

April 15, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
CROW BUTTE RESOURCES, INC.)	Docket Nos. 40-8943
)	
(License Renewal for the In Situ Leach)	ASLBP No. 08-867-08-OLA-
Facility, Crawford, Nebraska))	BD01

NRC STAFF'S SUBMITTAL IN RESPONSE TO MARCH 29, 2011
MEMORANDUM REQUESTING REPORT FROM THE NRC STAFF

INTRODUCTION

On March 29, 2011, the Atomic Safety and Licensing Board ("Board") issued a Memorandum requesting a report from the NRC Staff ("Staff"). In the Memorandum, the Board calls attention to what it characterizes as "entirely unexplained delays in carrying out the technical review" in the instant proceeding and references the most recent status report filed by the NRC Staff ("Staff").¹ The Board requests "that the NRC Staff submit a report to the Board ... providing an explanation of the significant and continuing delays in completing the technical review documents."² In response to the Board's request, the Staff offers the following information.

DISCUSSION

I. Reasons for Changes to Estimated Date for the Issuance of the SER.

The principal reasons for changes to the Staff's estimated issuance date for the SER

¹ See Memorandum (Requesting Report from the NRC Staff), at 2, 4 (March 29, 2011) (unpublished).

² *Id.* at 4.

are (1) the amount of time needed to complete the Request for Additional Information (“RAI”) resolution process, (2) ongoing discussions between the Applicant and the Staff regarding the possible preclusion of certain anticipated license conditions, and (3) the realignment of the Staff’s resources to account for higher priority work assigned to the Staff. Each of these causes is briefly discussed below. As additional background, the Staff includes as Attachment 1 a chronology of major milestones associated with the Staff’s preparation of the SER.

A. RAI Resolution Process.

The ability of the Staff to complete the technical review of the Application is inherently contingent upon the Applicant’s ability to respond in a timely and comprehensive manner to RAIs posed by the Staff. In this case, the Applicant required several months to respond to RAIs, as well as to address open issues identified by the Staff. The Staff does not characterize this lapse of time as relatively unusual in duration, but it provides this information in order to point out that the time needed to resolve these issues was longer than anticipated by the Staff when the Staff first estimated the issuance date for the SER.³

B. Ongoing Discussions Related to the Preclusion of Anticipated License Conditions.

Around September 2010, the Applicant and the Staff began focusing discussions on the possibility of precluding the need for certain anticipated license conditions. Such preclusion would be, as discussed by the Staff and the Applicant, predicated upon the provision of specified data sets by the Applicant, in advance of the license’s issuance. Once submitted, the Staff would review those data sets to determine whether, in light of the new

³ As Counsel for the Staff indicated at the December 15, 2008, telephone conference, when Staff first conveyed to the Board the estimated dates by which it would complete the two portions of its technical review, the estimated dates the Staff has provided in its monthly status reports are approximations. See Transcript at 436:16-25. The dates supplied in the Staff’s monthly status reports are good faith estimates based on what information the Staff has available to it at the time of the estimate.

information contained therein, certain anticipated license conditions would be unnecessary. The last discussion concerning this issue between the Applicant and the Staff occurred on March 17, 2011. As one of the outcomes of that meeting, the Applicant committed to performing additional work.⁴ As such, this process is ongoing.

In light of this ongoing process, the Staff now approximates that it will be able to issue the SER by December 2011.

C. Realignment of the Staff's Resources.

The Staff's technical review of the Application is but one portion of the work assigned to the Staff. As such, it is prioritized along with the rest of the Staff's work for the allocation of resources available to the Staff. Such other work includes, *inter alia*, inspection, licensee oversight, enforcement, the licensing review of other materials applications (including new facility applications, expansion applications, other license renewals, and amendments), and the development of guidance documents. At certain points, the Staff has reallocated resources from the review of the Application to other work considered to be of a higher priority.

