

DOCKETED
USNRC

RAS B-60

August 16, 2008 (8:00am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

LAW OFFICE OF BRUCE ELLISON

328 East New York Street, Ste. 5

P.O. Box 2508

Rapid City, S.D. 57709

(605) 348-9458 (Office)

341-1583 (Fax)

belli4law@aol.com

roxanneandre@yahoo.com

August 15, 2008

Office of the Secretary
Attn: Docketing and Service
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: In the Matter of Crowe Butte Resources, Inc.
Docket number 40-8943

Office of the Secretary:

Please file the enclosed Petitioners' Post-Argument Submission Re: NDEQ Consent Decree, together with a Certificate of Service and attachments.

If you have any questions or concerns, please do not hesitate to contact our office.

Thank you.

Sincerely,



Bruce Ellison

Attorney for Owe Aku and Debra White Plume

Template Aug-021

DS-03

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
Before Administrative Judges:
Ann Marshall Young, Chair
Dr. Richard F. Cole
Dr. Fred W. Oliver

In the Matter of

CROW BUTTE RESOURCES, INC.
(In Situ Leach Facility, Crawford, NE)

Docket No. 40-8943
ASLBF No. 07-859-03-MLA-BD01

August 15, 2008

PETITIONERS' POST-ARGUMENT SUBMISSION RE: NDEQ CONSENT DECREE

Pursuant to the August 5, 2008 Order, Confirming Matters Addressed at July 23, 2008, Oral Argument, Petitioners' hereby provide the supporting documentation of the violations mentioned in oral arguments in support of a request for a Subpart G hearing. Please find attached a Complaint filed in the District Court of Lancaster County, NE, by the State of Nebraska, ex rel., Nebraska Department of Environmental Quality; and the related Consent Decree filed by the Clerk of the District Court on May 23, 2008.

Neither the alleged violations, dating back to July 1, 2003, nor the self-reporting of said violations to the NDEQ on April 7, 2006 were disclosed by Applicant in their application for the North Trend Expansion. Furthermore, the complaint and consent decree (attached) were learned of through independent research rather than a fulfillment of the obligation of the applicant "to disclose all relevant material from the outset," as explained on the NRC's website: Frequently Asked Questions (FAQ) About 10 CFR Part 2 Revisions.

Where Applicant has already demonstrated a failure to carry out disclosure responsibilities in accordance with the highest standards of integrity and as required under 10 CFR 40.9, they cannot be expected to conform to the more streamlined discovery procedures of Subpart L. Only through the formal

discovery procedures of Subpart G, can the public rest assured that their health and safety welfare is being considered fully. Finally, the goal of reducing the cost and burden of hearings for all parties is not realized when the Applicant, as illustrated here, cannot be trusted to comply with self-reporting obligations or to disclose its own violations in its license applications. This in turn raises the cost and burden to Petitioners as every document must be independently located and every fact must be independently verified as the Applicant has lost all credibility.

Further, Applicant shows itself to be a scofflaw based on its intentional disregard for applicable laws, rules and regulations. Applicant intentionally violated the terms of its NDEQ Underground Injection Permit (UIC Permit) which requires that no wastewater be discharged to the land surface or surface waters. From July 1, 2003 to March 31, 2006, Applicant violated that NDEQ UIC Permit condition on a daily basis. As an additional violation, Applicant intentionally disregarded the term of the UIC Permit which prohibits the use of Chadron Formation well development water as drilling water and required Applicant to treat well development water from the Chadron Formation as liquid waste stream to be collected and retained in the lined evaporation ponds. Contrary to such express terms of the UIC Permit, Applicant used Chadron Formation well development water as drilling water on a daily basis from July 1, 2003 to March 31, 2006. Also, during that period, Applicant constructed injection wells and uranium production wells in a manner that had the potential to allow the movement of fluid containing contaminants into an underground source of drinking water in violation of Nebraska law and regulations, US Clean Water Act and Environmental Protection Act, and the Winters rights of the Oglala Petitioners.

Finally, Applicant's intentional delay in notifying the NDEQ from discovery on March 31, 2006 until disclosure on May 12, 2006 was a violation of its self-reporting obligations. These self-reporting obligations are similar to the streamlined discovery procedures of Subpart L and are based on an assumption of good faith compliance and good faith disclosure. Applicant has shown a pattern and practice of non-reporting, concealment, omissions of material facts and violations of self-reporting requirements as shown in the example of the May 2008 NDEQ Consent Decree.

