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August 6, 2015

**VIA OVERNIGHT DELIVERY**

Ms. Tina Artemis  
Regional Hearing Clerk  
U.S. Environmental Protection Agency (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

**RE: In The Matter Of: The U.S. Bureau of Reclamation  
National Electric Coil, Environmental Contractors, LLC  
& CTA Construction and Environmental, LLC  
Yellowtail Dam Facility  
EPA ID No. MT0142390046  
Docket No. RCRA-08-2015-0002 and  
Docket No. CAA-08-2015-0014**

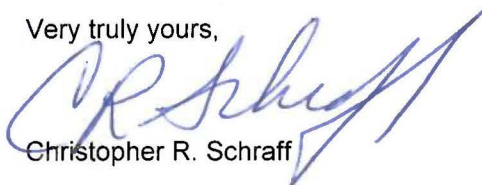
Dear Ms. Artemis:

Enclosed please find the original and one copy of "Answer of Respondent National Electric Coil, L.P. to First Amended Compliance Order Dated July 15, 2015" which is to be filed in the above-captioned matter.

Also enclosed are three extra copies which are to be time-stamped and returned in the enclosed self-addressed, postage prepaid envelope.

Thank you for your assistance in this matter.

Very truly yours,



Christopher R. Schraff

CRS:mkd  
Enclosures

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
ENVIRONMENTAL APPEALS BOARD**

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IN THE MATTER OF:

The U.S. Bureau of Reclamation, )  
National Electric Coil, Environmental Contractors, )  
LLC & CTA Construction and Environmental, LLC )  
)  
)  
Yellowtail Dam Facility )  
EPA ID No. MT0142390046 )  
)  
Docket No. RCRA-08-2015-0002 )  
Docket No. CAA-08-2015-0014 )

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**ANSWER OF RESPONDENT NATIONAL ELECTRIC COIL, L.P.  
TO FIRST AMENDED COMPLIANCE ORDER DATED JULY 15, 2015**

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Pursuant to 40 C.F.R. §22.15, National Electric Coil, L.P. (“NEC”) files this Answer in response to the First Amended Compliance Order and Notice of Opportunity For Hearing dated June 18, 2015 in the above-captioned proceedings. National Electric Coil, L.P. contests the material facts, findings of fact and law, findings of violation and the lawfulness and of the First Amended Compliance Order issued by the United States Protection Agency, Region 8 with respect to the above captioned Respondents. National Electric Coil, L.P. requests a hearing as to all contested questions of fact and law, as further set forth in this Answer.

With respect to the numbered paragraphs of the First Amended Compliance Order, Respondent NEC answers and responds as follows:

**INTRODUCTION**

1. In response to Paragraph 1 of the First Amended Compliance Order, NEC states that this paragraph contains no allegations or findings of fact or law with respect to any Respondent for which a response is required. To the extent that Paragraph 1 can be construed to contain allegations of findings of fact or law with respect to NEC, NEC denies each and every allegation of Paragraph 1.

2. In response to Paragraph 2 of the First Amended Compliance Order, NEC states that this paragraph contains no allegations or findings of fact or law with respect to any Respondent for which a response is required. To the extent that Paragraph 2 can be construed to contain allegations or findings of fact or law with respect to NEC, NEC denies each and every allegation of Paragraph 2.

3. In response to Paragraph 3 of the First Amended Compliance Order, NEC states that this paragraph contains no allegations or findings of fact or law with respect to any Respondent for which a response is required. To the extent that Paragraph 3 can be construed to contain allegations or findings of fact or law with respect to NEC, NEC denies each and every allegation of Paragraph 3.

4. In response to Paragraph 4 of the First Amended Compliance Order, NEC states that this paragraph contains no allegations or findings of fact or law with respect to any Respondent for which a response is required. To the extent that Paragraph 4 can be construed to contain allegations or findings of fact or law with respect to NEC, NEC denies each and every allegation of Paragraph 4.

5. In response to Paragraph 5 of the First Amended Compliance Order, NEC has no direct knowledge as to USEPA's authority in Indian Country, including the Crow Reservation in Montana, and therefore denies the allegations of Paragraph 5.

