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

STATE OF OKLAHOMA, *ex rel.* W.A. DREW EDMONDSON, in his capacity as ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, *et al.*	)	
Plaintiffs	)	
vs.	)	05-CV-00329-GKF-PJC
TYSON FOODS, INC., *et al.*	)	
Defendants	)	

RESPONSES OF DEFENDANT CAL-MAINE FARMS, INC. TO STATE OF OKLAHOMA'S MARCH 17, 2009 INTERROGATORIES AND REQUESTS FOR PRODUCTION

Defendant, Cal-Maine Farms, Inc., ("Cal-Maine") submits the following Responses to State of Oklahoma's March 17, 2009 Interrogatories and Requests for Production of Documents to Cal-Maine, pursuant to Federal Rules of Civil Procedure 26, 33, and 34.

GENERAL OBJECTIONS:

1. Cal-Maine objects to, and does not agree to subject itself to, the arbitrary and extraordinary "definitions and instructions" described by the State to certain terms as set forth in their March 17, 2009 Interrogatories and Request for Production of Documents propounded to Cal-Maine. To the extent that such terms appear in the Interrogatories and Requests for Production of Documents and are in excess of the requirement of the Federal Rules of Civil Procedure and Orders of the Court, Cal-Maine instead ascribes the ordinary, every day and reasonably, commonly understood meanings

EXHIBIT
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which apply to such terms, and also which comply with the Federal Rules of Civil Procedure. Cal-Maine objects to the definitions to the extent they assume facts not in evidence or related to facts or contentions in dispute in the action. Cal-Maine also specifically objects to the following definitions:

a. The definition of "Poultry Waste" is overly broad, inconsistent with the terminology set forth in the statutes and regulations governing poultry growing operations in the Illinois River Watershed ("IRW"), and includes substances not typically associated with poultry litter.

b. The definition of "Your poultry growing operations" is argumentative, and by virtue of ignoring the legal and factual distinction between Cal-Maine owned and operated facilities (of which there are none in the IRW), and those operations owned and operated by independent contractors, the State seeks for Cal-Maine to admit as a predicate to its responses factual and legal issues in dispute in the lawsuit.

c. The definition of "Run-off" is misleading, overly broad, vague and ambiguous. Cal-Maine objects to the definition as it includes within its scope both the acts of nature and volitional or negligent acts of persons which cannot be characterized by a single term. The term is also ambiguous in that it is unclear whether Plaintiffs are suggesting that a "release" involves the substance they define as "poultry waste," or whether it also includes chemical or other constituents which comprise some fraction of "poultry waste." Cal-Maine also objects to the definition in that it employs the term "release," which has a specific statutory and regulatory meaning, and as such, the definition seeks for Cal-Maine, as a predicate to its responses, to admit factual and legal matters, which are in dispute in the lawsuit.

d. The definition of "Waters of the State" is misleading, overly broad, vague and ambiguous. Cal-Maine objects to this definition as it seeks to categorize privately owned and localized waters as "waters of the State," which is unsupported by law. Cal-Maine also objects to the definition as it seeks for Cal-Maine, as predicate to its responses, to admit factual and legal matters, which are in dispute in the lawsuit.

2. Each of the following responses are made subject to and without any waiving any objections Cal-Maine may have with respect to the subsequent use of these responses or the documents identified pursuant thereto, and Cal-Maine specifically reserves: (a) all questions as to the privilege, relevancy, materiality, and admissibility of said responses or documents; (b) the right to object to the uses of said responses or the documents identified pursuant thereto in any lawsuit or proceeding on any or all of the foregoing grounds or on any other proper ground; (c) the right to object on any and all proper grounds, at any time, to other discovery procedures involving or related to said responses or documents; and (d) the right, at any time, upon proper showing, to revise, correct or clarify any of the following responses.

3 Cal-Maine objects to each and every request to the extent it seeks or calls for information or the identification of documents which are protected from discovery and privileged by reason of: (a) the attorney-client communication privilege; (b) the "work product" doctrine; (c) the "trial preparation" doctrine; (d) the joint defense of "co-party" privilege; or (e) any other applicable discovery rule or privilege. To the extent Cal-Maine withholds or claims any protection from discovery from any document, Cal-Maine will produce logs of such documents as the document production progresses.

