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 POULTRY, 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 Poultry, Inc's First Set of Interrogatories in accordance with the Court's Order of February 26, 2007 (Dkt # 1063). The State incorporates its previous responses and objections to these interrogatories as if fully stated herein. Further, the State reserves the right to supplement its responses as additional responsive information is identified.

INTERROGATORY NO. 5: Please specifically Identify (without just referring to your Complaint) each and every provision of the Oklahoma Registered Poultry Operations Act and/or its implementing regulations which You contend has been violated by any Tyson Defendant or any person or Entity for which any Tyson Defendant may allegedly be held legally responsible and provide:

(a) the date, location and a description of each such violation for which You contend a Tyson Defendant may be held liable;

(b) the name and address of the contract Grower or other person involved the violation(s) identified in response to the preceding interrogatory subpart; and

(c) Identity any notices of violations, warnings, complaints, investigative reports, agency orders, correspondence, photographs, video recordings or witness statements (written or audio) and other Documents or items of evidence which Relate To each such violation or form the basis of Your belief that such a violation has occurred.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5

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 actions of Defendant and its growers violate the following provisions of the Oklahoma Registered Poultry Feeding Operations Act and its implementing regulations: 2 O.S.§§ 10-9.1 and 10-9.7; and OAC 35:17-5-1 and 35:17-5-5.

Pursuant to Fed.R.Civ.P.§ 33(d) the State has produced grower files, which contain the information described in subsections (a)(b) and (c) on June 15, 2006, Bates Nos. OKDA0000001-OKDA0010561 and OKDA0013013-OKDA0021846. The State will further provide all grower files and violations of the Oklahoma Registered Poultry Feeding Operations Act at the Oklahoma Department of Agriculture, Food and Forestry document production in accordance with the Courts Scheduling Order. Such files will contain information regarding violations of best management practices and animal waste management practices. The State will specifically identify the location in the grower file where violations and notice of violations are kept. The State continues its investigation of these matters and will supplement this response as the State becomes aware of additional responsive information.

The State intends to demonstrate violations of these statutes and regulations 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 Defendants' wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and 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) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

(A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to 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 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 Defendants' 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 runoff and ground waters, and the sediments of Lake Tenkiller;

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

(D) Analyzing Historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing 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 of 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) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

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 has produced documents addressed by the Court's January 5, 2007, Order associated with the State's sampling scheme with the February 1, 3, and 8 document productions and will continue these productions on a rolling basis. The expert opinions and reports that will show these violations are still being completed and will be provided to the Defendants in accordance with the Court's Order Scheduling Order (Dkt #1075). The State hereby withdraws its previous Fed.R.Civ.P § 33(d) designation for this interrogatory. The State refers Defendant to documents included in the State's February 1, 3, and 8 document production and subsequent updates produced pursuant to the Court's January 5, 2007, Order. [(Dkt. 1016]

INTERROGATORY NO. 6: Please specifically Identify (without just referring to Your Complaint) each and every provision of the Oklahoma Agricultural Code which You contend has been violated by the defendants or any person or Entity for which the defendants may allegedly be held legally responsible and provide:

(a) the date, location and a description of each such violation for which You contend a Tyson Defendant may be held liable;

(b) the name and address of the Grower or other person involved the violation(s) identified in response to the preceding interrogatory subpart; and

(c) Identity any notices of violations, warnings, complaints, investigative reports, agency orders correspondence, photographs, video recordings or witness statements (written or audio) and other Documents or items of evidence which Relate To each such violation or form the basis of Your belief that such a violation has occurred.

SUPPLEMENTAL RESPONSE TO NO. 6:

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).

In addition to those provisions of the Oklahoma Agricultural Code listed in Supplemental Responses to Nos. 4 and 5 (above), Defendant and its growers violate the following provision of the Oklahoma Agricultural Code: 2 O.S. § 2-18.1.

The State intends to demonstrate violations of these statutes 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 Defendants' wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and 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) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State 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 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 runoff and ground waters, and the sediments of Lake Tenkiller;

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

(D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing 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 of 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) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

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 has produced documents addressed by the Court's January 5, 2007, Order associated with the State's sampling scheme with the February 1, 3, and 8 document productions and will continue these productions on a rolling basis. The expert opinions and reports that will show these violations are still being completed and will be provided to the Defendants in accordance with the Court's Scheduling Order (Dkt. #1075).

