

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**HARRY STEPHENS FARMS, INC.; and
HARRY STEPHENS, individually and as
managing partner of STEPHENS PARTNERSHIP**

PLAINTIFF

V.

**CASE NO. 2:06CV00166 JMM
Consolidated with
CASE NO. 4:07CV00278 JMM**

**WORMALD AMERICAS, INC.,
Successor to ANSUL, INC.; and
HELENA CHEMICAL CO., INC.
EXXON MOBILE CORPORATION
Successor to MOBIL CHEMICAL CO.**

DEFENDANTS

ORDER

Pending is Plaintiffs' motion for summary judgment and request to take judicial notice. (Docket # 119). The Defendants have filed responses and Plaintiffs' have filed a reply. In Plaintiffs' reply, Plaintiffs acknowledge that Defendants' affidavits and documents attached to their pleadings raise factual issues precluding summary judgment as to Plaintiffs' state law claims. Accordingly, Plaintiffs' motion for summary judgment and request to take judicial notice is DENIED.

Plaintiffs' include in their reply brief a motion for summary judgment pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and the Resource Conservation and Recovery Act ("RCRA"). Plaintiffs' current complaint does not allege causes of action pursuant to RCRA and CERCLA. Although Plaintiffs have requested leave to file an amended complaint, the Court has not yet ruled on Plaintiffs' motion. Further, Plaintiffs' motion for summary judgment fails to comply with the Rules of the U.S. District Court

for the Eastern and Western Districts of Ark. 7.2 and 56.1. Accordingly, Plaintiffs' motion for summary judgment pursuant to CERCLA and RCRA is DENIED without prejudice. Defendant, Exxon Mobil Corporation's motion to strike, docket # 185, is hereby MOOT.

IT IS SO ORDERED this 26th day of May, 2010.


James M. Moody
United States District Judge