6. In response to Paragraph 6 of the First Amended Compliance Order, NEC has no knowledge as to USEPA's "...sole authority to regulate federal facilities, including the Yellowtail Dam pursuant to the National Asbestos Emission Standards and Hazardous Air Pollutants (NESHAP) program within the State of Montana," and, therefore, denies the allegations of Paragraph 6.

7. In response to Paragraph 7 of the First Amended Compliance Order, NEC has no knowledge as to whether USEPA "...typically excludes Indian Country as defined by federal statute at 18 U.S.C. §1151 from program delegations and authorizations to states in the absence of an express grant of authority to a state from Congress," and therefore denies the allegations of Paragraph 7.

8. Paragraph 8 of the First Amended Compliance Order contains general statements of law and legal conclusions, and contains no factual allegations or findings of fact or law with respect to any Respondent for which an answer is required. To the extent that Paragraph 8 can be construed as containing allegations or findings of fact or law with respect to NEC, NEC denies each and every allegation of Paragraph 8.

9. Paragraph 9 of the First Amended Compliance Order contains general statements of law and legal conclusions, and contains no factual allegations or findings of fact or law with respect to any Respondent for which an answer is required. To the extent that Paragraph 9 can be construed as containing allegations or findings of fact or law with respect to NEC, NEC denies each and every allegation of Paragraph 9.

10. Paragraph 10 of the First Amended Compliance Order contains general statements of law and legal conclusions, and contains no allegations or findings of fact or law with respect to any Respondent for which an answer is required. To the extent that Paragraph 10 can be construed as containing allegations or findings of fact or law with respect to NEC, NEC denies each and every allegation of Paragraph 10.

11. Paragraph 11 of the First Amended Compliance Order contains general statements of law and legal conclusions, and contains no allegations or findings of fact or law with respect to any Respondent for which an answer is required. To the extent that Paragraph 11 can be construed as containing allegations or findings of fact or law with respect to NEC, NEC denies each and every allegation of Paragraph 11.

### **PARTIES BOUND**

12. In response to Paragraph 12 of the First Amended Compliance Order, NEC denies that the Order jointly and severally binds the Respondents.

### **FINDINGS OF FACT AND LAW**

13. NEC admits the findings contained in Paragraph 13 of the First Amended Compliance Order.

14. NEC admits the findings contained in Paragraph 14 of the First Amended Compliance Order.

15. NEC admits the findings contained in Paragraph 15 of the First Amended Compliance Order.

16. NEC admits the findings contained in Paragraph 16 of the First Amended Compliance Order.

17. NEC admits the findings contained in Paragraph 17 of the First Amended Compliance Order.

18. NEC admits the findings contained in Paragraph 18 of the First Amended Compliance Order.

19. NEC is without knowledge or information sufficient to respond to the findings contained in Paragraph 19 of the First Amended Compliance Order, and, therefore, denies the findings contained in Paragraph 19.

20. NEC is without knowledge or information sufficient to respond to the findings contained in Paragraph 20 of the First Amended Compliance Order, and, therefore, denies the findings contained in Paragraph 20.

21. NEC is without knowledge or information sufficient to respond to the findings contained in Paragraph 21 of the First Amended Compliance Order, and, therefore, denies the findings contained in Paragraph 21.

22. NEC admits the findings contained in Paragraph 22 of the First Amended Compliance Order.

23. NEC admits the findings contained in the first two sentences of Paragraph 23 of the First Amended Compliance Order. NEC lacks knowledge sufficient to respond to the findings contained in the third sentence of Paragraph 23, and, therefore, denies the findings contained in the third sentence of Paragraph 23 that the total area subjected to cleaning and power washing of the rotors and stators in Generator 3 was approximately 852 square feet. NEC admits the findings of the fourth sentence of Paragraph 23.

24. NEC denies the allegations of Paragraph 24 of the First Amended Compliance Order and states that, as a subcontractor, EC was working under the supervision of the prime contractor, NEC. Respondent Bureau of Reclamation, under the contract requirements and submittal review and approval process, gave direction to the way EC's work was performed. Respondent CTA and its employee, Keith Cron, CIH, as the Certified Industrial Hygienist on the job, reviewed and approved plans related to EC's work, and performed periodic site visits to ensure that requirements under the approval plans were met.

