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March 24, 2009

Robert A. Nance
Riggs, Abney, Neal, Turpen, Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119

BY EMAIL

Re: State of Oklahoma, et al. v. Tyson, et al.
Court File No. 05-CV-0329 GKF-PJC

Dear Mr. Nance:

I write to follow up on Plaintiffs' responses to the Cargill Defendants' February 17, 2009 discovery requests, served by your office on March 19, 2009. Overall, the State's objections to the requests are not well founded, and I ask that you review your responses in light of the discussion below and that you identify a time not later than 1:00 p.m. CDT on Thursday, March 26, 2009 that you or one of your colleagues will be available to confer by telephone concerning any remaining differences on these requests. Given the time remaining before the discovery deadline, we unfortunately must act quickly to get a motion before the Court.

Common Issues

As to common issues, your statement that the Cargill Defendants have exceeded the number of requests for admissions allowed under the rules is mistaken. N.D. Okla. LCvR 36.1 allows each party 25 such requests, for a total of 50 between the two Cargill Defendants. On March 6, 2007, the Cargill Defendants contributed a total of 30 requests for admission to the collective set served on the State by Defendants. Inasmuch as the Cargill Defendants' February 17, 2009 set included only 16 requests for admission, the Cargill Defendants have not exceeded their allotted requests.

In addition, Plaintiffs' blanket claims of undue burden, asserted without any offer of factual support, fails as a matter of law, e.g., Cardenas v. Dorel Juvenile Group, Inc., 232 F.R.D. 377, 380 n.16 (D. Kan. 2005), and we ask the you withdraw it.

With respect to the interrogatories and document requests, the Court has chastised the State on multiple occasions for its refusal to provide sufficient particularity in response to the

Exhibit A

Cargill Defendants' interrogatories and document requests. Not only is the State bound to follow Federal Rules of Civil Procedure 33(d) and 34 in this regard, the State is also bound to specific Orders of the Court requiring the State's compliance with these Rules.

As the Court has directed, as the party responding under Rule 33(d), the State "has a duty to indicate, with some degree of specificity, from what documents the answer can be 'derived or ascertained.'" (May 17, 2007 Ord. at 3: Dkt. No. 1150.) Magistrate Judge Joyner ordered Plaintiffs to "clearly identif[y]" the documents containing an interrogatory's answer. (Id.) In addition, the State will recall that due to its initial document production failure, the Court ordered a supplemental Rule 34(b) production demonstrating the particular boxes of documents responsive to particular requests for production. (Id. at 7.)

The Court has also admonished the State for providing circular, unhelpful answers to interrogatories, for instance by "answering [an] interrogatory by stating that the violations occur wherever a violation has occurred." (Feb. 26, 2007 Ord. at 11: Dkt. No. 1063.)

In the face of the Court's February 26, 2007, May 17, 2007, and July 6, 2007 Orders (among others), the Cargill Defendants insist that the State abandon its attempts in the current set of responses to answer interrogatories by directing the Cargill Defendants to vast arrays of unparticular documents and providing circular narratives. The State must immediately comply with the Court's Orders by "clearly identif[ying]" with specificity which documents it asserts answers any interrogatory. In the alternative, the State must provide a particular and complete narrative answer to each interrogatory.

Individual responses

Request for Admission 1: The State's response tries both to admit the statement by Mr. Edmondson and to deny it based on other grounds. The State cannot have it both ways. The Rules require that the State must either (1) admit the statement, or (2) deny the statement, or (3) "state in detail" why the State cannot admit or deny it. See Fed. R. Civ. P. 36(a)(4). The State's present answer does not comply with that requirement, and we ask that the State modify its response to do so.

Requests for Admission 5 and 6: These requests require the State to admit to deny whether "[e]very compound that contains phosphorus is a hazardous substance under CERCLA." Because Plaintiffs have put this question directly at issue in this case, most recently in their response to the Defendants' motion for summary judgment on Plaintiffs CERCLA claims, and cannot justifiably claim that it is irrelevant or overbroad. Plaintiffs' attempt to substitute its own language concerning whether "phosphorus-containing compounds in poultry waste" for the requests the Cargill defendants actually posed is not authorized by the rules and is not acceptable. We ask that the State supplement its response to address the substance of the requests as actually framed.