4. Cal-Maine objects to each and every request to the extent it seeks information or the identification of documents concerning any claims or occurrences other than the claims and occurrences set forth in the State's First Amended Complaint for which the State request relief.

5. Cal-Maine objects to the Requests for Production as duplicative of previous document requests served on Cal-Maine Cal-Maine has produced documents and things responsive to these prior requests for production and, where appropriate, has supplemented its production in accordance with the Federal Rules of Civil Procedure. Accordingly, Cal-Maine has no further obligation to produce documents they have already produced to Plaintiffs.

6. Cal-Maine also incorporates as though fully restated herein all objections and limitations to responses made by every other Defendant to the corresponding requests to admit and request for production.

7. Except as set for the above, the foregoing objections apply to each and every response herein. By specifically incorporating individual General Objections in any response, Cal-Maine expressly does not waive the application of the remainder of the General Objections to such response.

INTERROGATORIES

Interrogatory No. 1: Please identify each instance (including, where available, specific date, specific location, tonnage of waste applied, acreage upon which it was applied, and STP before application) in which poultry waste generated at your poultry feeding operations, or at poultry feeding operations under contract with you, has been

applied within the IRW as fertilizer, identifying all witnesses to the application and all documents evidencing it.

Answer: Cal-Maine incorporates the General Objections into its answer to Interrogatory No. 1. Cal-Maine further objects to the interrogatory as vague, overly burdensome, overly broad and not limited in any way with regard to time or scope of information sought. The interrogatory seeks information which Cal-Maine neither tracks nor maintains in the normal course of its business. Cal-Maine also objects to the interrogatory as misleading in that it suggests that the owner of the poultry houses where the "poultry waste" is initially situated , *i.e.,* the independent contract poultry grower, is the individual who makes the ultimate decision as to the location, amount and times for every land application of such "poultry waste." The State's interrogatory ignores that third persons within and without the IRW acquire title to "poultry waste" from the poultry growers and make their own decisions about utilization of the "poultry waste" according to their own purposes. Cal-Maine objects to the interrogatory to the extent that the information sought is obtainable from the reports, records and documentation required to be submitted to the State of Oklahoma and its administrative agencies under Oklahoma law by anyone within the IRW who land applies poultry litter as fertilizer and, thus, already within Plaintiffs' possession and control. Subject to and without waiving the foregoing objections and the General Objections, Cal-Maine does not have knowledge of when poultry litter is applied within the IRW, where it is applied, how much is applied, or the STP for any location before its application.

Interrogatory No. 2: Please identify each instance (including, where available, specific date, specific location, tonnage of waste applied, acreage upon which it was

applied, and STP before application) where poultry waste generated at your poultry feeding operations, or at poultry feeding operations under contract with you, has been land applied within the IRW which as not resulted in run-off or leaching, identifying all witnesses to the application and all documents evidencing it.

Answer: Cal-Maine incorporates its objections and answer to Interrogatory No. 1 as though fully re-stated herein. Cal-Maine incorporates the General Objections, into its answer to Interrogatory No. 2. Cal-Maine further objects as argumentative, overly burdensome and broad, vague and not limited in any way with regard to time or scope of information sought. Plaintiffs do not identify with specificity the runoff or leaching of any particular substance, thereby requiring Cal-Maine to speculate as to the alleged runoff or leaching. Cal-Maine also objects to this interrogatory as it assumes facts not in evidence, and presumes that "run-off or leaching" of "poultry waste", or some other substance, has occurred in the IRW. Cal-Maine further objects to this interrogatory as it contains a contention that improperly purports to shift the burden of proof from Plaintiffs to Cal-Maine on the issue of whether any "run-off or leaching" of "poultry waster" has occurred. Cal-Maine also objects to the interrogatory as misleading in that is suggests that the owner of the poultry houses where the "poultry waste" is initially situated, *i.e.,* the independent contact poultry grower, is the individual who makes the ultimate decision as to the location, amount and timing for every land of such "poultry waste." Plaintiffs' interrogatory ignores that third persons within and without the IRW acquire title to "poultry waste" from poultry growers, and make their own decisions about utilization of the "poultry waste" according to their own purposes. Subject to and without waiving the foregoing objections and the General Objections, Cal-Maine does

not have knowledge of when poultry litter is applied within the IRW, where it is applied, how much is applied, or the STP for any location before its application.