25. NEC admits the statements in the second sentence of Paragraph 25 of the First Amended Compliance Order. NEC is without adequate knowledge, information or belief to admit the first and third sentences of Paragraph 25 of the First Amended Compliance Order, and therefore denies the statements in these sentences. Further, NEC states that BOR, EC, NEC and CTA were on-site on June 17, 2014, working together to revise the Asbestos Hazardous Abatement Plan. Irrespective of whether this asbestos abatement project was governed by 40 C.F.R. Part 61, NEC's contract with BOR required NEC to obtain an asbestos abatement permit for this work.

26. NEC admits the statements contained in Paragraph 26 of the First Amended Compliance Order, except that NEC denies the third sentence of Paragraph 26 and incorporates herein by reference its answer to Paragraph 24 of the First Amended Compliance Order.

27. NEC is without knowledge or information sufficient to respond to the findings or allegations contained in Paragraph 27 of the First Amended Compliance Order, and therefore denies the allegations of Paragraph 27.

28. NEC is without knowledge or information sufficient to respond to the findings or allegations contained in Paragraph 28 of the First Amended Compliance Order, and, therefore, denies the findings contained in Paragraph 28 of the First Amended Compliance Order.

29. NEC admits the findings contained in Paragraph 29 of the First Amended Compliance Order.

30. NEC denies the findings contained in Paragraph 30 of the First Amended Compliance Order. Further, NEC states that the wastewater in question was collected under negative pressure HEPA filtered containment by personnel wearing respiratory protection, TyVek suits and gloves, followed by showering. The wastewater containers were closed and

decontaminated prior to being safely moved in order to pump out the wastewater into a 9,000 gallon holding tank

31. NEC admits the findings contained in Paragraph 31 of the First Amended Compliance Order.

32. NEC admits the findings in Paragraph 32 of the First Amended Compliance Order. Further, NEC states that USEPA refers to the holding tank as a “frac tank”, in Paragraph 32 of the First Amended Compliance Order. “Frac tank” is a reference to a tank which holds drilling fluids. No drilling fluids were generated or placed in the tank in question.

33. NEC denies the findings in Paragraph 33 of the First Amended Compliance Order and avers that there was no “...unauthorized discharge of hazardous and asbestos-contaminated wastewater.” NEC further states that the leakage from the holding tank amounted to one or two gallons of wastewater, was completely contained within the secondary containment of the holding tank, and was collected and re-deposited within the holding tank. The holding tank leak was fixed on the same day.

34. NEC admits the finding of Paragraph 34 of the First Amended Compliance Order that water samples of the wastewater in the holding tank were collected on August 18, 2014. NEC denies that the sample results exceeded the RCRA toxicity characteristic leaching procedure (TCLP) levels, and further denies that the wastewater carries the hazardous waste code of D008 for cadmium. NEC further denies that the sample for the poly container indicated that this water was a characteristically hazardous waste and that the wastewater carries the hazardous waste codes of D006 for lead and D008 for cadmium. Further, NEC states that, in order to determine whether the wastewater is a RCRA characteristic waste, it is necessary to perform a Toxicity Characteristic Leaching Procedure test in accordance with 40 C.F.R. §261.24. 40 C.F.R. §261.24(a) states that:

A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, **using the Toxicity Characteristic Leaching Procedure test method 1311 in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,”** EPA Publication SW-846, as incorporated by reference in §260.11 of this chapter, the extract from a representative sample of the waste contains any of the contaminants listed in table 1 at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this section.

(Emphasis added)

USEPA’s First Amended Compliance Order does not aver that the testing mandated by 40 C.F.R. §261.24(a) was performed. The laboratory reports upon which USEPA relies to claim violations of RCRA in Paragraphs 34 and 35 of the First Amended Compliance Order state that

all testing was performed using EPA Test Method 6020 --- not EPA Test Method 1311. Therefore, the values obtained for the wastewater through the testing of samples collected on August 18, 2014 do not comply with 40 C.F.R. §261.24, and cannot form the basis for the violations claimed by USEPA. Further, NEC states that, even if the results of the sampling on August 18, 2014 exceeded the TCLP limits specified in 40 C.F.R. §261.24, the sample in question was not a representative sample of the contents of the container, as required by 40 C.F.R. §§261.20 and 261.24(a), and was not collected, nor intended to be used to characterize the wastewater for disposal.