Requests for Admission 7, 8, 9 and 10: Although the Cargill Defendants believe that these requests accurately and clearly reflect the record concerning the State's involvement with the AWMPs, if the State needs clarification in order to understand these requests, the Cargill Defendants are happy to provide it. Based on the transcript pages of Ms. Teena Gunter's deposition that Plaintiffs cite at pages 9-10 of their response,[1] the Cargill Defendants are willing to modify the language of Requests 7-10 as follows:

> RFA No. 7: The Oklahoma Department of Agriculture, Food & Forestry intends the Animal Waste Management Plans it ~~issues to~~ drafts for Oklahoma poultry growers to meet the regulatory requirements under the Oklahoma Registered Poultry Feeding Operations Act and the rules and regulations developed under that Act.
>
> RFA No. 8: The Oklahoma Department of Agriculture, Food & Forestry does not intend the Animal Waste Management Plans it ~~issues to~~ drafts for Oklahoma poultry growers to meet the regulatory requirements under the Oklahoma Registered Poultry Feeding Operations Act and the rules and regulations developed under that Act.
>
> RFA No. 9: The Oklahoma Department of Agriculture, Food & Forestry bases~~develops~~ the Animal Waste Management Plans it ~~issues to~~drafts for Oklahoma poultry growers ~~based~~ on current scientific standards for animal waste management and any applicable federal, state or local regulations or policies.
>
> RFA No. 10: The Oklahoma Department of Agriculture, Food & Forestry ~~develops~~ bases the Animal Waste Management Plans it ~~issues to~~ drafts for Oklahoma poultry growers on anything ~~a basis~~ other than current scientific standards for animal waste management and any applicable federal, state or local regulations or policies.

Plaintiffs may not simply assert that questions it dislikes are "non-sensical" and thereby refuse to answer them.

Further, with respect to Requests Nos. 9 and 10, the State, as the ultimate governing body, should be in the best position to know exactly which "federal, state, or local regulations or policies" apply to Oklahoma's Animal Waste Management Plans. The Cargill Defendants' statements are neither "vague" nor "ambiguous," but quite particular. We ask that the State respond to the substance of these requests; either ODAFF bases the AWMPs on current scientific standards and applicable laws or it does not, and the State needs to take a position.

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[1] For your convenience, I have attached the relevant passages from Ms. Gunter's testimony to the end of this letter.

Requests for Admission 11, 12 and 13: The Cargill Defendants respectfully take the position that these requests are not "incapable" of being admitted or denied. The application levels set in the AWMPS are either always reasonable, are never reasonable, or are sometimes reasonable or sometimes not. As the ultimate governing body, the State should be able to articulate whether the permitted levels of poultry litter in Oklahoma Animal Waste Management Plans are "reasonable" and "not reasonable." To the extent Plaintiffs are confused by the word "reasonable," as their response suggests, please understand the word to mean "fair, proper, or moderate under the circumstances." Black's Law Dictionary at 1272 (7th ed. 1999). The State must answer these Requests without equivocation.

Requests for Admission 14, 15 and 16: These requests do not ask the State to address whether it has any poultry-house-specific evidence that is solely derived from particular types of scientific analysis, they ask whether the State has any poultry-house-specific evidence from these sources at all. The response does not address the substance of the request, and we ask that you amend it so that it does so.

In addition, the last two sentences in each of the State's responses to these requests is nothing more than non-responsive argument. Because these sentences do not explain or refine the State's answers, the Cargill Defendants request that the State amend its responses to withdraw these sentences.

In addition, if the State intends to stand on its objections that these requests are vague and ambiguous, it must explain the grounds for its blanket assertions. Please do so.

Interrogatory 1: The State cannot stand on its blanket references to "discovery disclosures to Defendants, including but not limited to interrogatory responses, document productions, expert witness reports, and depositions" in lieu of narratively answering the request. Similarly, references to "documents produced from the files of ODAFF" or "the grower files of ODAFF" are wholly insufficient under Rule 33(d) and the Court's Orders against the State. The State's current answer is a violation of prior Court Orders and subject to sanction under Rule 37.

Interrogatory 2: No party may fairly contend that a request to describe its own claim is "overly broad and unduly burdensome." The State carries the burden to prove the existence of a CERCLA facility or facilities in this case, and cannot tenably claim that a request that it simply describe the location and boundaries of such facilities is irrelevant or overbroad. Plaintiffs will need to prove the locations and scope of any facilities at trial, and thus must provide that information in discovery.

