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July 3, 2007

VIA ELECTRONIC MAIL

Mr. David Riggs
Riggs, Abney, Neal, Turpen, Orbison & Lewis
Frisco Building
502 West Sixth Street
Tulsa, Oklahoma 74119-1010

Re: *Oklahoma v. Tyson Foods, Inc. et al.*

Dear David:

I have received and reviewed the State's Objections and Responses to Tyson Foods, Inc.'s April 25, 2007 Requests for Production of Documents. The State's objections are unfounded and its "responses" are plainly deficient. Please contact me at your earliest convenience to schedule a meet and confer session with respect to these discovery responses. During that meeting, the State should be prepared to discuss the following non-exhaustive list of deficiencies:

Confusing Numbering of Exhibits. The State attached 8 sets of documents to its responses. Those sets of documents were identified as Exhibits 1, 2A, 2B, 3A, 3B, 3C, 3D, 3E and 3F. The responses only reference "Exhibit 1" and "Exhibit 2". We need clarification on what particular document requests the State is responding to with the documents identified in Exhibits 3A, 3B, 3C, 3D, 3E and 3F.

Missing Exhibit. In several places the State's responses refer Tyson Foods to "the State's Court Ordered Scientific Production" (See Attached Index). This index was not attached to the State's responses. Please supply a copy of the index.

Privilege Claims. The State's response to virtually every Request for Production includes a blanket assertion of attorney-client privilege, work product protections and the consulting expert protections of Rule 26(b)(4). However, the State generally proceeds thereafter to "respond" to the requests "subject to and without waiver of these objections." Tyson Foods cannot determine the extent to which, if at all, the State has actually withheld documents based up these claims of privilege. Local Rule 26.4 requires "when a claim of privilege or work

EXHIBIT
C

product protection is asserted in response to a discovery request for documents, the party asserting the privilege or protection shall provide . . . a privilege log." No privilege log was included with the State's responses. Please provide a privilege log or withdraw these claims of privilege or protection.

Response to RFP No. 1. This RFP does not ask the State to "fully brief" its "legal theory" that "the listing of elemental chemicals on various EPA lists used in CERCLA is intended to include compounds of such chemicals for purposes of determining whether a chemical/compounds is a hazardous substance for purposes of CERCLA liability." The request simply asked the State to produce any documents that it contends support that legal theory. Tyson Foods was not expecting a legal brief or copies of cases, statutes, regulations or legislative history in response to this request. However, if the State has reports, publications, memoranda, letters, meeting minutes or other written communications in its possession custody or control which it will use to support this argument, those documents should be produced.

Response to RFP No. 2. This RFP sought production of "issued orders" and "agreements" entered into by the State with respect to improving "WWTP facilities." The State has referred Tyson Foods to Exhibit 1 and to "documents previously produced at the Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board." Exhibit 1 consists of two untitled spreadsheets that appear to capture information regarding phosphorus and nitrogen in watersheds other than the IRW. Exhibit 1 neither contains nor references any "issued orders" or "agreements." The generic reference to the jumbled mass of documents previously produced at ODEQ and OWRB fails to meet the specificity requirements for responses to Rule 34 document requests as clearly enunciated by Magistrate Joyner in the May 17, 2007 Order (Dkt. No. 1150). In responding to this RFP, the State cannot simply refer Tyson Foods back to its "agency productions." Please amend your response to specifically identify and produce those documents which are responsive to this RFP.

Response to RFP No. 4. This RFP asked the State to produce any documents reflecting or relating to legal enforcement actions brought by the State to effectuate what the State claimed in its response to Request for Admission No. 120 was a "prohibition" of the use of commercial fertilizer in a manner that created "a nuisance or pollution of the waters of the State." The State's response simply repeats its legal argument that "there are laws which prohibit pollution and the creation of a public nuisance from any number of activities, including the application of commercial fertilizer." This is nonresponsive. The State must either produce the documents requested or amend its response to confirm that no such documents exist because the State has never brought a "nuisance enforcement action related" to commercial fertilizer applications.

