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

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 05-cv-329-GKF(SAJ)**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF OKLAHOMA'S RESPONSE IN OPPOSITION TO MOTION OF AMERICAN FARM BUREAU FEDERATION AND NATIONAL CATTLEMEN'S BEEF ASSOCIATION FOR PERMISSION TO FILE JOINT BRIEF AS AMICUS CURIAE IN OPPOSITION TO THE PLAINTIFFS' [SIC] MOTION FOR PRELIMINARY INJUNCTION

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 ("the State"), hereby submits this response in opposition to the American Farm Bureau Federation and National Cattlemen's Beef Association for Permission to File Joint Brief as Amicus Curiae in Opposition to the Plaintiffs' [sic] Motion for Preliminary Injunction [DKT #1551] ("*Amicus* Motion"). Because the *Amicus* Motion is "not timely, useful or helpful to the Court beyond the help the lawyers for the parties are able to provide," the *Amicus* Motion must be denied.

I. The *Amicus* Motion must be denied because it is not timely, useful or helpful to the Court beyond the help the lawyers for the parties are able to provide.

A. Governing legal principles

The State incorporates by reference the governing legal principles it set out in its Response in Opposition to the Motion of the National Chicken Council, U.S. Poultry & Egg

Association, and the National Turkey Federation for Permission to File Brief as *Amici Curiae* in Opposition to the Plaintiff's Motion for Preliminary Injunction. *See* DKT #1568.

B. The *Amicus* Motion is untimely

The Preliminary Injunction Motion has been on file for approximately three months now. The *Amicus* Motion should be denied as untimely because it has been filed at the eleventh hour -- a mere four days before the scheduled start of the preliminary injunction proceeding. It has offered no explanation for its delay in filing its *Amicus* Motion. To require the State to expend resources responding to an *amicus* brief as it makes its final preparations for the preliminary injunction hearing is an unnecessary distraction, improper, and prejudicial.

C. The *Amicus* Motion is not useful or helpful to the Court beyond the help the lawyers for the parties are able to provide

The proposed *amicus* brief attached to the *Amicus* Motion, with one addition,[1] raises <u>the same flawed arguments</u> that have already been raised in briefing by Defendants or other *amici*, namely: (1) that the State's RCRA claim would interfere with the regulatory schemes of

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[1] The movants argue that the State's RCRA claim is precluded because federally-permitted Concentrated Animal Feeding Operations are subject to the CWA and thus excluded from RCRA. The movants argument is flawed in at least two respects (and was rightfully not even raised by Defendants). First, the movants have not identified any federally-permitted Concentrated Animal Feeding Operations in the Illinois River Watershed. And second, even were there federally-permitted Concentrated Animal Feeding Operations in the Illinois River Watershed, the CWA does not exclude the State's RCRA claim. *See* 42 U.S.C. § 6905(a) ("Nothing in this chapter shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act . . . except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts"). The State's RCRA claim, were there a federally-permitted Concentrated Animal Feeding Operations in the Illinois River Watershed, would not be inconsistent with the requirements of the CWA.

Oklahoma and Arkansas, (2) that the Court should defer to state administrative processes on primary jurisdiction grounds[2]; and (3) that RCRA does not apply to poultry waste.

As this Court recently stated in *JPMorgan Chase Bank, N.A. v. Fletcher*, 2008 WL 73233, *1 (N.D. Okla. Jan. 7, 2008), "[a]micus briefs filed by allies of litigants which duplicate the arguments made in the litigants' briefs, in effect merely extending the length of the litigant's brief, are an abuse and should not be allowed. . . . The term 'amicus curiae' means friend of the court, not friend of a party." *Id.* at *1 (denying motion to file *amicus* brief because it would otherwise "place the proposed amicus in the position of an additional counsel for the defendant rather than a friend of the Court"). This Court went on to deny the *amicus* motion in *JPMorgan Chase* because

> it does not appear that the proposed amicus possesses unique information or perspective that can help the Court beyond the help that the lawyers for the parties are able to provide. [Defendant] is represented in this case by exceptional lawyers. Current counsel are fully capable of presenting the law and the facts to assist the Court in resolving the issues presented.

Id. at *2. So too, here. The movants' proposed *amicus* brief does not contain "unique information or perspective that can help the Court beyond the help that the lawyers for the parties are able to provide."

In short, for lack of utility, the movants must, therefore, be denied permission to file its proposed *amicus* brief. *See O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 282 F. Supp. 2d 1271, 1274 (D.N.M. 2002) (denying leave to file *amicus* brief for lack of utility); *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1177-78 (D. Nev. 1999) (same).

II. Conclusion

For the foregoing reasons, movants' *Amicus* Motion [DKT #1551] should be denied.

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[2] This Court has already resolved issues of concerning primary jurisdiction and concluded that the courthouse is an appropriate forum to adjudicate the State's claims. *See* Court's 7/5/07 Order [DKT #1206] (denying motion to dismiss based on primary jurisdiction).

Respectfully Submitted,

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