The Petitioners respectfully submit that resolution of material facts regarding Contentions A-C and E as to the occurrences of past activity and other related matters involves issues of credibility, motive, and intent of the Applicant, together with Applicant's demonstrated "culture of concealment," makes it incumbent upon the Board to exercise its discretion in this case and impose reasonable Subpart G discovery measures requested by Petitioners.

CONCLUSION

For the reasons stated above, the foregoing legal principles and facts, especially in light of the contentions regarding reckless disregard by Applicant of the applicable laws and regulations concerning disclosure of foreign ownership and geologic information, the intentional concealment of such information from regulators and the intentional failure to timely report violations of its UIC Permit, there is clearly support for the implementation of Subpart G discovery procedures including depositions, interrogatories and document requests under supervision of the Board.

Dated this 15th day of August, 2008

Respectfully submitted,


Bruce Ellison

BRUCE ELLISON
P.O. Box 2508
Rapid City, S.D. 57709
605-348-9458
belli4law@aol.com

Attorney for Debra White Plume
And Owe Aku

/s/ David Frankel
DAVID FRANKEL
P.O. Box 3014
Pine Ridge, SD 57770
206-427-4747
Arm.legal@gmail.com

Attorney for WNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
Before Administrative Judges:
Ann Marshall Young, Chair
Dr. Richard F. Cole
Dr. Fred W. Oliver

In the Matter of

CROW BUTTE RESOURCES, INC.
(In Situ Leach Facility, Crawford, NE)

Docket No. 40-8943
ASLBP No. 07-859-03-MLA-BD01

August 15, 2008

CERTIFICATE OF SERVICE

I hereby certify that copies "PETITIONERS' SUBPART G ORAL ARGUMENT SUPPORTING DOCUMENTATION" in the above captioned proceeding has been served on the following persons by electronic mail as indicated by a double asterisk (**), and by deposit in the United States Mail as indicated by an asterisk (*); on this 15th day of August, 2008:

Judge Ann Marshall Young, Chair * **
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-Mail: Ann.Young@nrc.gov

Judge Fred W. Oliver * **
10433 Owen Brown Road
Columbia, MD 21044
E-mail: FWOLIVER@verizon.net

Judge Richard F. Cole * **
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Richard.Cole@nrc.gov

Mrs. Johanna Thibault * **
Board Law Clerk
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Johanna.Thibault@nrc.gov

Office of the Secretary * **
Attn: Docketing and Service
U.S. Nuclear Regulatory Commission
Washington, DC 20555
E-mail: Hearing.Docket@nrc.gov
(original & 2 copies)

Office of Comm. App. Adjudication * **
U.S. Nuclear Regulatory Commission
Washington, D.C 20555
E-mail: OCAAMAIL.Resource@nrc.gov
Office of the General Counsel **
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Andrea Z. Jones, Esq.
Andrea.Jones@nrc.gov

Catherine Marco, Esq.
Catherine.Marco@nrc.gov

Tyson R. Smith, Esq. **
Winston & Strawn LLP
1700 K St. NW
Washington, DC 20006
E-Mail: trsmith@winston.com

Mark D. McGuire, Esq. **
McGuire and Norby
605 South 14th Street, Suite 100
Lincoln, NE 60508
E-Mail: mdmsjn@alltel.net

David Frankel, Esq. **
P. O. Box 3014
Pine Ridge, SD 57770
E-mail: arm.legal@gmail.com

Debra White Plume **
P. O. Box 71
Manderson, SD 57756
E-mail: LAKOTA1@gwtc.net

Shane C. Robinson **
2814 E. Olive St.
Seattle, WA 98122
E-mail: shanecrobinson@gmail.com
Thomas Kanatakeniate Cook **
1705 S. Maple Street
Chadron, NE 69337
E-mail: tcook@indianyouth.org

Western Nebraska Resources
Council **
Attn: Buffalo Bruce
P. O. Box 612
Chadron, NE 69337
E-mail: buffalobruce@panhandle.net

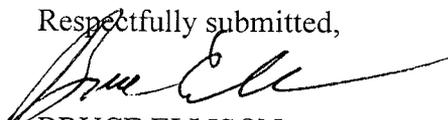
Crow Butte Resources, Inc. **
Attn: Stephen P. Collings
141 Union Blvd., Suite 330
Lakewood, CO 80228
E-mail: steve_collings@cameco.com