Response to RFP No. 5. This RFP asked the State to produce documents that support its statement in Response to Request for Admission No. 147 that "the constituents of poultry litter have been found throughout the IRW." In response, the State claims that it has "identified numerous documents which the State contends shows degradation and pollution of the Illinois

River from the constituents of poultry litter" and then refers Tyson Foods to its "agency productions" and it's "Court Ordered Scientific Productions." As a preliminary matter, the State must respond to the RFP as framed and it is improper for the State to seek to reword the request as part of its response. Tyson Foods has asked to see the documents in which the State claims it "has found the constituents of poultry litter throughout the IRW." Tyson Foods did not ask about the State's often repeated claims of "degradation or pollution of the IRW." Furthermore, as noted above, generic references to the mass of documents included in the State's jumbled "agency productions" violate Judge Joyner's May 17, 2007 Order (Dkt. No. 1150). In responding to this RFP, the State cannot simply refer Tyson Foods back to its "agency productions." Similarly, the State may not refer Tyson Foods generically to it's "Court Ordered Scientific Production." Those records were not produced "as they were kept in the usual course of business" and the State has not indicated which documents included in that production are responsive to specific Rule 34 document requests. Please amend your response to specifically identify and produce those documents which are responsive to this RFP.

Response to RFP No. 6. In its Response to Request for Admission No. 152, the State claimed that operations of poultry growers in the IRW under "*some* contracts" with defendants inevitably and foreseeably result in "illegal activity." This RFP asked the State to produce the particular contracts that would identify the poultry growing operations that inevitably and foreseeably result in this illegal activity. The State objected to this request claiming that it is overly broad and unduly burdensome "to the extent it seeks identification of 'all' documents for the request." Please read the RFP again. It does not seek production of "all" contracts. Rather, it only seeks production of those contracts that identify the poultry growing operations that inevitably and foreseeably result in this illegal activity. The State's objection that "the Tyson Defendants' are already in possession of their contracts with poultry growers" is likewise without merit. The State claims that "some" but not all poultry growing operations result in illegal activity. Only the State knows which poultry growers under contract with the Tyson Defendants' are claimed by the State to be involved in illegal activity. The State's final objection relates to the State's belief that producing contracts of the other defendants may violate the Court's Confidentiality Order. In order to remove this objection, please accept this letter as notice that Tyson Foods will narrow RFP No. 6 to request production only of those contracts between the Tyson Defendants and poultry growers that the State claims inevitably and foreseeably result in "illegal activity."

Response to RFP No. 7. In its Response to Request for Admission No. 153, the State claimed to have evidence as to the amount of poultry litter applied in the IRW produced by poultry growers under contract with each defendant. This RFP asked the State to produce that evidence. The State responds by saying it "has requested this information from the Defendants." If the State does not have the evidence claimed it should amend it response to this RFP to so state. If it has the evidence claimed, it must be specifically identified and produced. To the extent that the State claims that this evidence may be found in the records "previously produced"

at ODAFF or the "State's Court Ordered Scientific Production, it must specifically identify the documents included in those productions responsive to this RFP.

Response to RFP Nos. 8 -14. In its Response to Requests for Admission, the State claimed to have evidence as to the amount of various constituents in the environment in the IRW originating from poultry houses under contract with each defendant. This RFP asked the State to produce that evidence. The State's generic references to the mass of documents included in the "ODAFF document production" and "the State's Court Ordered Scientific Production" clearly is not an adequate response. Such generic references violate Judge Joyner's May 17, 2007 Order (Dkt. No. 1150). In responding to this RFP, the State cannot simply refer Tyson Foods back to its "agency productions." Similarly, the State may not refer Tyson Foods generically to the State's "Court Ordered Scientific Production." Those records were not produced "as they were kept in the usual course of business" and the State has not indicated which documents included in that production are responsive to specific Rule 34 document requests. Please amend your response to specifically identify and produce those documents which are responsive to *each* RFP. In doing so, the State should separate in its response the identification and production of documents responsive to each of these 7 RFPs as each request focuses on a different constituent for which the State has claimed to have defendant-specific evidence.

Response to RFP No. 19. This RFP asked the State to produce copies of documents related to the State-issued "permits for construction or dredging within a streambed of the IRW" which the State referenced in Response to Request for Admission No. 198. In response, the State generically refers Tyson Foods to documents produced at the "ODEQ document production" and documents produced by the State in response to another defendant's pre-lawsuit Open Records Request to the Oklahoma Department of Mines. These generic references to documents included in agency productions or responses to Open Records Act requests are inadequate. Please amend your response to specifically identify and produce those documents which are responsive to this RFP.

