

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,

Plaintiff,

v.

CROW BUTTE RESOURCES, INC., a
Nebraska Corporation,

Defendant.

LANCASTER COUNTY Case No. 0708-2248

2008 MAY 23 AM 8 57

CLERK OF THE
DISTRICT COURT

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.

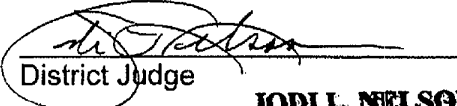
7. IT IS FURTHER ORDERED that the Defendant shall pay, as a Supplemental Environmental Project, the sum of 50,000 (fifty thousand dollars) into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state 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,

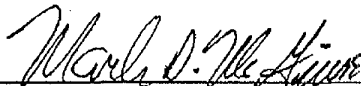
BY: JON BRUNING #20351
Attorney General

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:

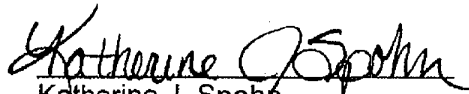

Mark D. McGuire
McGuire and Norby
605 South 14th Street, Suite 100
Lincoln, NE 68508
Tel. (402) 434-2390
Attorney for Defendant.

CERTIFICATE OF SERVICE

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

class postage prepaid on this ^{23rd}~~25~~ 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

