



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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2016 JUL 18 PM 2:17

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: RCRA-08-2015-0002

IN THE MATTER OF:

The U.S. Bureau of Reclamation,
National Electric Coil, Environmental
Contractors, LLC, and CTA Construction
and Environmental, LLC

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18(b)(2) and (3), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing of this Consent Agreement and Final Order.

SO ORDERED THIS 18th DAY OF July, 2016.

Elyana Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

2016 JUL 18 PM 2: 17

BEFORE THE ADMINISTRATOR

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:) Docket No. RCRA-08-2015-0002
)
The U.S. Bureau of Reclamation, National)
Electric Coil, Environmental Contractors, LLC,) **CONSENT AGREEMENT**
and CTA Construction and Environmental, LLC,)
)
Respondents.)

Complainant U.S. Environmental Protection Agency, Region 8 (EPA), and Respondents U.S. Bureau of Reclamation, National Electric Coil, Environmental Contractors, LLC, and CTA Construction and Environmental, LLC, by their undersigned representatives, hereby consent and agree as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. On July 15, 2015, Complainant filed a First Amended Compliance Order and Opportunity for Hearing (Amended Order) under section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(B), directing the treatment, transportation and disposal of alleged contaminated asbestos and alleged hazardous wastewater generated and temporarily stored by the Respondents at the Yellowtail Dam hydroelectric facility in Montana.
2. With regard to the Amended Order issued under section 3008(a), 42 U.S.C. § 6928(a), the Amended Order provided the Respondents the opportunity to seek administrative review in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits (Rules of Practice), 40 C.F.R. part 22. By contrast, the Amended Order informed the Respondents they could seek federal judicial review of the portion of the Amended Order issued pursuant to section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), under section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

3. Under the Rules of Practice, 40 C.F.R. part 22, Respondents National Electric Coil (NEC) and CTA Construction and Environmental, LLC (CTA), filed administrative answers to the Amended Order with the EPA on August 6 and 13, 2015, respectively, denying the findings of fact and violations of RCRA alleged in the Amended Order, and requested a hearing regarding these allegations. Respondents Environmental Contractors, LLC (EC), and U.S. Bureau of Reclamation (BOR) did not request a hearing on the Amended Order, which is now final as to them pursuant to section 3008(b) of RCRA.

4. Respondents NEC and CTA filed separate petitions for review with the United States Court of Appeals for the Ninth Circuit on September 10, 2015, challenging the CAA-portion of the Amended Order. These petitions subsequently were consolidated on October 22, 2015, and that matter currently is proceeding before the Ninth Circuit separate and apart from the administrative matter subject to this Consent Agreement and Final Order.

5. The Honorable M. Lisa Buschmann, Administrative Law Judge, was designated as the presiding officer in this administrative proceeding on December 24, 2015.

6. Administrative Law Judge Buschmann issued the Complainant and Respondents NEC and CTA a Prehearing Order in this matter on December 29, 2015, and an Erratum on December 30, 2015, establishing prehearing requirements in anticipation of an administrative hearing on the Amended Order. The parties have filed their respective prehearing exchange documents in accordance with the Prehearing Order. The matter has not yet been scheduled for hearing.

7. On April 29, 2016, Complainant and Respondents NEC and CTA submitted a Settlement Status Report to the presiding officer, informing the presiding officer of on-going settlement discussions between the parties and requesting that the matter not be scheduled for hearing until and unless the parties failed to file a Consent Agreement within 60 days of filing the Report.

8. The Prehearing Order for this proceeding provides, in part, that the parties sign and file a Consent Agreement and Final Order, with a copy sent to the Presiding Officer, if the case is settled.

9. The Rules of Practice govern all administrative adjudicatory proceedings including compliance orders such as the Amended Order issued pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6928(a). 40 C.F.R § 22.1(a)(4).

10. This Consent Agreement signed by all parties is intended to fully resolve all RCRA factual allegations, findings of violation and relief set forth in the Amended Order. The parties wish to enter into this Consent Agreement in order to resolve and terminate this proceeding concerning alleged violations of RCRA identified in the Amended Order, thereby avoiding protracted and costly litigation and preserving judicial resources and without any admission or adjudication of fact or law. The parties agree that this Consent Agreement fully, fairly and completely resolves the matters set forth in the Amended Order which are at issue in this proceeding.