Subject to and without waiving the foregoing objections and its General Objections, Cal-Maine is also not aware that any "poultry waste" land applied by any independent grower formerly under contract with it has resulted in any "run-off or leaching" in the IRW. Representatives of the State of Oklahoma, *see e.g.,* depositions of Teena Gunter or Mike Thralls, have indicated that compliance with Nutrient Management Plans is compliance with Oklahoma law with regard to, among other things, run-off. Plaintiffs have not identified any poultry grower formerly under contract with Cal-Maine who has violated his or her Nutrient Management Plan; therefore, Cal-Maine is not aware of any evidence that any "run-off or leaching" has occurred in the IRW.

REQUESTS FOR PRODUCTION

Request for Production No. 1: Please produce all documents identified in the foregoing interrogatories.

Response; Cal-Maine incorporates the General Objections into its answer to Request for Production No. 1. Cal-Maine incorporates its objections and answer to Interrogatory Nos. 1 and 2 as though fully re-stated herein. Subject to the foregoing objections and the General Objections, to the extent Cal-Maine possesses such information in its business records if at all, it will be contained with the Nutrient Management Plans, which to the extent possessed by Cal-Maine, are included within its previously produced documents to the State.

Request for Production No. 2: Please produce all documents evidencing land application of poultry waste from your poultry feeding operations, or those of your

contract growers in the IRW in which the land application was used as fertilizer, including, but not limited to the specific date, specific location, tonnage of waste applied, acreage upon which it was applied, and STP before application.

Response: Cal-Maine herein incorporates its response and objections to Request for Production No. 1 as if fully reinstated herein.

Request for Production No. 3: Please produce all documents evidencing land application of poultry waste from your poultry feeding operations, or those of your contract growers, in the IRW in which the land application of poultry waste has not resulted in any run-off or leaching, including but not limited to the specific date, specific location, tonnage of waster applied, acreage upon which it was applied, and STP before application.

Response: Cal-Maine herein incorporates its response and objections to Request for Production No. 1 as if fully restated herein.

Respectfully submitted,

By: _____

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The undersigned certifies that the above and foregoing document was sent via electronic mail on the 16th day of April, 2009, to the following counsel of record:
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, *ex rel.* W.A. DREW EDMONDSON, in his capacity as ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, *et al.*	)	
Plaintiffs	)	
vs.	)	05-CV-00329-GKF-PJC
TYSON FOODS, INC., *et al.*	)	
Defendants	)	

RESPONSES OF DEFENDANT CAL-MAINE FOODS, INC. TO STATE OF OKLAHOMA'S MARCH 17, 2009 INTERROGATORIES AND REQUESTS FOR PRODUCTION

Defendant, Cal-Maine Foods, Inc., ("Cal-Maine") submits the following Responses to State of Oklahoma's March 17, 2009 Interrogatories and Requests for Production of Documents to Cal-Maine, pursuant to Federal Rules of Civil Procedure 26, 33, and 34.

GENERAL OBJECTIONS:

1. Cal-Maine objects to, and does not agree to subject itself to, the arbitrary and extraordinary "definitions and instructions" described by the State to certain terms as set forth in their March 17, 2009 Interrogatories and Request for Production of Documents propounded to Cal-Maine. To the extent that such terms appear in the Interrogatories and Requests for Production of Documents and are in excess of the requirement of the Federal Rules of Civil Procedure and Orders of the Court, Cal-Maine instead ascribes the ordinary, every day and reasonably, commonly understood meanings

which apply to such terms, and also which comply with the Federal Rules of Civil Procedure. Cal-Maine objects to the definitions to the extent they assume facts not in evidence or related to facts or contentions in dispute in the action. Cal-Maine also specifically objects to the following definitions:

a. The definition of "Poultry Waste" is overly broad, inconsistent with the terminology set forth in the statutes and regulations governing poultry growing operations in the Illinois River Watershed ("IRW"), and includes substances not typically associated with poultry litter.

b. The definition of "Your poultry growing operations" is argumentative, and by virtue of ignoring the legal and factual distinction between Cal-Maine owned and operated facilities (of which there are none in the IRW), and those operations owned and operated by independent contractors, the State seeks for Cal-Maine to admit as a predicate to its responses factual and legal issues in dispute in the lawsuit.