The Staff places paramount priority on the continuous safety of the facilities currently licensed and operating. The Staff continues to regulate and inspect the operation of the Applicant's in-situ recovery facility per the terms and conditions of the license previously issued for the facility, in conjunction with all applicable portions of the Commission's regulations. The annual inspection reports for the facility as prepared by the Staff from 2008 to the present can be found in ADAMS using the following accession numbers: ML082410870 (2008), ML092670138 (2009), and ML102320543 (2010).

⁴ A summary of the March 17 meeting, as prepared by the Staff, can be found in ADAMS using the following accession number, ML110810041.

II. Reasons for Changes to Estimated Date for the Issuance of the Final Environmental Review Document.

Section 106 of the National Historic Preservation Act requires the NRC, as a federal agency, before the issuance of the subject Application, to “take into account the effect of the [issuance of the license] on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.”⁵ The Staff is currently taking steps necessary to identify the presence of historic properties within the area of potential effect for the undertaking (*i.e.*, the grant of the Application).⁶ If any historic properties are identified within the area of potential effect for the undertaking, the Staff, in consultation with all necessary parties, would determine whether such identified properties would be adversely affected by the undertaking.⁷ If it is determined that any historic properties would be adversely affected, the Staff, again in consultation with all necessary parties, would “develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.”⁸

To address the requirement that the Staff consult with any Indian Tribes which “attach[] religious and cultural significance to historic properties that may be affected” by the undertaking, the Staff has sent out letters formally inviting Indian Tribes, known to have historic ties to the area of potential effect for the undertaking, to become consulting parties.⁹ In response to these letters and additional inquiries made by the Staff, more Tribes than initially anticipated by Staff have expressed an interest in Section 106 consultation. The Staff

⁵ 16 U.S.C. § 470f (2011).

⁶ See 36 C.F.R. § 800.4(a)-(b).

⁷ See *id.* at § 800.5.

⁸ See *id.* at § 800.6(a).

⁹ See *id.* at § 800.2(c)(2)(ii).

is currently engaged in scheduling a “face-to-face” introductory and information gathering meeting with the Tribes that have expressed an interest in consultation. In cooperation with the Applicant, the Staff is also attempting to schedule a site visit of the Applicant’s facility in conjunction with the meeting. The meeting is tentatively scheduled for June 2011.

Given the tentative date for the initial “face-to-face” meeting in June 2011, the Staff now approximates that it will be able to issue the final environmental review document by December 2011.

Respectfully submitted,

Executed in Accord with 10 CFR 2.304(d)

Brett Michael Patrick Klukan
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O15-D21
Washington, DC 20555-0001
(301) 415-3629
Brett.Klukan@NRC.gov

Dated at Rockville, Maryland
This 15th day of April, 2011

ATTACHMENT 1

CHRONOLOGY OF MAJOR MILESTONES ASSOCIATED WITH STAFF'S PREPARATION OF THE SER

Date	Event	ADAMS Accession No.
11/27/2007	NRC Staff receives License Application.	ML073480264
3/28/2008	NRC Staff accepts Application and begins technical review.	ML080720341
1/16/2009	NRC Staff submits RAIs to the Applicant.	ML083660060
5/12/2009	NRC Staff receives Applicant's response to RAIs.	ML091470116
6/30/2010	NRC Staff completes internal draft SER. The Staff communicates list of open issues to Applicant.	ML101800386
9/17/2010	Applicant responds to identified open issues.	ML102640195
9/28/2010	Applicant transmits page changes to Application based on 9/17/2010 response to open issues.	ML102740030
3/17/2011	Public meeting with Applicant. Discussion focused on Applicant's 9/17/2010 response to open issues. Applicant commits to provide additional data. Additional meetings to be scheduled in the near future.	ML110810041

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S SUBMITTAL IN RESPONSE TO MARCH 29, 2011 MEMORANDUM REQUESTING REPORT FROM THE NRC STAFF" in the above captioned proceeding have been served via the Electronic Information Exchange ("EIE") this 15th day of April 2011, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the above captioned proceeding.

Executed in Accord with 10 CFR 2.304(d)

Brett Michael Patrick Klukan
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, D.C. 20555-0001
(301) 415-3629
Brett.Klukan@nrc.gov