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'S SUPPLEMENTAL RESPONSE TO DEFENDANT CARGILL, INC.'S INTERROGATORIES

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 hereby supplements its responses to Defendant Cargill, Inc.'s Interrogatories pursuant to the Court's Order at the September 27, 2007 hearing.

GENERAL OBJECTIONS

The State fully incorporates its previous general objections to these Interrogatories as if fully stated herein.

INTERROGATORY NO. 9: Separately for each Cargill entity at issue, state with particularity the factual and legal basis for the allegation in ¶ 56 of Your Amended Complaint that any Cargill entity's "poultry waste disposal practices are not, and have not been, undertaken in conformity with federal and state laws and regulations" and identify every witness upon whom You will rely to establish each fact.

Exhibit C

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:

The State incorporates its previous general and specific objections and responses, and further 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 the Cargill Defendants and entities for which they are legally responsible violate CERCLA, the Solid Waste Disposal Act (SWDA), and 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. The actions of the Cargill Defendants and entities for which they are legally responsible violate the following provision of the Oklahoma Agricultural Code: 2 O.S. § 2-18.1. Further, the actions of the Cargill Defendants and entities for which they are legally responsible violate the following provision of the Oklahoma Environmental Quality Act: 27A O.S. § 2-6-105, as well as State and Federal common law. In addition, the actions of the Cargill Defendant and entities for which they are legally responsible 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.

At this time, the State has not identified direct evidence of a violation of the applicable statutes or regulations by either of the Cargill entities. The State has substantial circumstantial evidence as set forth in this response, including evidence found in grower files at ODAFF and evidence already produced to the Defendants, which demonstrates violations of applicable

statutes or regulations by the Cargill entities. All of the ODAFF grower files will be part of the State's circumstantial case.[1] Should the State develop such direct evidence, or additional circumstantial evidence, it will supplement its response to this interrogatory.

By way of example and not by limitation, the State has attached as Exhibit 2 hereto ODAFF records of Ernest Doyle which circumstantially demonstrate violations of law for which Cargill is responsible. OKDA 0003033 indicates that Cargill grower Doyle removed separate loads of waste from his operation in the amounts of 175.5 tons and 45 tons in 2001 for spreading in the Oklahoma portion of the IRW, and 246 tons, 78 tons, and 104 tons for spreading in the Oklahoma portion of the IRW in 2002. Similarly, at OKDA 0003030 Cargill grower Doyle reported that he provided separate shipments of 40 tons, 66 tons, and 66 tons of waste to be applied in the Oklahoma portion of the IRW in 2002. On the same page, this Cargill grower also reported that he provided shipments of 66 tons, 216 tons and 66 tons to the Oklahoma portion of the IRW in 2003, which is significant and inconsistent with his reporting of his 2003 activity at OKDA 0003028. At OKDA 0003028 of this record, Cargill grower Doyle indicates that in 2003 he provided three separate shipments of 66 tons, 84 tons, and 72 tons of waste to be applied in the Oklahoma portion of the IRW, and in 2004 provided an additional shipment of 91 tons of waste to be applied in the IRW. OKDA 0003037, 0003041, 0003048, 0003046 and 0003107 also record amounts of litter which was land applied. These records not only establish directly that Cargill-generated waste is being spread upon the land, but cumulatively show that this <u>is</u> the waste disposal practice of the Cargill Defendants.

OKDA 0003039 shows a violation of the rules for failure to perform an annual soil test and perform a litter test before the first application of each year, and failure to have a

[1] The Cargill entity growers for which files have been assigned Bates numbers and produced to the Defendants appear on Exhibit 1 attached hereto.

catastrophic death loss procedure in place. OKDA 0003056 repeated the admonition to get soil and litter tests before the first land application. OKDA 0003053 shows a reminder to get required education.

OKDA 0003045 indicates that litter was spread on Mr. Doyle's property in September, 1998, while in March 1998, the field where it was applied (field no. 3) showed an STP of 1000 to 1250 (recall that 65 is the maximum OSU finds necessary to meet 100% of crop needs). OKDA 0003072 formally notified this grower that he could not apply on field no. 3 based upon its soil test. OKDA 0003077 indicates that soil tests taken in December 1998 show the fields on Mr. Doyle's property had STPs of 884, 728, 811, and 1064 respectively and predicted that Mr. Doyle's operation would produce 560 tons of waste per year which must be applied off site, based on producing 20,500 turkeys. Mr. Doyle now produces 41,000 turkeys a year, see e.g. OKDA 0003014, so his waste production has presumably doubled. In 2000 Mr. Doyle indicated that he had land applied poultry waste for 22 years, which explains why the STP levels on his land are so high. OKDA 0003089.

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 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 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, 2007 document productions and will continue these productions on a rolling basis. Pertinent documents include, but are not limited to, the analysis of the environmental samples included in the Plaintiffs scientific production labeled as LAL 16-A thru D and FAC 08; and the aerial photo and sampling plans found at STOK 16502-16505. Cargill is further referred to the aerial photo produced and the associated ground truthing of it locating Cargill operations as well as those of other Integrators. See OK-PL 0001-OK-PL 4332.