35. NEC admits the finding of Paragraph 35 of the First Amended Compliance Order that water samples were collected from two positions in the tank on September 2, 2014. NEC denies the findings of Paragraph 35 that "...the cadmium concentration in the wastewater in the tank was 4.4 mg/l, exceeding the TCLP value of 1.0 mg/l." NEC further denies the findings of Paragraph 35 that the "...sample for the poly container had metal results of 1.83 mg/l and 11.6 mg/l, making this a characteristically hazardous waste." NEC further denies that the wastewater carries the hazardous waste codes of D006 for lead and D008 for cadmium. *See also* NEC's response to Paragraph 34 of the First Amended Compliance Order, above, which is incorporated by reference into this response.

36. NEC denies the findings of Paragraph 36 of the First Amended Compliance Order.

37. NEC denies the findings of Paragraph 37 of the First Amended Compliance Order.

38. NEC admits the findings of Paragraph 38 of the First Amended Compliance Order and further states that the letter in question was written during the cleaning process for Generator 3 of the Yellowtail Dam. At that time, it was not known, and had not been determined, whether additional washing would be required. As it turned out, after two wash down events, further washing was required which increased the volume of wastewater.

39. NEC admits the findings of Paragraph 39 of the First Amended Compliance Order, but further states that the listed name of the sample, "HAZWASTE-01," was arbitrarily selected at that time.

40. In response to Paragraph 40 of the First Amended Compliance Order, NEC admits that Respondent CTA submitted a 8700-12 Form to the State of Montana. Upon information and belief, NEC states that the 8700-12 Form in question was submitted as a "draft" document for review by the State of Montana. Further, upon information and belief, NEC states that Respondent CTA intentionally did not sign the document, given its draft status, and also because CTA was not authorized to submit the 8700-12 Form on behalf of BOR.

41. NEC denies the findings contained in Paragraph 41 of the First Amended Compliance Order, except that NEC admits that, after initial sampling of wastewater on or about August 18, 2014, additional wastewater was added to the tank. This was because the samples drawn on August 18, 2014, and September 2, 2014 were not drawn to characterize the

wastewater for disposal, or to determine whether the wastewater was a “hazardous waste” under RCRA. Rather, the purpose of the sampling on those dates was to evaluate an initial, small volume of the wastewater in order to ascertain the concentration of asbestos fibers and other chemicals in order to verify that the level of personal protective equipment by employees was adequate, personal decontamination procedures would be effective, and that engineering controls for the collection of asbestos-containing wastewater were appropriate. NEC employed a multiple wash and sample cycle to attain the level of residual surface cleanliness for asbestos resulting from the decontamination of the electrical equipment at Generator 3 of the Yellowtail Dam which was acceptable to BOR. The samples collected by NEC and CTA on August 18, 2014 and September 2, 2014 were not collected or used for the purpose of characterizing the wastewater from the Generator 3 asbestos decontamination project for waste disposal purposes. To the contrary, at the completion of the work on Generator Unit 3 (and unlike the initial samples of wastewater drawn on August 18, 2014, and September 2, 2014, as referenced by USEPA in Paragraphs 34 and 35 of the First Amended Compliance Order), the sampling conducted in 2015 to characterize the wastewater for disposal utilized a stratified sampling of the holding tank at 6-inch intervals (top to bottom). Those sample results established that the wastewater was not a hazardous waste. Stratified sampling was conducted to ascertain and insure that no physical or chemical separation was occurring which would either skew the test results or cause the sampling to be non-representative of the contents of the tank. It is the stratified sampling of the holding tank in 2015 --- not the “grab” samples in August and September, 2014 --- which were used to characterize the waste for disposal.