c. The definition of "Run-off" is misleading, overly broad, vague and ambiguous. Cal-Maine objects to the definition as it includes within its scope both the acts of nature and volitional or negligent acts of persons which cannot be characterized by a single term. The term is also ambiguous in that it is unclear whether Plaintiffs are suggesting that a "release" involves the substance they define as "poultry waste," or whether it also includes chemical or other constituents which comprise some fraction of "poultry waste." Cal-Maine also objects to the definition in that it employs the term "release," which has a specific statutory and regulatory meaning, and as such, the definition seeks for Cal-Maine, as a predicate to its responses, to admit factual and legal matters, which are in dispute in the lawsuit.

d. The definition of "Waters of the State" is misleading, overly broad, vague and ambiguous. Cal-Maine objects to this definition as it seeks to categorize privately owned and localized waters as "waters of the State," which is unsupported by law. Cal-Maine also objects to the definition as it seeks for Cal-Maine, as predicate to its responses, to admit factual and legal matters, which are in dispute in the lawsuit.

2. Each of the following responses are made subject to and without any waiving any objections Cal-Maine may have with respect to the subsequent use of these responses or the documents identified pursuant thereto, and Cal-Maine specifically reserves: (a) all questions as to the privilege, relevancy, materiality, and admissibility of said responses or documents; (b) the right to object to the uses of said responses or the documents identified pursuant thereto in any lawsuit or proceeding on any or all of the foregoing grounds or on any other proper ground; (c) the right to object on any and all proper grounds, at any time, to other discovery procedures involving or related to said responses or documents; and (d) the right, at any time, upon proper showing, to revise, correct or clarify any of the following responses.

3 Cal-Maine objects to each and every request to the extent it seeks or calls for information or the identification of documents which are protected from discovery and privileged by reason of: (a) the attorney-client communication privilege; (b) the "work product" doctrine; (c) the "trial preparation" doctrine; (d) the joint defense of "co-party" privilege; or (e) any other applicable discovery rule or privilege. To the extent Cal-Maine withholds or claims any protection from discovery from any document, Cal-Maine will produce logs of such documents as the document production progresses.

4. Cal-Maine objects to each and every request to the extent it seeks information or the identification of documents concerning any claims or occurrences other than the claims and occurrences set forth in the State's First Amended Complaint for which the State request relief.

5. Cal-Maine objects to the Requests for Production as duplicative of previous document requests served on Cal-Maine Cal-Maine has produced documents and things responsive to these prior requests for production and, where appropriate, has supplemented its production in accordance with the Federal Rules of Civil Procedure. Accordingly, Cal-Maine has no further obligation to produce documents they have already produced to Plaintiffs.

6. Cal-Maine also incorporates as though fully restated herein all objections and limitations to responses made by every other Defendant to the corresponding requests to admit and request for production.

7. Except as set for the above, the foregoing objections apply to each and every response herein. By specifically incorporating individual General Objections in any response, Cal-Maine expressly does not waive the application of the remainder of the General Objections to such response.

INTERROGATORIES

Interrogatory No. 1: Please identify each instance (including, where available, specific date, specific location, tonnage of waste applied, acreage upon which it was applied, and STP before application) in which poultry waste generated at your poultry feeding operations, or at poultry feeding operations under contract with you, has been

applied within the IRW as fertilizer, identifying all witnesses to the application and all documents evidencing it.

Answer: Cal-Maine incorporates the General Objections into its answer to Interrogatory No. 1. Cal-Maine further objects to the interrogatory as vague, overly burdensome, overly broad and not limited in any way with regard to time or scope of information sought. The interrogatory seeks information which Cal-Maine neither tracks nor maintains in the normal course of its business. Cal-Maine also objects to the interrogatory as misleading in that it suggests that the owner of the poultry houses where the "poultry waste" is initially situated , *i.e.,* the independent contract poultry grower, is the individual who makes the ultimate decision as to the location, amount and times for every land application of such "poultry waste." The State's interrogatory ignores that third persons within and without the IRW acquire title to "poultry waste" from the poultry growers and make their own decisions about utilization of the "poultry waste" according to their own purposes. Cal-Maine objects to the interrogatory to the extent that the information sought is obtainable from the reports, records and documentation required to be submitted to the State of Oklahoma and its administrative agencies under Oklahoma law by anyone within the IRW who land applies poultry litter as fertilizer and, thus, already within Plaintiffs' possession and control. Subject to and without waiving the foregoing objections and the General Objections, Cal-Maine does not have knowledge of when poultry litter is applied within the IRW, where it is applied, how much is applied, or the STP for any location before its application.

