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November 4, 2008 (12:32pm)

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:  
Michael M. Gibson, Chairman  
Dr. Richard F. Cole  
Mr. Brian K. Hajek

In the Matter of  
  
CROW BUTTE RESOURCES, INC.  
(License Renewal In Situ Leach Facility,  
Crawford, NE)

Docket No. 40-8943  
ASLBP No. 08-867-02-OLA-BD01  
  
November 4, 2008

**PETITIONERS' SUBMISSION RESPONDING TO JUDGES' QUESTIONS  
FROM SEPTEMBER 30, 2008 HEARING**

Petitioners hereby submit the following responses to the Judges' questions posed during the hearing held on September 30, 2008:

A. Water Tests Questions. Judge Cole asked "Have any tests been conducted? Do they have any evidence to show that there's something in the water that might cause harm.?" Hearing Transcript ("HT") at 28, ln 13-16. Further discussion and questions about the water testing is found at HT at 36, 37-38, 39, 40, 44, and 46. Counsel for the Ogala Sioux Tribe also mentioned that water testing was in process and that the results would be submitted to the Board and the parties through the EIE. See HT at 408-409.

Response: In addition to the water tests referenced by Counsel for the Oglala Sioux Tribe, the Consolidated Petitioners have been funded to conduct specific water testing as to each Petitioner and his or her water supply. Consolidated Petitioners are in the process or arranging for the testing and reporting of results and will notify the

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Board and the parties when we know the date the test results will be received. Thereafter, Consolidated Petitioners will submit the test results to the Board and the parties by electronic mail filing.

B. Location of Cook Family Well in Chadron. Judge Hajek asked “is that [having a shallow well] a common practice?” HT at 87, ln 4-5.

Response: We have ascertained from a local well driller that it is common practice to drill shallow wells (30 feet being common) and to stop drilling once the shale is reached.

C. Meaning of Dr. LaGarry Phrase “Very Short Time.” Judge Hajek asked “what’s the context of those three words, very short time? In terms of geological time, one might consider a thousand years as being a very short time.” HT at 132, lns 10-14.

Response: Dr. LaGarry’s response is contained in the attached email dated October 23, 2008:

The phrase "a very short time" at the end of the above paragraph refers to days to weeks.

To be clear:

1) migration of contaminated water from the Crawford area to Pine Ridge through White River alluvium could take a decade or two. Known spills go back farther than that, so this could have happened already. Today's [sic] spills could travel the distance in 20 years, or with more rain (and therefore flow) the time could be half that, or ten years.

2) migration of contaminated waters from the Crawford area to distant areas, such as Pine Ridge or Chadron, could take as little as a few years. In the southern panhandle of Nebraska, water has been reported to move 1500'/day along faults. That's 1 mile/4 days, or 30 miles/120 days.

3) artesian outflow would be analogous to a pumping well discharging onto the landscape. Over a few days to a few weeks, such a major spill would supply large amounts of contaminants that would travel as in 1 & 2 above.

D. Standing Based on Failure to Provide Information as Injury to Public Interest Organizations. Judge Rosenthal asked “Do you have any authority – judicial authority for that proposition?” HT at 150, lns 5-7. This followed an explanation by the undersigned that the Applicant’s failure to make full disclosures of information in its application caused injury to Petitioner WNRC because the organization exists for the purpose of raising public awareness and it cannot fulfill its purpose for existing if less than complete and full disclosure is made by the mining company in the application. See HT at 149-150 and discussion HT at 150-152. Judge Rosenthal summed up the question as asking for “some authority for the proposition that...the organization can claim injury on the basis that it is impeded from carrying out the mission that it has assigned to itself.” HT at 151, ln 25, HT at 152, lns 1-3.

Response: There is judicial authority to support the proposition referenced above, see generally, Note: Standing and the National Environmental Policy Act: Where Substance, Procedure and Information Collide, 85 B.U.L. Rev. 633, 652-662 (April 2005), and the following cases discussed therein:

1) Scientists' Inst. for Pub. Info., Inc. (SIPI) v. Atomic Energy Comm'n, 481 F.2d 1079, 1086-87 n.29 (D.C. Cir. 1973) (recognizing informational

standing under NEPA and holding that the Atomic Energy Commission was required to produce a 'programmatic EIS' where organization's injury was reduced ability to accomplish its self-imposed goals of making available to the public scientific information relevant to important social issues and stimulating and informing public discussion);