Further, Rule 33(d) and the Court's prior discovery Orders against the State preclude the State from responding that the Cargill Defendants may derive the answer to this interrogatory from 1) "the grower and applicator files of ODAFF" pertaining to the Cargill Defendants'

growers' poultry operations, 2) "the reports of the State's investigators," 3) "the State's productions of its scientific documents," 4) "the State's expert reports," or "the Cargill Defendants' own files." The Cargill Defendants will also not condone the State's attempt to shift the burden of proof away from itself.

The Cargill Defendants insist that the State immediately either identify the particular documents that contain the response to Interrogatory No. 2 or narratively respond to the question posed. The State's current answer is a violation of prior Court Orders and subject to sanction under Rule 37.

Interrogatory 3: Again, no party may reasonably contend that a request to describe its own claim is "overly broad and unduly burdensome" to identify. The State carries the burden to prove the existence of regulatory and statutory violations in this case – it cannot claim that simply describing its contentions about such violations is anything but relevant. Plaintiffs' Second Amended Complaint asserts that "[e]ach instance of this conduct" constitutes a separate violation of a statute or regulation, see SAC ¶¶ 128, 129, 130, 134, 137, and seeks a separate civil penalty for each violation. SAD ¶¶ 131, 135, 138 (alleging "the State of Oklahoma is entitled to an assessment of civil penalties… for each respective violation"). The State seeks a civil penalty for each "instance" of a violation, and it must therefore specifically identify each instance.

Further, Rule 33(d) and the Court's prior discovery Orders against the State preclude the State from responding that the so-called "evidence" is "overwhelming" cannot suffice. Nor may the State contend that Cargill Defendants may derive the answer to this interrogatory from "governmental reports" or by way of reference to all of the State's expert reports.

The State must immediately either identify the particular documents that contain the response to Interrogatory No. 3 or narratively respond. The State's current answer is a violation of prior Court Orders and subject to sanction under Rule 37.

Interrogatory 4: Once again, a Plaintiff may not tenably contend that a request to describe its own claim is "overly broad and unduly burdensome." The State has alleged multiple unlawful acts by the Cargill Defendants, e.g., SAC ¶¶ 55, 98, 100, 102, 119, 131, 135, 138, and carries the burden of proving those unlawful acts. The State cannot reasonably claim that simply identifying its contentions is anything but perfectly relevant.

The State must immediately either identify the particular documents that contain the response to Interrogatory No. 2 or narratively respond. The State's current answer is a violation of prior Court Orders and subject to sanction under Rule 37.

Request for Production 1: If the State intends to stand on its relevance objection, it bears the burden to explain (and prove) its position. Nor may the State rely on blanket assertions of overbreadth and undue burden. Such objections are impermissible on their face and do not permit the State to refuse to produce any documents responsive to this request whatsoever. The State's questioning of witnesses at depositions has suggested that its attorneys know of some investigation into BMP's, Inc. or Eucha-Spavinaw BMPs, Inc. that may be related to some issue relevant to the claims or defenses in this case. See, e.g., Sherri Heron Dep. at 212-13, 287. If Plaintiffs have documents associated with any such investigation, the Cargill Defendants are entitled to their production. If Plaintiffs have no such documents, they need to state that fact (as it did with respect to RFDs 2 and 3).

Request for Production 4: The Cargill Defendants are willing to narrow this request to claimed violations within the IRW. The records regarding any violations of SWDA are clearly relevant, given that Plaintiffs seek relief against the Cargill Defendants based on that statute, and I find it difficult to believe that Plaintiffs have not at this point in the litigation identified any such documents. Please produce these documents or state that none exist in the State's possession.

And again, the State may not rely on blanket assertions of overbreadth and undue burden. Such objections are impermissible on their face and do not permit the State to refuse to produce any documents responsive to this request whatsoever.

Request for Production 5: As repeatedly noted above, the State cannot prevail on blanket claims of undue burden and overbreadth, either as to production in the first instance, or as to its effective claim that compliance with the Court's May 17 and July 6, 2007 Orders would be "unduly burdensome." As the State implicitly recognizes, it is required to list the documents responsive to this (and each) of the Cargill Defendants' requests for production.