Interrogatory No. 2: Please identify each instance (including, where available, specific date, specific location, tonnage of waste applied, acreage upon which it was

applied, and STP before application) where poultry waste generated at your poultry feeding operations, or at poultry feeding operations under contract with you, has been land applied within the IRW which as not resulted in run-off or leaching, identifying all witnesses to the application and all documents evidencing it.

Answer: Cal-Maine incorporates its objections and answer to Interrogatory No. 1 as though fully re-stated herein. Cal-Maine incorporates the General Objections, into its answer to Interrogatory No. 2. Cal-Maine further objects as argumentative, overly burdensome and broad, vague and not limited in any way with regard to time or scope of information sought. Plaintiffs do not identify with specificity the runoff or leaching of any particular substance, thereby requiring Cal-Maine to speculate as to the alleged runoff or leaching. Cal-Maine also objects to this interrogatory as it assumes facts not in evidence, and presumes that "run-off or leaching" of "poultry waste", or some other substance, has occurred in the IRW. Cal-Maine further objects to this interrogatory as it contains a contention that improperly purports to shift the burden of proof from Plaintiffs to Cal-Maine on the issue of whether any "run-off or leaching" of "poultry waster" has occurred. Cal-Maine also objects to the interrogatory as misleading in that is suggests that the owner of the poultry houses where the "poultry waste" is initially situated, *i.e.,* the independent contact poultry grower, is the individual who makes the ultimate decision as to the location, amount and timing for every land of such "poultry waste." Plaintiffs' interrogatory ignores that third persons within and without the IRW acquire title to "poultry waste" from poultry growers, and make their own decisions about utilization of the "poultry waste" according to their own purposes. Subject to and without waiving the foregoing objections and the General Objections, Cal-Maine does

not have knowledge of when poultry litter is applied within the IRW, where it is applied, how much is applied, or the STP for any location before its application.

Subject to and without waiving the foregoing objections and its General Objections, Cal-Maine is also not aware that any "poultry waste" land applied by any independent grower formerly under contract with it has resulted in any "run-off or leaching" in the IRW. Representatives of the State of Oklahoma, *see e.g.,* depositions of Teena Gunter or Mike Thralls, have indicated that compliance with Nutrient Management Plans is compliance with Oklahoma law with regard to, among other things, run-off. Plaintiffs have not identified any poultry grower formerly under contract with Cal-Maine who has violated his or her Nutrient Management Plan; therefore, Cal-Maine is not aware of any evidence that any "run-off or leaching" has occurred in the IRW.

REQUESTS FOR PRODUCTION

Request for Production No. 1: Please produce all documents identified in the foregoing interrogatories.

Response; Cal-Maine incorporates the General Objections into its answer to Request for Production No. 1. Cal-Maine incorporates its objections and answer to Interrogatory Nos. 1 and 2 as though fully re-stated herein. Subject to the foregoing objections and the General Objections, to the extent Cal-Maine possesses such information in its business records if at all, it will be contained with the Nutrient Management Plans, which to the extent possessed by Cal-Maine, are included within its previously produced documents to the State.

Request for Production No. 2: Please produce all documents evidencing land application of poultry waste from your poultry feeding operations, or those of your

contract growers in the IRW in which the land application was used as fertilizer, including, but not limited to the specific date, specific location, tonnage of waste applied, acreage upon which it was applied, and STP before application.

Response: Cal-Maine herein incorporates its response and objections to Request for Production No. 1 as if fully reinstated herein.

Request for Production No. 3: Please produce all documents evidencing land application of poultry waste from your poultry feeding operations, or those of your contract growers, in the IRW in which the land application of poultry waste has not resulted in any run-off or leaching, including but not limited to the specific date, specific location, tonnage of waster applied, acreage upon which it was applied, and STP before application.

Response: Cal-Maine herein incorporates its response and objections to Request for Production No. 1 as if fully restated herein.

Respectfully submitted,

By: _____

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Attorneys for Cal-Maine Foods, Inc., and
Cal-Maine Farms, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that the above and foregoing document was sent via electronic mail on the 16th day of April, 2009, to the following counsel of record:
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