

STATE OF SOUTH DAKOTA)
)
COUNTY OF LINCOLN)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

BELL-MURPHY FAMILY TRUST, CARL
& ANN COWART LIVING TRUST OF
2000, BENNETT and LUELLA DEJONG,
LEANBE FARMS, BRIAN and LESLIE
BUTZER, JOHN and MELISSA SCHUTTE,
EVELYN SCHUER LIVING TRUST, L
BAR R, INC., VANDENTOP TRUST, and
HELEN SHORT,

Plaintiffs,

v.

SCS CARBON TRANSPORT, LLC, a
Delaware Limited Liability Company, a/k/a
SUMMIT CARBON SOLUTIONS,

Defendant.

41CIV22-000365

**DEFENDANT SCS CARBON
TRANSPORT, LLC'S ANSWERS TO
PLAINTIFFS' FIRST SET OF
REQUESTS FOR ADMISSION**

Defendant SCS Carbon Transport, LLC ("SCS" for short), by and through its attorneys of record, responds to the Plaintiffs' First Set of Requests for Admission dated August 8, 2022.

REQUEST FOR ADMISSION #1: Admit that if any carbon dioxide is captured, transported, and ultimately stored and or sequestered in North Dakota by you, you have no plan to attempt to use such stored and sequestered carbon dioxide for any purposes including but not limited to enhanced oil recovery.

RESPONSE: Denied. The Request speaks in terms of "any purposes including but not limited to enhanced oil recovery." As a common carrier, SCS is responsible for the interstate transportation of a product—here, carbon dioxide (CO₂)—from facilities in five states. SCS itself does not plan to "use" CO₂ for enhanced oil recovery; rather, it intends to transport CO₂ from facilities in five states.

REQUEST FOR ADMISSION #2: Admit there is no requirement of the South Dakota Public Utilities Commission that you conduct surveys upon any of the parcels of land in the State of South Dakota where you intend to locate your hazardous pipeline.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. Subject to and without waiving those objections, denied.



REQUEST FOR ADMISSION #3: Admit there is no South Dakota state law requiring that you conduct an examination or survey upon any of the parcels of land in the State of South Dakota where you intend to locate your hazardous pipeline.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #4: Admit there is no Federal law requiring that you conduct an examination or survey upon any of the parcels of land in the State of South Dakota where you intend to locate your hazardous pipeline.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #5: Admit “Summit Carbon never planned to enter private property without a court order or without receiving Landowners’ consent.”

RESPONSE: Admitted.

REQUEST FOR ADMISSION #6: Admit that pertaining to surveys you seek you claim drilling activities using continuous flight augers, hollow stem augers, wet rotary drills, or rock coring drills may occur.

RESPONSE: SCS objects to the Request because it calls for irrelevant information. SCS also objects to the Request because it is vague and ambiguous and denies it on that basis. Subject to and without waiving those objections, SCS states that the letters that SCS sent to landowners in South Dakota speak for themselves.

REQUEST FOR ADMISSION #7: Admit you believe drilling activities such as continuous flight augers, hollow stem augers, wet rotary drills, or rock coring drills would be activities requiring “limited survey access.”

RESPONSE: SCS objects to the Request because it calls for irrelevant information. SCS also objects to the Request because it is vague and ambiguous and denies it on that basis. Subject to and without waiving those objections, SCS states that the letters that SCS sent to landowners in South Dakota speak for themselves.

REQUEST FOR ADMISSION #8: Admit that for surveys you seek you claim ““deep testing” is required” and that such testing would use a “backhoe to dig trenches typically 7 to 10 feet in length, 2 to 3 feet in width, and 6 to 10 feet deep.”

RESPONSE: SCS objects to the Request because it calls for irrelevant information. SCS also objects to the Request because it is vague and ambiguous and denies it on that basis. Subject to and without waiving those objections, SCS states that the letters that SCS sent to landowners in South Dakota speak for themselves.

REQUEST FOR ADMISSION #9: Admit you believe your “deep testing” activities would require “limited survey access.”

RESPONSE: SCS objects to the Request because it calls for irrelevant information. SCS also objects to the Request because it is vague and ambiguous and denies it on that basis. Subject to and without waiving those objections, SCS states that the letters that SCS sent to landowners in South Dakota speak for themselves.