The State hereby withdraws its previous Fed.R.Civ.P § 33(d) designation for this interrogatory. The State refers Defendant to documents included in the State's February 1, 3, and 8 document production and subsequent updates produced pursuant to the Court's January 5, 2007, Order. [Dkt. 1016]

INTERROGATORY NO. 7: Please specifically Identify (without just referring to your Complaint) each and every provision of the Oklahoma Environmental Quality Act and/or its implementing regulations which You contend has been violated by any Tyson Defendant or any person or Entity for which any Tyson Defendant may allegedly be held legally responsible and provide:

(a) the date, location and a description of each such violation for which You contend a Tyson Defendant may be held liable;

(b) the name and address of the Grower or other person involved the violation(s) identified in response to the preceding interrogatory subpart; and

(c) Identity any notices of violations, warnings, complaints, investigative reports, agency orders correspondence, photographs, video recordings or witness statements (written or audio) and other Documents or items of evidence which Relate To each such violation or form the basis of Your belief that such a violation has occurred.

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).

Defendant and its growers violate the following provision of the Oklahoma Environmental Quality Act: 27A O.S. § 2-6-105.

The State intends to demonstrate violations of this statute 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 who 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 releases contaminants contained in these wastes into the environment and 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) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State will demonstrate violations by:

(A) Showing that the soils and Karst geology that make up the IRW are particularly susceptible to 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 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 runoff and ground waters, and the sediments of Lake Tenkiller;

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

(D) Analyzing historical poultry waste contaminant concentration trends 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 of 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) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

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 has produced documents addressed by the Court's January 5, 2007, Order associated with the State's sampling scheme with the February 1, 3, and 8 document productions and will continue these productions on a rolling basis. The expert opinions and reports that will show these violations are still being completed and will be provided to the Defendants in accordance with the Court's Scheduling Order (Dkt. #1075).

The State hereby withdraws its previous Fed.R.Civ.P § 33(d) designation for this interrogatory. The State refers Defendant to documents included in the State's February 1, 3, and 8 document production and subsequent updates produced pursuant to the Court's January 5, 2007, Order. [Dkt. # 1016]

INTERROGATORY NO. 8: Please specifically Identify (without just referring to Your Complaint) each and every provision of the Oklahoma Administrative Code which You contend has been violated by any Tyson Defendant or any person or Entity for which any Tyson Defendant may allegedly be held legally responsible and provide:

(a) the date, location and a description of each such violation for which you contend a Tyson Defendant may be held liable;

(b) the name and address of the Grower or other person involved the violation(s) identified in response to the preceding interrogatory subpart; and

(c) Identity any notices of violations, warnings, complaints, investigative reports, agency orders correspondence, photographs, video recordings or witness statements (written or audio) and other Documents or items of evidence which Relate To each such violation or form the basis of Your belief that such a violation has occurred.

SUPPLEMENTAL RESPONSE 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 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).

In addition to the Oklahoma Administrative Code ("OAC") provisions referenced in Supplemental Responses Nos. 4 and 5 (above), the actions of Defendant and its growers violate the following provisions of the OAC: 785:45-1-2, 785:45-3-2, 785:45-1-1, 785:45-5-10, 785:45-5-19, 785:45-5-12, 785:45-7-1, 785:45-7-2, 785:45-7-3, 785:45-5-9, 785:45-5-16, and 785:45-5-25.

The State intends to demonstrate violations of these regulations 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 Defendants' wastes (i.e., the wastes of its growing operations and that of its contract growers) within the IRW releases contaminants contained in these wastes into the environment and 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) discharge, seep and leach from the land applied soils into ground waters that flow into IRW surface waters. In particular, the State 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 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 runoff and ground waters, and the sediments of Lake Tenkiller;

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

(D) Analyzing historical poultry waste contaminant concentration trends in the IRW surface waters (including Lake Tenkiller) and comparing 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 of 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) Showing that poultry waste is the major contributor of nutrients in the IRW using a nutrient mass balance analysis;

(H) Showing that poultry waste is a major contributor of pollutants in the IRW by circumstantial evidence.

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 has produced documents addressed by the Court's January 5, 2007, Order associated with the State's sampling scheme with the February 1, 3, and 8 document productions and will continue these productions on a rolling basis. The expert opinions and reports that will show these violations are still being completed and will be provided to the Defendants in accordance with the Court's Scheduling Order (Dkt. #1075).

The State hereby withdraws its previous Fed.R.Civ.P § 33(d) designation for this interrogatory. The State refers Defendant to documents included in the State's February 1, 3, and 8 document production and subsequent updates produced pursuant to the Court's January 5, 2007, Order. [Dkt. # 1016]

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2007, the foregoing document was mailed to the following, with postage thereon prepaid:

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