

In re Core Energy LLC
Appeal No. UIC 07-02
U.S. EPA Region 5
Response to Petition

ATTACHMENT 3

LeBlancs' Comments on Draft Permit

United States Environmental
Protection Agency
DI Section (Attn: Lisa Perenchio)
77 West Jackson Boulevard, (WU-16J)
Chicago, Illinois 60604-3590

Robert B. LeBlanc
On Behalf of Himself &
His Wife Joan S. LeBlanc
9300 Island Drive
Grosse Ile, MI 48138
(734) 675 - 0323

Tuesday August 14th, 2007

Re: Written comments, Objections, and Request for Public Hearing
as to PUBLIC NOTICE Dated: July 23, 2007 for proposed
underground injection for MI-137-5X25-0001 for the Charlton
4-30 well in Otsego County, Michigan.

Dear Lisa:

I am taking time from my busy schedule to write to you as
to the USEPA as to the issue of storage of CO2 in certain forma-
tions underground which I sincerely believe is premature for
several of the following valid reasons.

First, I think that we can agree to the following quote by
a well known economist by the name of Adam Smith, namely:

The first and chief design of every system of
government is to maintain justice; to prevent
the members of a society from encroaching on one
another's property, or seizing what is not their
own.¹

Secondly, in the case titled Strain v. Cities Services Gas Co.,
83 P.2d 124, at 126 and 127 reads:

It is settled law that private property is not
to be taken for private use. (Citation omitted.)
...This would disrupt the whole theory of (natural
methane) gas ownership, production and distribution
which now prevails.

Yet in the case of Kelo v. New London (2004) adjudicated by the
United States Supreme Court, private property was taken for
private use. Fortunately, however, in Michigan the Michigan
Supreme Court recently decided that the case of "Poletown"
was reversed and that in Michigan once again, private property
is not to be taken for private use. According to your PUBLIC

¹ See Adam Smith, Lectures on Jurisprudence (Indianapolis,
Liberty Press, 1762, 1978), p. 5.

NOTICE Dated July 23rd, 2007 (See attached notice adopted by reference herein) "Core Energy, LLC will own and operate one proposed well....". Next, the treatise entitled "Regulating Carbon Dioxide Capture and Storage" by M.A.de Figueiredo, et al and published in April of 2007 by MIT CEEPR, demonstrates, among other things, safety and storage issues including, but not limited to subsurface trespass issues because of so-called "plume migration" mentioned on page 6 of said treatise. On page 7 of said treatise it says:

In March 2007, the EPA announced that it recommended using an experimental well category ("Class V") for permitting pilot CCS projects (U.S.Environmental Protection Agency, 2007). The Class V status relieves the operator from complying with the minimum requirements of the class into which the injection well would ordinarily fall.

Thus, it should be evident 40 CFR § 144.35 Effect of a permit remains a very, very important regulation because it is well settled that

Federal regulations have no less pre-emptive effect than federal statutes.

Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta, 458 U.S. 141, at 153 (1982).

That agency rules with the force of law are "Laws of the United States" for the purposes of the Supremacy Clause, United States Constitution Article VI, Clause 2. Again, see City of New York v. FCC, 486 U.S. 57, at 63 (1988) ("The phrase 'Laws of the United States' encompasses both federal statutes themselves and federal regulations that are properly adopted in accordance with statutory authorization.").

Accordingly, "The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege" and, "The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations." 40 CFR § 144.35(b)-(c). (Underlined emphasis added.)

I believe that up to this point the above-listed facts and "law" are true and genuine and that you can also agree to the same. If this be true then only two remaining issues remain to

discussed and brought to light.