Response to RFP No. 20. This RFP seeks the production of any documents that the State contends constitute or relate to an ongoing but not yet completed "Natural Resource Damage Assessment" pursuant to 43 C.F.R. Part 11. In response, the State makes reference to documents "previously produced through the State's Court-Ordered production" but then states that additional documents responsive to this request will be disclosed pursuant to the Court's Order regarding expert and damage reports. First, if the State's Court-Ordered production included documents responsive to this RFP, please specifically identify those documents. Second, please provide an explanation for the State's apparent claim that is permitted to withhold information and documents relating to a CERCLA Natural Resource Damage Assessment under 43 C.F.R. Part 11 until the deadline for disclosing expert opinions in this case. As you know, CERCLA requires that Natural Resource Damage Assessments be conducted in the light of day with public notice and participation. The State is not permitted to conduct a Natural Resource

Damage Assessment in secret and then spring it upon Tyson Foods as part of its expert reports in this case.

Response to RFP Nos. 21-25, 27. In its Response to Requests for Admission, the State claimed that it has conducted "removal activities" in the IRW with respect to phosphorus compounds, nitrogen compounds, arsenic compounds, zinc compounds, cooper compounds and bacteria. This RFP asked the State to produce documents relating to those "removal activities." The State objects to these requests because the phrase "removal activities" is not defined. This is the phrase used by the State to describe its own activities. Presumably, the State understands the meaning of the phrase it used. However, to avoid any confusion, the Tyson Defendants suggest that when the State used this phrase it was referring to those activities which qualify as "removal" activities pursuant to CERCLA, 42 U.S.C. § 9607. To the extent the State has truly engaged in "removal activities" in the IRW with respect to phosphorus compounds, nitrogen compounds, arsenic compounds, zinc compounds, cooper compounds and bacteria, the State must identify documents related to those activities and produce them as requested by these RFPs.

Response to RFP Nos. 28 and 29. This RFP asked the State to produce documents related to the costs the State allegedly incurred in hauling poultry litter out of the IRW or managing of poultry litter within the IRW. The State claims that this information is of little benefit to the parties and is unimportant in resolving the issues in this case. Given these statements made by the State regarding the lack of relevancy of the information sought in this RFP, the Tyson Defendants need clarification from the State as to whether it is seeking to recover litter hauling or management expenses as part of its damage claim in this case. If so, the documents requested clearly must be produced. The State's generic references to documents "produced at the Oklahoma Conservation Commission and the Office of the Secretary of the Environment's document productions" are clearly inadequate. Such generic references violate Judge Joyner's May 17, 2007 Order (Dkt. No. 1150). In responding to this RFP, the State cannot simply refer Tyson Foods back to its agency productions.

Response to RFP No. 30. In its Response to Request For Admission No. 242, the State claimed that it has advised people not to swim in waters in the IRW due to pollution or water quality conditions. This RFP asked the State to produce copies of any written notices, advisories or communications that comprise those alleged advisories. In its response, the State has identified some generic fact sheet publications which are not specific to the IRW as well as some publications or data which the State apparently believes support the idea that swimming in the waters of the IRW is not advisable. These documents are not responsive to the RFP. Please produce copies of no-swim advisories issued by the State specific to waters in the IRW. If the State has never issued such advisories specific to waters in the IRW, then please amend your response to so state.

Response to RFP No. 31. Please advise as to when you produce the "boil orders" referenced in your response to this RFP.

Response to RFP No. 33. In its Response to Request For Admission No. 245, the State claimed that it has advised people not to eat fish which come from the waters in the IRW due to pollution or water quality conditions. This RFP asked the State to produce copies of any written notices, advisories or communications that comprise those alleged advisories. In its response, the State has identified a single generic fact sheet publication relating to mercury levels in fish. First, mercury is not one of the substances alleged in the State's complaint to originate from poultry litter. If you are claiming that the defendants are responsible for mercury levels in fish, please amend your complaint to make that clear. Second, the referenced publication is not specific to the IRW and therefore is not responsive to the RFP. Please produce copies of fish consumption advisories issued by the State specific to fish taken from the IRW. If the State has never issued such advisories specific to the IRW, then please amend your response to so state.

As always, Tyson Foods would prefer to resolve the above-noted deficiencies without court intervention. If the State is willing to do so, please contact me at your earliest convenience to discuss corrective action necessary by the State. If I have not heard from by the close of business on July 10, 2007, I will assume the State is unwilling to correct these deficiencies and will proceed with preparing a motion to compel.

Cordially,

Robert W. George

cc: Counsel of Record (via e mail)