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.	)	

SUPPLEMENTAL OBJECTIONS AND RESPONSES OF STATE OF OKLAHOMA TO SEPARATE DEFENDANT TYSON FOODS, INC.'S FIRST SET OF INTERROGATORIES PROPOUNDED TO PLAINTIFFS

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 supplements its previous response to Defendant Tyson Foods, Inc's First Set of Interrogatories in accordance with the Court's Order of February 26, 2007 [Dkt. # 1063]. The State incorporates its previous response and objections to these interrogatories as if fully stated herein. Further, the State reserves the right to supplement its responses as responsive information is identified.

The above listed documents, with the exception of the Septic System permits, have been previously produced to the Defendants; others will be produced at upcoming document productions at the Oklahoma Department of Agriculture, Food and Forestry. If Defendant did not copy any of the above, the State will work them to get them copies of the documents. The State reserves the right to supplement this response if additional responsive information is identified. The State hereby withdraws its previous Fed.R.Civ. P. 33(d) designation for this interrogatory.

INTERROGATORY NO. 7: Please describe all evidence and Identify all Documents You contend support Your allegation that the Tyson Defendants caused the release of any "hazardous substance" (as that term in defined in CERCLA, 42 U.S.C. § § 9601 et seq.) into any Water Body within the IRW, and in doing so, Identify each such release by specific hazardous substance, location, source, volume, time period of release, owner and/or operator of the source, generator of the hazardous substance, and the transport mechanism and pathway from the source location to the identified Water Body.

SUPPLEMENTAL RESPONSE TO NO. 7

The State objects to this interrogatory to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B).

The State objects to this interrogatory on the ground that it improperly seeks identification of "all" items of responsive information, which renders it overly broad and

oppressive. It may be impossible to locate "all" items of responsive information to this interrogatory. The State incorporates its response to Cobb-Vantress Interrogatory No. 5. as if stated fully herein.

Subject to and without waiving objections heretofore made to this interrogatory, the State intends to demonstrate a release of a hazardous substance through expert testimony that is based on (1) published treatises and peer reviewed articles on relevant and applicable subjects (discussed below), and (2) the evaluation of sampling and analysis data collected by the State and its consultants. The State will call expert witnesses at trial that will demonstrate that land application of the Defendant's wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW release contaminates contained in these wastes into the environment when rainfall: (1) washes off the constituents of these wastes and the land applied soils and they together run off of the area that was land applied and flow into IRW surface waters, and (2) seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, these expert witnesses will demonstrate violations by:

(A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible of surface water runoff and seepage and leaching into the groundwater. Additionally, the hydrogeological connection between and among the land surface, the ground waters and the surface waters within the IRW will be shown that will demonstrate the "pathway" to and through surface and ground water that runs into the streams and rivers of the IRW and eventually into Lake Tenkiller;

(B) Showing that a chemical "finger print" is found all along this water pathway (from waste application sites to Lake Tenkiller) by analysis and comparison of the chemical attributes of the Defendant's waste, the soils on which those wastes are applied, the groundwater and surface waters leaving land applied locations, the water and sediments of the streams and rivers that collect the these runoff and ground waters, and the and sediments of Lake Tenkiller;

(C) Lake Tenkiller core analysis and comparison with (i) other Lakes and (ii) poultry and waste growth and production;

(D) Historical poultry waste contaminant concentration trend analyses in the IRW surface waters (including Lake Tenkiller) and comparison with poultry production and waste volume in the IRW;

(E) Demonstrating poultry waste indicator chemicals and substances at locations that are co-incident with locations within the IRW that experience injury for which the State seeks damages and injunctive relief;

(F) Demonstrating that the density of poultry operations directly influences the concentrations phosphorous in IRW streams and rivers and that the contributions of phosphorous from land application of poultry waste causes the injuries to IRW water quality and biota for which the State seeks damages and injunctive relief;

(G) Show that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis.