42. NEC admits the first two sentences of Paragraph 42 of the First Amended Compliance Order. NEC is without knowledge or information sufficient to form a belief as to the parenthetical statement appearing at the end of Paragraph 42 and therefore denies the findings contained in the parenthetical sentence of Paragraph 42. Further, NEC states that no agitation of the tank occurred during the stratified sampling episode.

43. NEC admits the findings contained in Paragraph 43 of the First Amended Compliance Order.

44. NEC admits the findings contained in Paragraph 44 of the First Amended Compliance Order.

45. NEC is without knowledge or information sufficient to form a belief as to the truth or accuracy of the findings contained in Paragraph 45 of the First Amended Compliance Order, and, therefore, denies each and every allegation contained in Paragraph 45.

46. NEC is without knowledge or information sufficient to form a belief as the truth or accuracy of the findings contained in Paragraph 46 of the First Amended Compliance Order, and, therefore, denies each and every allegation contained in Paragraph 46.

47. NEC is without knowledge or information sufficient to form a belief as to the truth or accuracy of the findings contained in Paragraph 47 of the First Amended Compliance Order, and, therefore, denies each and every allegation contained in Paragraph 47.



48. NEC is without knowledge or information sufficient to form a belief as to the truth or accuracy of the findings contained in Paragraph 48 of the First Amended Compliance Order, and, therefore, denies each and every allegation contained in Paragraph 48.

49. NEC admits the findings contained in the first sentence of Paragraph 49 of the First Amended Compliance Order. NEC denies the balance of the findings contained in Paragraph 49.

50. NEC admits the findings contained in Paragraph 50 of the First Amended Compliance Order.

## **FINDINGS OF VIOLATION**

### **RCRA Subtitle C**

51. Paragraph 51 of the First Amended Compliance Order contains general summary of law which does not include allegations of findings of fact or law related to Respondents which requires a response. To the extent that Paragraph 51 can be construed to contain allegations or findings of fact or law against Respondent NEC, NEC denies the entirety of Paragraph 51.

52. Paragraph 52 of the First Amended Compliance Order contains a general summary of law which does not include allegations or findings of fact or law related to Respondents which requires a response. To the extent that Paragraph 52 can be construed to contain allegations or findings of fact or law against Respondent NEC, NEC denies the entirety of Paragraph 52.

53. NEC denies the findings of violation set forth in Paragraph 53 of the First Amended Compliance Order.

54. Paragraph 54 of the First Amended Compliance Order contains a general summary of law which does not include allegations or findings of fact or law related to Respondents which requires a response. To the extent that Paragraph 54 can be construed to contain allegations or findings of fact or law against Respondent NEC, NEC denies the entirety of Paragraph 54.

55. NEC denies the findings of violation set forth in Paragraph 55 of the First Amended Compliance Order.

56. Paragraph 56 of the First Amended Compliance Order contains a general summary of law which does not include allegations or findings of fact or law related to Respondents which require a response. To the extent that Paragraph 56 can be construed to contain allegations or findings of fact or law against Respondent NEC, NEC denies the entirety of Paragraph 56.

57. NEC denies the findings of violation set forth in Paragraph 57 of the First Amended Compliance Order. Further, NEC states that the tank and tank storage containment for the wastewater in question is located a few feet from the NEC field office at the Yellowtail Dam. Access to the office necessarily requires NEC personnel and other personnel to pass close by the containment and holding tank, which is in plain view, hundreds of times each 10-hour, 6-day work shift. The tank is essentially new, not corroded and in a secondary spill containment facility. The wastewaters in the tank are not corrosive by characteristic, and would not have corroded the tank during the period such wastewater was contained within the tank. Thus, any requirement for weekly inspections of the tank under 40 C.F.R. §262.34(a) or 40 C.F.R. §265.174 was met.

58. Paragraph 58 of the First Amended Compliance Order contains a general summary of law which does not include allegations or findings of fact or law related to Respondents which require a response. To the extent that Paragraph 58 can be construed to contain allegations or findings of fact or law against Respondent NEC, NEC denies the entirety of Paragraph 58.