TERMS OF SETTLEMENT

11. Respondents admit the jurisdictional allegations of the Amended Order. The Respondents deny the remaining allegations of fact and allegations of violations of law with respect to the RCRA violations alleged in the Amended Order, and this Agreement shall not be construed to constitute an admission of fact or law regarding any of the allegations of the Amended Order.

12. Respondents waive their right to a hearing before any tribunal to contest any issue of law or fact set forth in the Amended Order or Consent Agreement except the CAA-portion of the Amended Order currently under appeal. Respondents further waive their right to appeal this Consent Agreement and Final Order.

13. The parties agree that the Respondents, having timely performed all requirements set forth in the Amended Order, have fully complied with the Amended Order. Further, based on the totality of circumstances unique to this particular matter, Complainant is not seeking penalties for the RCRA violations alleged in the Amended Order, and agrees not to seek penalties in the future for the RCRA violations alleged in the Amended Order; nor to seek additional remedial relief in addition to that relief set forth in the Amended Order, with which Respondents have fully complied.

GENERAL PROVISIONS

14. This Consent Agreement contains all terms of the settlement agreed to by the parties.

15. This Consent Agreement shall not relieve Respondents of their obligation to comply with RCRA and its implementing regulations with respect to matters not covered by the Amended Order.

16. The undersigned Respondents' representatives certify that they are fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the Respondents to the terms and conditions of this Consent Agreement.


17. The parties agree to forward the executed Consent Agreement to the Regional Judicial Officer in accordance with 40 C.F.R. § 22.18(b)(2) with a request that it be incorporated into a Final Order.

18. Each party shall bear its own costs and attorney fees in connection with this matter

19. This Consent Agreement upon incorporation into a Final Order shall constitute full and final civil settlement of the RCRA violations alleged in the Amended Order.

DATE: 7-15-16


UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

 (for)

Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

DATE: July 7, 2016

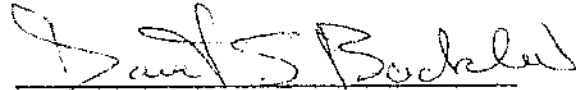
UNITED STATES BUREAU OF
RECLAMATION,
Respondent.



Michael J. Ryan
Regional Director
Great Plains Region

DATE: July 13 2016

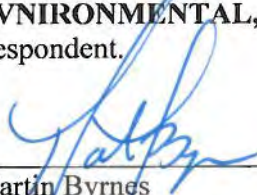
NATIONAL ELECTRIC COIL,
Respondent.



Darf Bucklew
Senior Vice President

DATE: 7.5.16

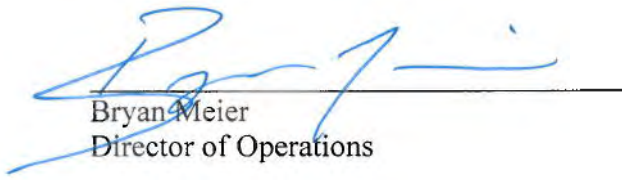
**CTA CONSTRUCTION AND
ENVIRONMENTAL, LLC,**
Respondent.



Martin Byrnes
Principal

DATE: 7/6/16

ENVIRONMENTAL CONTRACTORS, LLC,
Respondent.


Bryan Meier
Director of Operations

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **U.S. BUREAU OF RECLAMATION, NATIONAL ELECTRIC COIL, ENVIRONMENTAL CONTRACTORS, LLC, AND CTA CONSTRUCTION AND ENVIRONMENTAL, LLC; DOCKET NO.: RCRA-08-2015-0002** was filed with the Regional Hearing Clerk on July 18, 2016.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Amy Swanson, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on July 18, 2016, to:

Respondent

Mr. Christopher Schraff, Esq.
Porter Wright Morris & Arthur, LLP
41 S. Hugh Street, Suites 2800-3200
Columbus, OH 43215

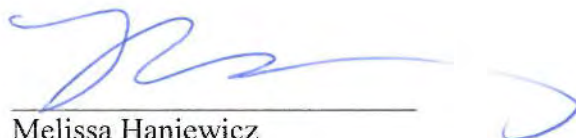
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Billings, MT 59101

July 18, 2016



Melissa Haniewicz
Regional Hearing Clerk