The State and its experts are still collecting data and performing analysis on the data which will be used in their opinions and reports. The State refers Defendant to all

sampling documents and investigations included in the State's February 1st, 3rd, and 8th document production and updates thereto. *See* OK-PL4744-OK-PL5863 and OK-PL4333-OK-PL4743 for investigative documents. Analytical results for phosphorus, nitrogen compounds including ammonia, copper and copper compounds, arsenic and arsenic compounds, zinc and zinc compounds are contained in the reports from Aquatic Research and A&L Analytical Laboratories. Data providing results of these substances associated with litter or soil applied with waste from Tyson associated facilities are found in A&L Analytical Laboratories Report Numbers: 06-178-204, 06-179-0204, 06-193-0223, 06-194-203, 06-181-9210, 06-187-202, 06-208-0216, 06-188-0201, 06-192-0200.

The State hereby withdraws its previous Fed.R.Civ.P. 33(d) designation for this interrogatory. The State reserves the right to supplement this response if additional responsive information is identified.

INTERROGATORY NO. 8: Please describe all activities that have been conducted by any person, Entity or Agency within Your knowledge to investigate, evaluate, study, model or otherwise determine any characteristic of the water in the IRW, contaminant loading, or the conditions of any Water Body within the IRW, and in doing so, Identify all persons, Entities of Agencies with knowledge of such activities, and state for each such activity, what actions were taken, the time period of the activity, the objective(s) of the activity, who funded the activity, any conclusions, observations, or recommendations from the activity. Also, please Identify all Documents Related to such activity.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8

The State objects to this interrogatory to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to

source by specific location, owner or operator, if any, and the mechanism and/or pathway for the transport of the alleged hazardous substances, pollutants or contaminants from the source to any Water Body within the IRW. Also, please identify all Documents Related to such sources.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9

The State objects to this interrogatory to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed.R.Civ.P. 26(b)(4)(A) and (B).

The State objects to this interrogatory on the ground that it improperly seeks identification of "all" items of responsive information, which renders it overly broad and oppressive. It may be impossible to locate "all' items of responsive information to this interrogatory. The State incorporates its response to Tyson Foods Interrogatory No. 7 as if fully stated herein.

The State refers Defendants to the material produced by the State in February, 2007 and subsequent productions produced pursuant to the Court's January 5, 2007 Order, including but not limited to, information at the following locations/bates numbers: OK-PL 4744-5863 found in Box 4 produced in February and OK-PL 433-47433 found in Box 3 and analytical results for phosphorus, nitrogen compounds including ammonia, copper and copper compounds, arsenic and arsenic compounds, zinc and zinc compounds are contained in the reports from Aquatic Research and A&L Analytical Laboratories. Data providing results of these substances associated with litter or soil applied with waste

from Tyson associated facilities are found in A&L Analytical Laboratories Report Numbers: 06-178-204, 06-179-0204, 06-193-0223, 06-194-203, 06-181-9210, 06-187-202, 06-208-0216, 06-188-0201, 06-192-0200.

The State also refers Defendants to Oklahoma Department of Agriculture Food and Forestry files produced on June 15, 2006, Bates Numbers OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846. Updated grower files will be produced in accordance with the Court's Order of March 26, 2006 at a yet to be scheduled document production at ODAFF.

The State's investigation into every source related to poultry operations is ongoing. The State's experts are still evaluating the relevant data for their reports which will address in detail the foregoing matters. This Interrogatory will be supplemented by such Expert reports at the time required by the Court's Scheduling Order [Dkt. # 1075]. The State reserves the right to supplement this response.

INTERROGATORY NO. 10: Please describe all evidence and Identify all Documents You contend supports Your allegation that the actions or inactions of any Tyson Defendant pose a threat to the health of any person in the IRW, and in doing so, please state for each such action or inaction, the specific conduct and Tyson Defendant You contend is responsible, and describe the specific threat posed to human health.

SUPPLEMENTAL RESPONSE TO NO. 10

The State objects to this interrogatory to the extent it seeks information protected by the attorney client privilege or work product protection. Further, the State objects to this interrogatory to the extent that it seeks information known or opinions held by expert