Request for Production 6: The State's claims of undue burden and overbreadth likewise fail in this response. In addition, the Court's prior Orders require the State to respond with a great deal more particularity than asserting merely that documents responsive to Request No. 6 may be found "in the grower and applicator files of the ODAFF." Again, the State cannot simply claim that listing responsive documents (and thereby complying with the Court's Orders) would be unduly burdensome.

Request for Production 8: The State's blanket claims of undue burden and overbreadth are not well taken. In addition, the Court's prior Orders require the State to respond with a great deal more particularity than asserting only that documents responsive to Request No. 8 may be found "in the grower files of the ODAFF and files of the ODEQ." The State cannot simply claim that listing responsive documents (and thereby complying with the Court's Orders) would be unduly burdensome.

Request for Production 9:
The State's claims of irrelevance, undue burden, and overbreadth, all offered without citation to factual support, also fail here. In addition, the Court's prior Orders require the State to respond with a great deal more particularity than asserting merely that documents responsive to Request No. 9 may be found in "responsive documents at the OSRC and the Office of the Oklahoma Secretary of the Environment." The State may not refuse to comply with the Court's Orders because it believes such compliance to be "unduly burdensome."

Request for Supplementation

Finally, as you may know, Mr. Garren and I corresponded last fall about Plaintiffs' obligation to supplement its earlier discovery responses. (I attach copies of my October 17, 2008 letter and Mr. Garren's October 31, 2008 responsive email for your information.) I had hoped that Plaintiffs' responses to the current set of discovery would ameliorate the problems I had with Plaintiffs' failure to supplement as set out in that letter, but, as discussed above, that has not been the case. Moreover, although Mr. Garren's email promised that the State could and would undertake to provide examples of improper waste handling by the Cargill Defendants, I have to date received no such examples. As a result, I also need you to direct your attention to the Cargill Defendants' requests for supplementation for purposes of a meet-and-confer session.

Given the considerable time Plaintiffs have already had to address these responses, we ask that you provide the additional responses, information, and documents describe above not later than 5:00 p.m. CDT on Tuesday, March 31, 2009.

As I said at the outset of this letter, the impending discovery deadline necessitates that I meet and confer with you or one of your colleagues concerning both Plaintiffs' latest discovery responses and the supplementation issues within the next two days. Please call or email me as soon as possible this afternoon to advise when and with whom this conference should take place.

Very truly yours,

Bruce Jones

Bruce Jones

bj:dy
cc: All Defense Counsel
fb.us.3799103.01

Relevant Portions of Gunter's Depo Testimony – pages cited by the State's response relating to RFAs 7-10 (highlighting added)

Gunter, Teena Vol I, page 81

11 Any arrangements with ODAFF and any federal
12 agency regarding land application of litter?
13 A We have a grant that we draft plans for the
14 USDA NRCS.
15 Q Okay. What does that grant entail?
16 A We're paid a -- or some of our contract folks
17 are paid -- the department is paid a fee for each
18 waste management plan that we produce for NRCS.
19 They are not department product. They are -- we are
20 the technical service provider essentially in that
21 arrangement.
22 Q Okay. ODAFF is writing animal waste
23 management plans for NRCS?
24 A Yes.
25 Q Okay, and that's covered by a grant?

page 82

1 A The grant is -- pays ODAFF a particular amount
2 per plan.
3 Q Okay, and what body of law requires these
4 animal management or animal waste management plans?
5 A Well, our -- the Poultry Act requires a
6 facility to have the waste management plan, as well
7 as the CAFO Act would, and the applicator does in
8 some cases require one.
9 Q Okay. So the federal grant is paying ODAFF to
10 write plans under the various acts that require an
11 animal waste management plan?
12 A No.
13 Q No?
14 A No, they're not writing -- we're strictly
15 writing them for NRCS as though we were an NRCS
16 field office in that respect.
17 Q Okay, but the plans are for Oklahoma?
18 A They are not for us. They are for NRCS and
19 the producer.
20 Q Okay. The plans are for NRCS and the
21 producer, the poultry producer?
22 A Yes.