59. NEC denies the findings of violation set forth in Paragraph 59 of the First Amended Compliance Order. Further, NEC states that no dilution of hazardous waste took place "...as a substitute for treatment standards for hazardous waste," as alleged in Paragraph 59 of the Compliance Order. All wastewater was collected and placed in the holding tank as part of an ongoing asbestos cleaning and removal operation, and in accordance with commonly accepted, good industry practice for projects of this kind.

#### **ASBESTOS NESHAPS PROGRAM**

60. NEC denies the finding of violation set forth in Paragraph 60 of the First Amended Compliance Order.

61. Paragraph 61 of the First Amended Compliance Order contains a general summary of law which does not include allegations of findings of fact or law related to Respondents for which an answer is required. To the extent that Paragraph 61 can be construed to contain allegations or findings of fact or law against Respondent NEC, NEC denies the entirety of Paragraph 61.

62. NEC denies the findings of violation set forth in Paragraph 62 of the First Amended Compliance Order. NEC further states that appropriate notice of the commencement of the asbestos decontamination project at Generator 3 of the Yellowtail Dam was given to the State of Montana pursuant to Montana DEQ Permit No. MTP14-0019-03, which was issued to NEC for the asbestos decontamination project in question. At the time that Montana DEQ Permit No. MTP14-0019-03 was issued, NEC and all other Respondents believed, in good faith, that the State of Montana had assumed jurisdiction over the Yellowtail Dam asbestos removal project. Neither the State of Montana nor EPA notified NEC, at the time when the application was submitted for Permit No. MTP14-0019-03 nor for several months after Permit No. MTP14-0019-03 was issued and the asbestos decontamination project was carried out, that EPA had

exclusive jurisdiction over the asbestos decontamination project for Generator 3. NEC's compliance with Permit No. MDP-0019-03 constitutes substantial compliance with 40 C.F.R. Part 61.

63. Paragraph 63 of the First Amended Compliance Order contains a general summary of law which does not include allegations or findings of fact or law related to Respondents and for which an answer is required. To the extent that Paragraph 63 can be construed to contain allegations or findings of fact or law against Respondent NEC, NEC denies the entirety of Paragraph 63.

64. NEC denies the findings of violation set forth in Paragraph 64 of the First Amended Compliance Order. Further, NEC states that, to the extent that the requirements of 40 C.F.R. §61.150(a)(i)(v) apply to this decontamination project at Generator 3, the labeling requirements referenced in 40 C.F.R. §61.150(a)(i)(v) apply after asbestos-containing waste material is placed in leak-tight containers, not before the completion of the placement of material into such containers. The warning labels are intended to be affixed to the leak-tight containers for loading and unloading of asbestos containing waste materials for ultimate disposal. 40 C.F.R. §61.150 contains no specific time limit by which such labels are to be affixed to the leak-tight containers to be used for disposal. Finally, even if warning labels were required, these labels were affixed to the required containers on or before May 22, 2015, thereby correcting this alleged violation well before the issuance of the First Amended Compliance Order.

65. Paragraph 65 of the First Amended Compliance Order contains a general summary of law which does not include allegations or findings of fact or law related to Respondents and for which an answer is required. To the extent that Paragraph 65 can be construed to contain allegations or findings of fact or law against Respondent NEC, NEC denies the entirety of Paragraph 65.

66. NEC denies the findings of violation set forth in Paragraph 66 of the First Amended Compliance Order. NEC further avers that the disposal of the waste in question was justifiably delayed due to: (1) negotiations and disagreements with the State of Montana as to the appropriate method of disposal of the wastewater in question; and (2) disputes between the State of Montana and USEPA over which agency had jurisdiction over this asbestos decontamination project. Further, NEC states that the asbestos removal operations were carried out in compliance with the Montana asbestos removal regulatory program, which is modelled upon the federal asbestos removal NESHAPS program found in 40 C.F.R. Part 61, and which was approved by USEPA for use in all areas of the State of Montana where Montana has primacy to administer the asbestos NESHAPs program. Montana has been delegated such authority by USEPA for over 40 years, and all Respondents to this Compliance Order were complying with Montana's NESHAP-based asbestos removal regulations. No one at Montana DEQ or USEPA directed NEC or any other Respondent to comply with 40 C.F.R. Part 61 in lieu of the Montana asbestos removal regulations, either prior to or for several months after NEC and other Respondents sought and obtained approval of the asbestos removal project for the Yellowtail Dam under Montana's asbestos removal program. The asbestos abatement project at Generator 3 had been completed before EPA asserted jurisdiction in this matter, and was permitted under Montana Permit No. MTP14-0019-03.