Owe Aku, Bring Back the Way **
Attn: Debra White Plume
P. O. Box 325
Manderson, SD 57756
E-mail: LAKOTA1@gwtc.net

Slim Buttes Ag. Dev. Corp. **
Attn: Joseph American Horse, Sr., President
P.O. Box 941
Pine Ridge SD 57770
E-mail slmbttsag@bbc.net

Elizabeth Maria Lorina **
Law Office of Mario Gonzalez
522 7th Street, Suite 202
RapidCity, SD 57701
E-mail elorina@gnzlawfirm.com

Respectfully submitted,



BRUCE ELLISON

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
)
v.)
)
CROW BUTTE RESOURCES, INC., a)
Nebraska Corporation,)
)
Defendant.)

Case No. _____

COMPLAINT

COMES NOW, Michael J. Linder, Director of the Department of Environmental Quality, who institutes this action through Jon C. Bruning, Attorney General, on behalf of the State of Nebraska, and alleges as follows:

FIRST CLAIM

1. The Nebraska Department of Environmental Quality (hereinafter NDEQ), is at all times alleged herein, the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. §81-1504(1) (Reissue 1999), of exercising exclusive general supervision, administration, and enforcement of the Environmental Protection Act (hereinafter the Act), Neb. Rev. Stat. §81-1501 *et seq* (Reissue 1999 and Cum. Supp. 2006) and all rules, regulations, and permits created thereunder.

2. Defendant Crow Butte Resources, Inc. (hereinafter CBR), at all times alleged herein, is a Nebraska corporation which owns and operates an in-situ uranium mining facility which is located on approximately 2,840 acres in all or portions of Sections 11, 12, and 13 of Township 31 North, Range 52 West of the

6th P.M., Dawes County, Nebraska, and Sections 18, 19, 20, 29, and 30 of Township 31 North, Range 51 West of the 6th P.M., Dawes County, Nebraska.

3. Pursuant to its authority under Neb. Rev. Stat. §81-1504(11) (Cum. Supp. 2006), NDEQ issued an Underground Injection Control (hereinafter UIC) Permit to CBR, UIC Permit No. NE0122611 which required:

All of the liquid waste streams shall be collected and retained in the lined evaporation ponds, or disposed of in a permitted deep disposal well as approved by the Department. This permit does not authorize any wastewater discharge to the land surface or surface waters of the State.

4. Violation of a permit condition or limitation is a violation of Neb. Rev. Stat. §81-1508.02(1)(b).

5. Beginning on or about July 1, 2003, and continuing daily thereafter until March 31, 2006, Defendant CBR violated its UIC Permit No. NE0122611 by releasing well development water upon the surface of the ground during CBR's well development and drilling process.

6. Pursuant to Neb. Rev. Stat. §81-1508.02, a civil penalty, not to exceed ten thousand dollars (\$10,000.00), is warranted for each day of violation.

SECOND CLAIM

7. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 6 as if fully stated herein.

8. Defendant CBR's UIC Permit No. NE0122611 further prohibited the use of Chadron Formation well development water as drilling water and required Defendants to treat well development water from the Chadron Formation as a liquid waste stream to be collected and retained in lined evaporation ponds.

9. Beginning on or about July 1, 2003, and continuing daily thereafter until on or about March 31, 2006, Defendant CBR, used Chadron Formation well development water as drilling water in violation of UIC Permit No. NE0122611.

THIRD CLAIM

10. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 9 as if fully stated herein.

11. At all times alleged herein, Nebraska Administrative Code Title 122 "Rules and Regulations for Underground Injection and Mineral Production Wells" (hereinafter Title 122) was in full force and effect and applied to the Defendant's facility and activities.

12. Title 122, Chapter 4, §001 prohibits an owner or operator from constructing an injection well or mineral production well in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water if the presence of the contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health and safety of persons.

13. Defendant CBR, on a daily basis from on or about July 1, 2003 until March 31, 2006, constructed injection wells and mineral production wells in a manner that had the potential to allow the movement of fluid containing contaminants into an underground source of drinking water, in violation of Title 122, Chapter 4, §001.