Gunter, Teena Vol II, page 243:19 – 244:19

Q Okay, and we talked about a grant program yesterday. Would some of those plans be written by ODAFF employees for NRCS?
A Yes. We've got a cooperative agreement with NRCS that -- and I don't know what you know, but the NRCS trains technical service providers to draft plans on their behalf, as well as their own staff to draft plans, and we have -- I think we have six people that have taken the training as technical service providers pursuant to that, and once they were all certified, NRCS had the grant and asked -- had the money for the grant and there were discussions back and forth about whether or not we could draft those plans as NRCS technical service providers through a contract and ultimately all of the issues were worked out and the -- and so we have staff members that either part time or full time contracted. They're all contract employees. None of them are actually FTEs with the agency. We'll draft those plans and prepare them, and I believe the way the process works is they prepare two copies. They mail them both to NRCS. NRCS distributes them to the grower, and then the grower would then send their extra copy of the plan back to the department because they're required to have that in their file, the updated plan.

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October 17, 2008

Richard T. Garren
David P. Page
Riggs, Abney, Neal, Turpen, Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119

Re: State of Oklahoma v. Tyson, et. al.
Court File No. 05-CV-00329 CKF-SAJ
Our File No. 320833

Dear Rick and David:

I write to follow up on plaintiffs' responses to Cargill Turkey Production's and Cargill Inc.'s interrogatories, which your office served in December 2006 and in some instances later supplemented. Many of those responses qualified their answers by stating that certain facts were not yet known or understood, or that some or all of the answers to certain questions would be part of plaintiffs' expert disclosures. Given the extensive discovery that has taken place since these responses and given plaintiffs' expert disclosures earlier this year, I write to ask that plaintiffs now supplement their original responses to the Cargill Defendants' interrogatories as set forth below.

1. Responses Specific to Cargill Turkey Production and Cargill, Inc.

With respect to many of the interrogatories in both sets that requested information as to each Cargill entity, plaintiffs responded in part with language similar to the following:

> As regards the request for information regarding "each Cargill entity at issue," the State understands that Cargill created Cargill Turkey in 2004 and transferred some or all of its poultry operations in the IRW to it thereafter. The State does not presently know the exact relationship between Cargill and Cargill Turkey, and is investigating that relationship and the particular activities of each of the Cargill entities. The State

> requested documents relevant to this relationship on July 10, 2006, and only received them on December 5, 2006, and has not had an opportunity to review or analyze the documents produced. Therefore, it cannot at present state its response "with particularity" as to each Cargill entity.

Plaintiffs' attorneys have now had the documents in question for over 21 months, and have also taken both 30(b)(6) and individual depositions of Cargill personnel. Given the investigation that plaintiffs have now conducted concerning "that relationship and the particular activities of each of the Cargill entities" as your response puts it, we ask that you supplement your responses specifically addressing the "specific activities" of Cargill, Inc. and Cargill Turkey Production with which plaintiffs take issue and the facts supporting those claims. Specifically, this request involves CTP interrogatory numbers 11, 12, 13, 14, 15, 16, 17, and 18, and Cargill, Inc. interrogatory numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17.

2. Identification of Witnesses.

In response to a number of interrogatories requesting the identities of the witnesses on whom plaintiffs intend to rely to establish certain facts, plaintiffs responded with words to the following effect:

> Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

Plaintiffs have now had nearly two years of additional discovery since framing that response, and should have a better idea at this point in the litigation of the witnesses that provide factual support for plaintiffs' allegations, particularly inasmuch as those witnesses must necessarily have been included in plaintiffs' disclosures of persons with knowledge of the subject matter of the action. Recognizing that discovery remains open and acknowledging that plaintiffs' identification of some witnesses on these topics now will not preclude plaintiffs from adding additional witnesses on these topics later in the discovery period, we ask that you supplement these responses to identify those witnesses that you know of now.

The Cargill Defendants could,of course, simply serve 30(b)(6) deposition notices addressing these subjects to obtain some of the same information, but we think it is cleaner and more efficient—and more in keeping with the intent of the Rules—for plaintiffs to actually identify these witnesses by name. This request for supplementation involves CTP interrogatory numbers 9, 13, 14, 15, 16, and 17, and Cargill, Inc. interrogatory numbers 1,2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17. In addition, with respect to CTP interrogatory number 18, plaintiffs' original response did not include the "ongoing

discovery" qualification quoted above but nevertheless failed to identify any witnesses. We ask that plaintiffs supplement this response as well.

3. Deferral to Expert Reports.

In response to a number of the Cargill Defendants' interrogatories seeking the facts underlying plaintiffs' specific claims against Cargill Turkey Production and Cargill, Inc., plaintiffs stated that the subject matter of those questions was within the scope of plaintiffs' anticipated expert witnesses' testimony, and that the questions were therefore premature inasmuch as plaintiffs' expert disclosures were not yet due.