## COMPLIANCE ORDER

67. Paragraph 67 of the First Amended Compliance Order requires Respondents to submit for EPA's approval the selected hazardous waste transporter who is compliant with 40 C.F.R. §263.11 and the treatment or disposal facility permitted to treat or dispose of RCRA hazardous waste per a permit issued according to the standards of 40 C.F.R. Part 264. The facility must also be able to dispose of wastewater generated as part of the asbestos abatement project. This requirement is arbitrary, capricious, unreasonable and unlawful because the wastewater in question is not a hazardous waste. In any event, NEC's selection of a waste transporter and disposal facility have been approved by USEPA.

68 Paragraph 68 obligates the Respondents to "containerize the wastewater into airtight containers meeting asbestos requirements and RCRA pre-transport requirements as listed in 40 C.F.R. §§262.30 through 262.33." This requirement is arbitrary, capricious, unreasonable and contrary to law because the cited regulations do not require "airtight containers."

69. Paragraph 69 obligates Respondents to ensure that the tank is empty as defined by RCRA at 40 C.F.R. §261.7. The order further obligates Respondents to "...comply with asbestos requirements for management of the tank and all poly containers." This requirement is arbitrary, capricious, unreasonable and unlawful because the wastewater in question is not a hazardous waste and the asbestos regulations set forth in 40 C.F.R. Part 61 do not contain any specific requirements for management of the tank and all poly containers. Therefore, this directive is unreasonably vague and ambiguous. Moreover, there is inadequate information and data set forth in the First Amended Compliance Order to establish whether the asbestos removal project in question is governed by 40 C.F.R. Part 61.

70. Paragraph 70 directs Respondents to "obtain all applicable State, Crow Tribal and local permits for transportation and disposal off the Reservation. Yet, USEPA claims "sole authority" to regulate federal facilities, including the Yellowtail Dam under Paragraphs 5 and 6 of the Compliance Order. If USEPA claims sole authority to regulate the wastewaters in question, it cannot subject NEC to conflicting or additional requirements of state, tribal and local authorities who, according to USEPA, lack authority in this matter. It is arbitrary, capricious, unreasonable, an abuse of discretion and unlawful to impose this requirement. In particular, the Crow Tribe has no jurisdiction to regulate activities occurring at the Yellowtail Dam because USEPA has not delegated authority to the Tribe under either RCRA or the Clean Air Act to regulate the activities in question.

71. Paragraph 71 of the First Amended Compliance Order obligates Respondents to "use manifests for disposal of the wastewater in compliance with the requirements of 40 C.F.R. §262.20 through 262.27 and 40 C.F.R. 61.150(d)." These requirements are arbitrary, capricious, an abuse of discretion and unlawful because the wastewater in question is not a hazardous waste, nor is the wastewater governed by 40 C.F.R. Part 61.

72. Paragraph 72 obligates Respondents to maintain the manifest and associated paperwork as required by 40 C.F.R. §262.40 and 40 C.F.R. §61.150(d). These requirements are arbitrary, capricious, an abuse of discretion and contrary to law because the wastewater in question is not a hazardous waste, nor are these wastewaters governed by 40 C.F.R. Part 61.

73. Paragraph 73 obligates Respondents to "...notify EPA that it [sic] has transported using the EPA approved transporter, and permanently disposed of the contaminated wastewater" at a permitted RCRA facility in "...a manner appropriate for both RCRA Subtitle C and asbestos contaminated waste." This requirement is arbitrary, capricious, an abuse of discretion and contrary to law because the wastewater in question is not a hazardous waste or governed by 40 C.F.R Part 61. Even if such wastewater was regulated as asbestos-containing waste, the wastewater is normally allowed to be disposed of, after filtration, through a wastewater treatment facility, with disposal of the filter medium as a non-hazardous waste. This is the common industry practice, and also the practice under OSHA. Finally, this requirement is also grammatically inconsistent ("...Respondents shall notify EPA that it has...."), creating confusion and uncertainty as to whether EPA intends each Respondent to separately notify EPA regarding the disposal of the wastewater in question, or if not, who EPA intends this obligation to fall upon.