14. Neb. Rev. Stat. §81-1508.02(1)(e) (Cum. Supp. 2006) makes it

unlawful for any person to violate any rules or regulations adopted and promulgated pursuant to such Act.

FOURTH CLAIM

15. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 14 as if fully stated herein.

21. Title 122 Chapter 21 §001.06 further requires a permittee to provide written notification to NDEQ of any noncompliance which may endanger the health and safety of persons or cause pollution of the environment within five days of the time the permittee becomes aware of the noncompliance.

23. Defendant CBR became aware of the noncompliance on or about March 31, 2006 and failed to provide written notification to NDEQ as required by Title 122 Chapter 21 §001.06 until May 12, 2006.

WHEREFORE, NDEQ prays that judgment on its Claims be entered herein in favor of NDEQ and against Defendant in the form of a civil penalty as provided under Neb. Rev. Stat. §81-1508.02, together with the costs of the action and such other relief as the Court deems just and equitable.

STATE OF NEBRASKA ex rel.
MICHAEL J. LINDER, Director
Department of Environmental
Quality, Plaintiff,

BY: JON BRUNING #20351
Attorney General

BY:

Katherine J. Spohn #22979
Assistant Attorney General
2115 State Capitol Bldg.
Lincoln, NE 68509
Tel. (402) 471-2682
katie.spohn@nebraska.gov

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon the Defendant by regular United States mail, first class postage prepaid on this ___ day of May, 2008 addressed to the Defendant's attorney of record as follows:

Mark D. McGuire
McGuire and Norby
605 South 14th Street, Suite 100
Lincoln, NE 68508

Katherine J. Spohn
Assistant Attorney General

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

LANCASTER COUNTY Case No.

0198-2248

2008 MAY 23 AM 8 57

CLERK OF THE
DISTRICT COURT

Plaintiff,

v.

CROW BUTTE RESOURCES, INC., a
Nebraska Corporation,

Defendant.

CONSENT DECREE

Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon C. Bruning, Attorney General, and the Defendant, Crow Butte Resources, Inc., a Nebraska Corporation, appearing through its counsel, Mark D. McGuire, and each party having consented to the making and entering of this Consent Decree without trial, the Court finds that the Consent Decree should be and hereby is entered.

IT IS THEREFORE ORDERED AND DECREED as follows:

1. The court has jurisdiction of the parties and the subject matter of this action. The Complaint herein sets forth justiciable causes of action against Defendant.

2. NDEQ, in its Complaint, alleges that beginning on or about July 1, 2003, and continuing daily thereafter until March 31, 2006, Defendant Crow Butte Resources, Inc., (hereinafter CBR), violated its Underground Injection Control (hereinafter UIC) Permit No. NE0122611 by releasing well development water

upon the surface of the ground during CBR's well development and drilling process. CBR recycled its well development water as a conservation measure, rather than treating it as a waste stream and collecting and retaining such water in CBR's lined evaporation ponds, contrary to the terms of its UIC permit. Such treatment of its well development water did not result in any pollution of either the surface of the ground or any aquifer thereunder. CBR discovered this process potentially violated the literal terms of its UIC permit on or about March 31, 2006, and self-reported it to the DEQ's on-site inspector on or about April 7, 2006.

3. NDEQ further alleges that Defendant is therefore subject to a civil penalty as provided in Neb. Rev. Stat. §81-1508.02(2) (Reissue 1999).

4. The parties agree that settlement of these matters is in the public interest and entry of this Consent Decree is the most appropriate means of resolving their dispute. Defendant, without admitting any allegations of the Complaint, agrees to the form and entry of this Consent Decree for purposes of settlement only.

5. The parties agree that this Consent Decree shall be in full satisfaction of all claims alleged in the Complaint and arising out of the same transaction or occurrence asserted therein, provided that such claims were known or were reasonably ascertainable from information in the State's possession as of the date of the filing of this Consent Decree.

6. IT IS THEREFORE ORDERED that Defendant shall pay to the Clerk of the District Court of Lancaster County a civil penalty in the sum of fifty thousand dollars (\$50,000) pursuant to Neb. Rev. Stat. §81-1508.02, together

with court costs in the amount of seventy-nine dollars (\$79.00). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution.

A. \$25,000 (twenty-five thousand dollars) of said penalty will be imposed immediately upon the entry of this Consent Decree by the Court, and is due no later than 10 (ten) days after the entry of this Consent Decree by the Court.