2) Pub. Citizen v. U.S. Dep't of Justice, 491 U.S. 440, 449 (1989) (finding cognizable informational injury under the Federal Advisory Committee Act);

3) Fed. Election Comm. v. Akins, 524 U.S. 11 (1998) (finding cognizable informational injury under the Federal Election Campaign Act); and

4) Am. Canoe Assoc. v. City of Louisa Water & Sewer, 389 F.3d 536, 544-547 (6th Cir. 2004) (finding informational injury and standing under Clean Water Act where the organizations' interest in reporting to its members and its ability to propose legislation and bring litigation based upon information collected by an agency are negatively affected by the defendant agency's failure to fulfill its monitoring and reporting obligations).

Dated this 4<sup>th</sup> day of November, 2008.

Respectfully submitted,

/s/

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NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD PANEL

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Docket No. 40-8943  
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November 4, 2008

CERTIFICATE OF SERVICE

I hereby certify that copies "PETITIONERS' SUBMISSION OF ANSWERS TO JUDGES' QUESTIONS FROM SEPTEMBER 30, 2008 HEARING" in the above captioned proceeding has been served on the following persons by electronic mail as indicated by a double asterisk (\*\*); on this 4<sup>th</sup> day of November, 2008:

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**Subject: Re: Question for Hannan**

**Date:** Thursday, October 23, 2008 10:37 AM

**From:** Hannan Lagarry <hlagarry@csc.edu>

**To:** David Cory Frankel <davidcoryfrankel@gmail.com>

**Cc:** <hlagarry@olc.edu>

**Conversation:** Question for Hannan

David-

Is this the reference you were writing about?

"THE PROBLEM OF ARTESIAN WATER

Artesian flow occurs along the Pine Ridge of Nebraska when there is a hydrologic connection, through faults or highly permeable strata, between the Chamberlain Pass Formation and the High Plains Aquifer. The weight of water in the topographically higher High Plains Aquifer exerts pressure downward into the Chamberlain Pass Formation, which can be released as artesian water flow where the topographically lower Chamberlain Pass Formation is exposed at the surface, or where it is punctured by drilling. Artesian flow was predicted by NDEQ in their evaluation of CBR's petition for an aquifer exemption, and was observed by a local landowner as CBR did test drilling for the North Trend Expansion. Artesian flow could transmit the most mineral-laden of waters onto the land surface (and into White River alluvium) and discharge large amounts of contaminants into aquifers or faults in a very short time."

The phrase "a very short time" at the end of the above paragraph refers to days to weeks.

To be clear:

- 1) migration of contaminated water from the Crawford area to Pine Ridge through White River alluvium could take a decade or two. Known spills go back farther than that, so this could have happened already. Today's spills could travel the distance in 20 years, or with more rain (and therefore flow) the time could be half that, or ten years.
- 2) migration of contaminated waters from the Crawford area to distant areas, such as Pine Ridge or Chadron, could take as little as a few years. In the southern panhandle of Nebraska, water has been reported to move 1500'/day along faults. That's 1 mile/4 days, or 30 miles/120 days.
- 3) artesian outflow would be analogous to a pumping well discharging onto the landscape. Over a few days to a few weeks, such a major spill would supply large amounts of contaminants that would travel as in 1 & 2 above.

I hope this helps -- let me know if this covers the question or I've missed the point of the question.

All the best!

Hannan

David Cory Frankel wrote:

>In your opinion, you make a reference to "a relatively short time" -  
can you  
>say what you meant? Hours, days, weeks, months, years, or centuries?  
>Judges asked whether that was geologic time being referenced - please  
>clarify asap so I can respond to the judges in the next few days - thx  
:)  
>  
>  
>

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(148.184.100.43) with Microsoft SMTP Server id 8.1.291.1; Tue, 4 Nov 2008  
12:33:33 -0500

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Return-Path: <davidcoryfrankel@gmail.com>

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by mx.google.com with ESMTPS id 9sm11286240yxs.5.2008.11.04.09.32.04  
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Date: Tue, 4 Nov 2008 07:31:47 -1000

Subject: Transmitting Document in Crow Butte Resources (Renewal) - Docket  
No. 40-8943 - ASLBP No. 08-867-02-OLA-BD01

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Thread-Topic: Transmitting Document in Crow Butte Resources (Renewal) -  
Docket No. 40-8943 - ASLBP No. 08-867-02-OLA-BD01  
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