74. Paragraph 74 of the First Amended Compliance Order directs Respondents to submit to EPA for review and approval modifications to the Asbestos Hazard Abatement Plan for abatement of the remaining three generators. This requirement is arbitrary, capricious, an abuse of discretion and contrary to law because 40 C.F.R. Part 61 does not require the submission of an "Asbestos Hazard Abatement Plan" to EPA for review and approval.

75. Paragraph 75 requires Respondents to file a Biennial Report in 2016 "as required by 40 C.F.R. §262.41." This requirement is arbitrary, capricious, an abuse of discretion and contrary to law because the wastewater in question is not a hazardous waste or governed by 40 C.F.R. Part 61. Moreover, 40 C.F.R. §262.41 requires one biennial report, while this paragraph, read literally, requires each Respondent to file a Biennial Report.

76. Paragraph 76 of the First Amended Compliance Order is arbitrary, capricious, an abuse of discretion and contrary to law because no documents need be submitted to USEPA under the facts and circumstances of this matter.

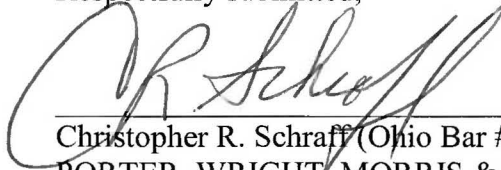
### **GENERAL PROVISIONS**

76. Paragraphs 77-84 contain general summaries of law or reservations of rights on the part of USEPA, and do not include any specific findings, allegations or conclusions of law with respect to the Respondents. To the extent that Paragraphs 77-84 can be construed to contain findings of fact, conclusions of law or other claims against Respondent NEC, NEC denies each and every part of Paragraphs 77-84 of the Complaint.

WHEREFORE, Respondent NEC respectfully requests that Findings and Orders be entered which:

1. Find as a matter of law and fact that the wastewater in question is not a hazardous waste, as claimed by USEPA;
2. Find as a matter of law and fact that the asbestos abatement project at the Yellowtail Dam is not subject to, or in the alternative, did not violate the requirements of 40 C.F.R. Part 61;
3. Vacate the First Amended Compliance Order dated June 18, 1015 against NEC;
4. Relieve NEC from any and all findings of violation of the Resource Conservation and Recovery Act, 40 U.S.C. §§6901 et seq., and its implementing regulations, and 40 C.F.R. Part 61; and
5. Grant such further relief as justice may require or warrant.

Respectfully submitted,



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*Attorneys for National Electric Coil*

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Answer of National Electric Coil, L.P. To First Amended Compliance Order Dated July 15, 2015" was served upon the following parties by sending an electronic copy by email and also mailing a copy by U.S. Postage, First Class service, postage prepaid, this 6<sup>th</sup> day of August, 2015 addressed to the following counsel:

*United States Environmental Protection Agency:*

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United States Environmental Protection Agency  
Region 8  
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*United States Bureau of Reclamation:*

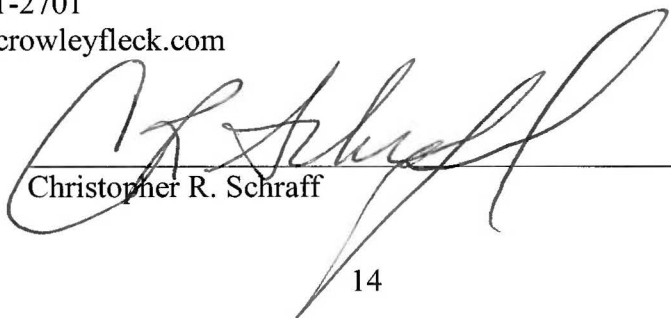
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