REQUEST FOR ADMISSION #10: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a good sold freely to the public.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #11: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a gas traded in bulk in the commodity market.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #12: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a liquid traded in bulk in the commodity market.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #13: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a gas traded in bulk in the spot market.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #14: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a liquid traded in bulk in the spot market.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #15: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a good.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #16: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not a ware.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #17: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not merchandise.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #18: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not an article of trade.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #19: Admit that the waste product carbon dioxide, when transported in a pipeline to be stored or sequestered, is not an article of commerce.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and calls for irrelevant information. Subject to and without waiving those objections, denied.

REQUEST FOR ADMISSION #20: Admit that the State of South Dakota Legislature has not delegated the power of eminent domain to Carbon Dioxide pipeline companies.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and calls for irrelevant information. Subject to and without waiving that objection, denied. SDCL § 49-7-13 confers the power of eminent domain on certain pipeline companies.

REQUEST FOR ADMISSION #21: Admit that the act of transporting carbon dioxide emitted from Ethanol plants in South Dakota to be stored or sequestered in North Dakota is not a public use.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion and calls for irrelevant information. Subject to and without waiving that objection, denied.

REQUEST FOR ADMISSION #22: Admit that SCS Carbon Transport, LLC, is not a public utility.

RESPONSE: SCS objects to the Request because it is vague and ambiguous, calls for a legal conclusion, and calls for irrelevant information and on those bases denies it.

REQUEST FOR ADMISSION #23: Admit that SCS Carbon Transport, LLC, is not an employee of a public utility.

RESPONSE: SCS objects to the Request because it is vague and ambiguous, calls for a legal conclusion, and calls for irrelevant information and on those bases denies it.

REQUEST FOR ADMISSION #24: Admit that SCS Carbon Transport, LLC, does not currently own or operate even one inch of an existing carbon dioxide pipeline.

RESPONSE: SCS objects to the Request because it is vague and ambiguous and denies it on that basis.

REQUEST FOR ADMISSION #25: Admit that based on the holding in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 210 L. Ed. 2d 369 (2021) SDCL 21-35-31 is unconstitutional.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion. Subject to and without waiving that objection, denied.

REQUEST FOR ADMISSION #26: Admit that your “necessity” to conduct examination and/or survey of any South Dakota property is for the specific purpose of determining the route of your proposed hazardous carbon dioxide pipeline.

RESPONSE: Denied. The Request speaks in terms of “the specific purpose,” suggesting that a survey or examination would have only one purpose when in fact a survey or examination could and likely would accomplish multiple purposes, including but not limited to determining the pipeline route.

REQUEST FOR ADMISSION #27: Admit that if a South Dakota landowner refuses to sign an easement for your proposed hazardous carbon dioxide pipeline that you believe is “necessary” for your hazardous pipeline to be constructed, you would file a condemnation proceeding against such a landowner.

RESPONSE: SCS objects to the Request because it calls for irrelevant information. Subject to and without waiving that objection, denied. SCS has made no categorical determination that a landowner’s refusal to sign an easement will necessarily result in SCS’s filing a condemnation proceeding.

REQUEST FOR ADMISSION #28: Admit that your proposed hazardous carbon dioxide pipeline’s purpose is economic development to benefit your company and is [sic] owners and investors.

RESPONSE: SCS objects to the Request because it calls for irrelevant information. Subject to and without waiving that objection, denied. The Request speaks in terms of a singular “purpose” when the proposed pipeline has multiple purposes, including but not limited to business operations, environmental motivations, and carbon transportation.

REQUEST FOR ADMISSION #29: Admit that hazardous carbon dioxide pipelines are not defined as a condemning authority anywhere in South Dakota law.

RESPONSE: SCS objects to the Request because it calls for a legal conclusion. Subject to and without waiving that objection, denied. SDCL § 49-7-13 confers the power of eminent domain on certain pipeline companies.

Dated this 7th day of September, 2022.

MAY, ADAM, GERDES & THOMPSON LLP

BY: /s/ Justin L. Bell

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CERTIFICATE OF SERVICE

Justin L. Bell of May, Adam, Gerdes & Thompson, LLP, hereby certifies that on the 7th day of September, 2022, he did electronically serve, through Odyssey File and Serve, a true and correct copy of the foregoing to the following at their last known address, to-wit:

Nicholas G. Moser
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and the same by First Class Mail, to-wit:

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 /s/ Justin L. Bell

Justin L. Bell