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 has not yet determined which witness or witnesses it will use to prove these facts.

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). See index attached to first supplemental response to this interrogatory.

INTERROGATORY NO. 13: Separately for each Cargill entity at issue, state with particularity the factual and legal basis for the allegation contained in Count 4 of Your Amended Complaint that the conduct and acts of any Cargill entity constitute a nuisance under Oklahoma law (including, but not limited to, an alleged violation of 27A Okla. Stat. § 2-6-105 or 2 Okla. Stat. § 2-18.1) and identify every witness upon whom You will rely to establish each fact.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:

The State incorporates its previous general and specific objections and responses, and further 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).

At this time, the State has not identified direct evidence of an action constituting a nuisance by either of the Cargill entities. The State has substantial circumstantial evidence as set forth in this response, including evidence found in grower files at ODAFF and evidence already produced to the Defendants, which demonstrates actions constituting a nuisance by the Cargill entities. All of the ODAFF grower files will be part of the State's circumstantial case.[2] Should the State develop such direct evidence, or additional circumstantial evidence, it will supplement its response to this interrogatory.

[2] The Cargill entity growers for which files have been assigned Bates numbers and produced to the Defendants appear on Exhibit 1 attached hereto.

By way of example and not by limitation, the State has attached as Exhibit 2 hereto ODAFF records of Ernest Doyle which circumstantially demonstrate violations of law for which Cargill is legally responsible. OKDA 0003033 indicates that Cargill grower Doyle removed separate loads of waste from his operation in the amounts of 175.5 tons and 45 tons in 2001 for spreading in the Oklahoma portion of the IRW, and 246 tons, 78 tons, and 104 tons for spreading in the Oklahoma portion of the IRW in 2002. Similarly, at OKDA 0003030 Cargill grower Doyle reported that he provided separate shipments of 40 tons, 66 tons, and 66 tons of waste to be applied in the Oklahoma portion of the IRW in 2002. On the same page, this Cargill grower also reported that he provided shipments of 66 tons, 216 tons and 66 tons to the Oklahoma portion of the IRW in 2003, which is significant and inconsistent with his reporting of his 2003 activity at page OKDA 0003028. At OKDA 0003028 of this record, Cargill grower Doyle indicates that in 2003 he provided three separate shipments of 66 tons, 84 tons, and 72 tons of waste to be applied in the Oklahoma portion of the IRW, and in 2004 provided an additional shipment of 91 tons of waste to be applied in the IRW. OKDA 0003037, 0003041, 0003048, 0003046 and 0003107 also record amounts of litter which was land applied. These records not only establish directly that Cargill-generated waste is being spread upon the land, but cumulatively show that this <u>is</u> the waste disposal practice of the Cargill Defendants.

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OKDA 0003045 indicates that litter was spread on Mr. Doyle's property in September, 1998, while in March 1998, the field where it was applied (field no. 3) showed an STP of 1000 to 1250 (recall that 65 is the maximum OSU finds necessary to meet 100% of crop needs). OKDA 0003072 formally notified this grower that he could not apply on field no. 3 based upon its soil test. OKDA 0003077 indicates that soil tests taken in December 1998 show the fields on Mr. Doyle's property had STPs of 884, 728, 811, and 1064 respectively and predicted that Mr. Doyle's operation would produce 560 tons of waste per year which must be applied off site, based on producing 20,500 turkeys. Mr. Doyle now produces 41,000 turkeys a year, see e.g. OKDA 0003014, so his waste production has presumably doubled. In 2000 Mr. Doyle indicated that he had land applied poultry waste for 22 years, which explains why the STP levels on his land are so high. OKDA 0003089.

The State intends to demonstrate the conduct of the Cargill Defendants constitute a nuisance under Oklahoma law (including, but not limited to, an alleged violation of 27A Okla. Stat. § 2-6-105 or 2 Okla. Stat. § 2-18.1) 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 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 and will continue these productions on a rolling basis. Pertinent documents include, but are not limited to, the analysis of the environmental samples included in the Plaintiffs scientific production labeled as LAL 16-A thru D and FAC 08; and the aerial photo and sampling plans found at STOK 16502-16505. Cargill is further referred to the aerial photo produced and the associated ground truthing of it locating Cargill operations as well as those of other Integrators. See OK-PL 0001-OK-PL 4332.

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 has not yet determined which witness or witnesses it will use to prove these facts.

The State refers Defendant to documents included in the State's February 1, 3, and 8, 2007 document production and subsequent updates produced pursuant to the Court's January 5, 2007 Order. See index attached to first supplemental response to this interrogatory. The State will supplement this Interrogatory as responsive information is identified, except the State will disclose information known or opinions held by expert consultants retained or employed in

anticipation of litigation or preparation for trial upon which it intends to rely pursuant to the Court's Scheduling Order (Dkt. #1075).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 2007, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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Also on this 19th day of October, 2007, I mailed a copy of the above and foregoing pleading to the following:

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