The deadline for plaintiffs' expert disclosures has passed, and plaintiffs have disclosed the intended testimony of a number of different experts on a number of different topics. In reviewing those expert disclosures, however, we are unable to find specific facts or analysis relating to the claimed individual conduct of Cargill Turkey Production or Cargill, Inc., and indeed we rarely find either company mentioned at all. We therefore ask that you supplement your responses to these interrogatories to identify the facts specific to Cargill Turkey Production and Cargill, Inc. on which you intend to rely for the specific allegations described in the interrogatories. If you contend that these specific facts are contained in plaintiffs' expert disclosures, we ask that you identify by author and page number where we may find those facts. This request applies to Cargill Turkey Production interrogatory numbers 6, 7, 8, 9, 13, 14, 15, 16, 17 and 18 and Cargill, Inc. interrogatory numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17.

4. Promised Supplementation.

In response to a number of interrogatories, plaintiffs stated that discovery was continuing and promised to supplement their responses later as additional information was developed. Plaintiffs have conducted a great deal of investigation and discovery over the last 21 months, and yet we have not received any of the promised supplementation. We ask that you provide it now. This request applies to CTP interrogatory numbers 3, 5, 6, 7, 8, 13, 15 and 16 and Cargill, Inc. interrogatory numbers 2, 3, 4, 6, 13, 14 and 16.

5. General Obligation to Supplement.

Finally, Federal Rule of Civil Procedure 26(e)(1)(A) provides:

> A party who has made a disclosure under Rule 26(a) – or who has responded to an interrogatory, request for production, or request for admission – must supplement or correct its disclosure or response:
> (A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and

> if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing;

We ask that plaintiffs review their prior responses to assure that they are fully complying with this obligation. This request applies to all of plaintiffs' discovery responses.

We appreciate your attention to these requests. We would appreciate confirmation within a week of plaintiffs' intentions with respect to these requests for supplementation. We ask that you provide the supplementations themselves not later than October 31, 2008. Please do not hesitate to contact us if you have any questions or concerns about these requests. We look forward to receiving the requested materials.

Very truly yours,

Bruce Jones

bj:dy
fb.us.3272916.02
cc: All Defense Counsel of Record

Jones, Bruce

From: Richard Garren [RGarren@riggsabney.com]

Sent: Friday, October 31, 2008 11:07 AM

To: Jones, Bruce

Cc: Kelly.Burch@oag.ok.gov; fbaker@motleyrice.com; Bob Nance; Trevor Hammons; David Riggs; Bullock, Louis

Subject: Supplemental responses

Mr. Jones,

I'm responding to your letter of October 17, 2008. I too agree there has been extensive discovery to date in this case and point out that the Cargill entities together have produced in excess of 280,000 pages of documents, many of which were irrelevant or non-responsive, thus creating delays in their review. This of course is in addition to the documents produced by the other defendants. All of which taken together show similar patterns of conduct. The State's review of all these documents is continuing.

While our complaint as amended is very clear as to the State's cause of action it should be known by Cargill at this time that the State is not required to list all single incidents of behavior which make up a broad, continuous and purposeful business model for growing turkeys while refusing to provide an environmentally safe disposal of its wastes.

To the extent that Cargill expects the State to identify each incident occurring over a period of years from activities of improper waste handling and disposal it is unreasonable and unnecessary. Nonetheless and without waiving any objections or arguments to the contrary, some examples can be provided and the State will undertake to do so. However, the State will not be able to meet your unilaterally created deadline of Oct. 31, 2008.

Regarding the request for the identification of witnesses the State would supplement its list, to the extent it is necessary to do so, by adding the names of any person who has been deposed in this case and in the City of Tulsa case involving the same poultry integrator defendants. The State objects to any further supplementation as it will continue to comply with the Federal Rules and appropriate orders regarding its obligation to identify such witnesses.

I trust that the Cargill entities are reviewing their prior discovery responses to assure they too are fully complying with the obligations imposed by Rule 26(e)(1)(A) as set forth in your letter.

Richard T. Garren, Esq.
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"It's much more important how you behave...than how much money you make...At the end of the day, it's about people being honest" [CEO wishing to remain anonymous]

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