B. \$25,000 (twenty-five thousand dollars) of said penalty will be due and owing 180 days following the approval of this Consent Decree by the Court. In the event that said Defendant continues to maintain compliance with the following obligations and provisions, during the time period between the approval of this Consent Decree by the District Court and 180 days following that approval, the \$25,000 (twenty-five thousand dollars) of civil penalties will be waived:

1. The Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq*;
2. Title 122 of the Nebraska Administrative Code, "Rules and Regulations for Underground Injection and Mineral Production Wells;" and
3. Defendant's UIC Permit No. NE0122611 and all conditions and provisions related thereto.

C. To qualify for the \$25,000 (twenty-five thousand dollars) waiver of civil penalties as stated in paragraph 6(B), Defendant shall file a showing with the

Court within 30 (thirty) days following the due date of the civil penalties establishing that it has maintained compliance as required. If the Defendant does not receive a Notice of Violation from NDEQ and is not a party to legal action initiated by the NDEQ disputing compliance with the statutes and regulatory provisions in paragraph 6(B) during the relevant time period, NDEQ shall file a Satisfaction of Judgment in the case within ten days of receipt of Defendant's showing. If Defendant receives a Notice of Violation from NDEQ, or is a party to legal action initiated by NDEQ disputing compliance with the statutes and regulatory provisions in paragraph 6(B) during the relevant time period, NDEQ shall file an objection to Defendant's showing and determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

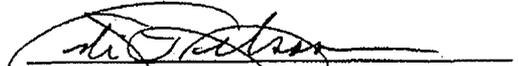
7. IT IS FURTHER ORDERED that the Defendant shall pay, as a Supplemental Environmental Project, the sum of 50,000 (fifty thousand dollars) into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General. This sum shall be paid as a lump-sum payment due no later than 10 (ten) days after the entry of this Consent Decree.

8. This Consent Decree will have no effect on any enforcement action brought by NDEQ against Defendant for future violations of any statutes or regulations.

9. The undersigned consent without further notice to the form and entry of the foregoing Consent Decree.

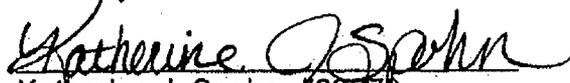
DATED THIS 23 day of May, 2008, in Lancaster County, Nebraska.

BY THE COURT:


District Judge **JODI L. NELSON**

STATE OF NEBRASKA ex rel.
MICHAEL J. LINDER, Director
Department of Environmental
Quality, Plaintiff,

BY: JON BRUNING #20351
Attorney General

BY: 
Katherine J. Spohn #22976
Assistant Attorney General
2115 State Capitol Bldg.
Lincoln, NE 68509
Tel. (402) 471-2682
katie.spohn@nebraska.gov
Attorneys for Plaintiff.

CROW BUTTE RESOURCES, INC.,
a Nebraska Corporation, Defendant

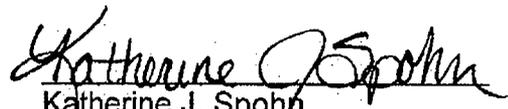
BY: 
Mark D. McGuire
McGuire and Norby
605 South 14th Street, Suite 100
Lincoln, NE 68508
Tel. (402) 434-2390
Attorney for Defendant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Consent Decree has been served upon the Defendant by ~~regular United States mail, first~~ hand delivery

class postage prepaid on this ^{23rd} day of May, 2008 addressed to the Defendant's attorney of record as follows:

Mark D. McGuire
McGuire and Norby
605 South 14th Street, Suite 100
Lincoln, NE 68508


Katherine J. Spohn
Assistant Attorney General

SUZANNE M. KIRKLAND
CLERK of the DISTRICT COURT
LANCASTER COUNTY
575 South 10th Street
Lincoln, Nebraska 68508-2810
402-441-7328/Fax 402-441-6190

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

--CERTIFICATE--

I, Simon G. Rezac, Deputy Clerk of the District Court of Lancaster County, Nebraska, do hereby certify that the foregoing is/are a full and correct copy/copies of the original instrument(s) duly filed and or record in this court. This Certificate, which bears the seal of the District Court of Lancaster County, State of Nebraska, USA, was signed on MAY 23 2008.

By:


Simon G. Rezac, Deputy Clerk

