry carcass (i.e., "poultry waste") has

[5] The numbers under each of the definitions correspond with a conservative count of factual elements in the respective definition.

directly leached (i.e., "run-off") into an irrigation system (i.e., "water of the State" incorporated into the definition of "run-off"), so it can properly deny Plaintiffs' Requests No. 5-9. Peterson can also deny that elemental phosphorous, which Plaintiffs incorporated into the definition of "phosphorous," is contained in poultry excrement (i.e., "poultry waste"), so it can properly deny Requests No. 4, 9, 10 and 12. Finally, Peterson can deny that feed wastes (i.e., "poultry waste") have contributed a greater amount of pathogens to the Oklahoma portion of the IRW than waste water treatment plants, cattle manure, manure from wildlife and septic systems combined.

Of course, some of the foregoing examples are nonsensical, but they clearly illustrate that Plaintiffs' April 20, 2007 substantially deviate from the simple, direct requests contemplated by Rule 36. Plaintiffs could have drafted Requests for Admission in compliance with Rule 36's requirements. However, they chose to burden Peterson with over 14,000 different facts incorporated into the thirteen Requests served on or about April 20, 2007. Plaintiffs did so at their peril, and they cannot complain that Peterson's answers to these Requests are insufficient. As such, Plaintiffs' instant Motion should be denied in its entirety.

2. Plaintiffs' Requests for Admission seek admission of liability and not facts

In addition to being compound, Plaintiffs' April 20, 2007 Requests for Admission do nothing to limit the issues for trial. In this regard, Plaintiffs' Requests do not seek the admission of singular facts. Rather, the Requests seek an admission of liability on the ten counts contained in their Complaint. For example, were Peterson to admit to each of the Requests (which is does not), thereby admitting each of the 14,000 different combinations of facts, one or more of those combinations of facts would potentially

amount to an admission of liability on the part of Peterson to the allegations in Plaintiffs' Complaint. Plaintiffs' less-than-stealthy attempt to use its Requests in this manner is an improper use of a Rule 36 request.

First, the compound factual elements incorporated into the Requests through the definitions are argumentative and seek admission of facts that are obviously in dispute. For example, the definition of "your poultry operations" places poultry operations owned by an integrator on the same level as those owned by an independent farmer. Peterson, however, does not own any poultry operations within the Illinois River Watershed, and the relationship between it and the farmers with whom it contracts to raise poultry is an issue that is in dispute. Yet, Plaintiffs effectively seek an admission that Peterson is liable for the acts of independent farmers and the manner in which they manage their farms.[6]

Similarly, Plaintiffs seek an admission that "poultry waste" contains a CERCLA-listed hazardous substance. In the past, Plaintiffs have argued that "phosphorous" is that substance. Not surprisingly, Plaintiffs' definition of "phosphorous" includes elemental phosphorous, which is a CERCLA-listed hazardous substance, and phosphate/phosphorous compounds, which are both common in the environment and not listed "hazardous substances." Plaintiffs cannot reasonably dispute that they attempted to bootstrap poultry litter to the Superfund legislation through its argumentative Request.

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[6] Plaintiffs contend in their Motion that it is improper for Peterson to object to their definition of "your poultry operations," and go as far as to suggest that the matter of Peterson's vicarious liability for the land management practices of the independent poultry growers who contract with it has been settled. Clearly, this is one of the penultimate issues in this case for which Plaintiffs carry a steep burden of proof, and thus Peterson's objecting to such an argumentative definition was clearly proper.

Despite this exercise, however, the fact remains that these issues are obviously in dispute in this lawsuit.[7]

Plaintiffs engage in a similar exercise with each of the definitions incorporated into their Requests, loading them with inferences and arguments which tend to support Plaintiffs' theory of their case. Accordingly, Peterson set forth in detail its objections to the both the definitions and the Requests and incorporates those objections into its Response. Use of these compound definitions—regardless of which one—transforms each of Plaintiffs' Requests into a disguised and argumentative interrogatory that Plaintiffs would have Peterson answer with a single word. While Plaintiffs might prefer that Peterson simply submit to the legal and factual contentions contained in the Requests, Rule 36 does not require Peterson to do so, notwithstanding the contentions in Plaintiffs' Motion suggesting otherwise.

Second, the foregoing examples illustrate that Plaintiffs are using their Requests as a not-too-subtle burden-shifting discovery device. In their Complaint and the amendments thereto, Plaintiffs have alleged that Peterson and the other Defendants in this lawsuit are liable for certain activities related to the handling and use of poultry litter as a fertilizer and soil amendment within the Illinois River Watershed. Without dispute, Plaintiffs bear the burden of proof on each of their claims. Instead of seeking admissions of singular facts pertinent to their claims, Plaintiffs have systematically integrated <u>all</u> of their contentions and materials facts underlying their various claims into their Requests and the incorporated definitions. Since the Requests are simply a more concise version

[7] It is alarming to note that Plaintiffs continue to cite to Judge Eagan's Order in the *City of Tulsa* case, despite the facts that it was withdrawn, and the Court has disapproved of the practice of citing that opinion in this case. (Transcript of proceedings before the Court on February 15, 2007 at p. 23:20-24.)

of Plaintiffs' Complaint, it should not come as a surprise to them that Peterson would object and deny the alleged facts on which Peterson's purported liability is based. In short, Plaintiffs' Requests for Admissions amount to impermissible discovery requests, which do nothing to narrow the issues for trial. Plaintiffs' Requests are, thus, an abuse of Rule 36, and their Motion should be denied.

III. CONCLUSION

Rule 36 places an affirmative burden on Plaintiffs to draft simple, concise Requests for Admissions, which can be answered with a simple yes or no response. They chose, instead, to draft compound and argumentative Requests. Through the instant Motion, Plaintiffs demand a "straightforward answer" to the 14,000 facts incorporated into their Requests and Peterson's admission of liability on their claims. Given the nature of the Requests, Peterson admitted what it could admit, denied what it could deny, and objected to everything else after making the reasonable inquiry required of it. Plaintiffs should not have expected anything more. Indeed, as shown, Peterson could have properly denied each of the Requests. That Peterson did so demonstrates that it complied with its obligation, notwithstanding Plaintiffs' abuse of its Rule 36 Requests for Admissions. In any event, Plaintiffs' Motion to Determine the Sufficiency of Defendant Peterson Farms, Inc.'s Responses to Plaintiffs' April 20, 2007 Requests to Admit (Dkt. #1249) should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 10th day of September, 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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