The first ~~involves~~ Case No. 2:06-cv-13588-DT before United States District Court Judge Gerald E. Rosen in the Eastern District of Michigan, Southern Division whereby the LeBlanc's have named the State of Michigan as the Defendant and Core Energy, LLC is a State Actor and whereby the EOR CO2 injector well (described as the Charlton "C" 2-30 began injecting on 8-13-05. The LeBlanc's mentioned 40 CFR § 144.35(b)-(c) in said Complaint as to subsurface trespass of CO2 under their Tract B Land, inter alia. Thus, **unresolved ownership issues** remain and still need to be addressed in said federal court as to said subsurface trespass because of CO2's tendency to migrate, inter alia, below adjacent land owners who continue to own their mineral and surface rights that are being ignored by said State and the EPA.

The second involves the case titled Arco Oil and Gas v. E.P.A., 14 F.3d 1431 (10th Cir. 1993) whereby at page 1436 says:

Instead, we [the 10th Cir. Court] conclude that neither the language of the SDWA, nor the relevant legislative history reveals a clear congressional intent to treat carbon dioxide as "natural gas" within the meaning of the Act [SDWA].

Further,

[W]e find the agency's interpretation of "natural gas" as excluding carbon dioxide to be permissible and consistent with the purpose and policy of the SDWA.

What is strange is the meaning of "natural gas". Under 15 U.S.C. § 717 it is implied that natural gas is methane gas being transported and sold to the public. Then under 15 U.S.C. § 717a(5) "Natural gas " means either natural gas unmixed, or any mixture of natural and artificial gas. Again implying methane gas and additives to skunk it or otherwise. Here the meaning can be deduced. Yet the Arco Court, Id. at 1434 found:

Apart from simply employing the term "natural gas", the SDWA does not elaborate on the term's intended meaning or scope.

And so it appears that in some instances the EPA can equivocate to have the word "natural gas" to both include carbon dioxide

and to exclude carbon dioxide. The fact is that if no legislative authority exists to enable the EPA to equivocate as demonstrated above then both its Class II and its Class V well programs are clearly devoid of the necessary legal sanction or validation since either CO2 can be regulated or it can not be regulated--that is the question.

In conclusion, the LeBlanc's respectfully Object and timely and duly request for a public hearing on the following issues:

- (A) The federal government's (whether through FERC, the EPA or through the NGA (Natural Gas Act) or the like or otherwise) role in protecting adjacent landowners property rights including, but not limited to mineral rights from disappearing altogether ?

- (B) Does the federal government intend to condemn private property including lands, oil and gas leases and the like under its own sovereign power yet the property taken for private use by private companies controlled by those who do not respect private property rights ? In other words, does the federal government expect to condone a redistribution of private property for the oil and gas industry who can then own all the then nationalized oil and gas and storage space throughout the United States like the case of *Kelo v. New London* cited above ? (City condemned private property so that Pfizer Pharmaceutical Co. could build a company owned social setting including hotel and shopping areas, etc. all at the expense of those unfortunate private property owners who were not using their property to the best use as could another private person like the city sought after.)

(C) Will the federal government soon intervene and protect the private property rights of those adjacent land owners who will rightfully charge rent to anyone attempting to store anything either on or subsurface with their property and protect all mineral right owners who have had their minerals stolen from under their property contrary to 40 CFR § 144.35(b)-(c) or will the federal government and the EPA continue to grant licenses to those who continue to curry favor with the United States Government solely to enforce a theory advocating elimination of private property and the ownership thereof² contrary to the United States Constitution, as Amended and especially Article 4 § 4 of said Constitution ?

(D) Can the LeBlanc's and other American's be assured that their property rights will be respected with respect to storage since none of the LeBlanc's property rights have been respected (so far) as to the current CO2 injection in the "C" 2-30 well) and that the so-called "sequestration" will not wind-up and result with the same trampling and disregard of said federal rights and interests ?

Thank you for your understanding, in advance, please confirm receipt and set hearing date, and with every good wish, I remain...

Sincerely,



Robert B. LeBlanc

On behalf of Himself &

His Wife Joan S. LeBlanc

² See definition of communism in any dictionary.