



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
www.epa.gov/region08

JUL 15 2015

Ref: 8ENF-L

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Brent Esplin, Area Manager  
Montana Area Office  
Bureau of Reclamation  
U.S. Department of the Interior  
P.O. Box 30137  
Billings, Montana 59107-0137

Registered Agent  
National Electric Coil  
CSC Lawyers Incorporating  
SVC, Inc.  
150 South Perry Street  
Montgomery, Alabama 36104-4227

Ms. Toni J. Kolendich, Registered Agent  
Environmental Contractors, LLC  
P.O. Box 80107  
Billings, Montana 59108-0107

Mr. Keith Cron, CIH  
Director of Environmental Services  
CTA Construction and Environmental, LLC  
219 2<sup>nd</sup> Avenue South  
Great Falls, Montana 59405

Re: First Amended Compliance Order and Notice of Opportunity for Hearing Pursuant to Section 3008(a) of the Resource Conservation and Recovery Act and Section 113(a)(3)(B) of the Clean Air Act, Docket Nos. RCRA-08-2015-0002 and CAA-08-2015-0014

Dear Mr. Esplin, Ms. Kolendich, Mr. Cron and CSC Lawyers, Inc.:

The U.S. Environmental Protection Agency is issuing the U.S. Bureau of Reclamation, National Electric Coil, Environmental Contractors, LLC, and CTA Construction and Environmental, LLC, (Respondents) the enclosed First Amended Compliance Order and Notice of Opportunity for Hearing (Amended Order), amending the order originally issued under the above referenced docket numbers on June 18, 2015. The Amended Order alleges the same violations of the Resource Conservation and Recovery Act (RCRA) hazardous waste program and the Asbestos National Emissions Standards and Hazardous Air Pollutants (NESHAP) program at the Yellowtail Dam hydroelectric facility (facility) on federal land within the exterior boundaries of the Crow Reservation, Montana as the original order. The Amended Order directs the treatment, transportation and disposal of approximately 5,125 gallons of hazardous and asbestos-contaminated wastewater generated by an asbestos abatement project at the facility on a different schedule than that contained in the original order. The EPA is authorized to issue this Amended Order pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6928(a), section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7413(a)(3)(B), and 40 C.F.R. § 22.14(c).

Upon receipt of the original Order, Respondents BOR, NEC and CTA submitted for the EPA's approval their selected hazardous waste transporter and treatment or disposal facility. By this letter, and as noted in the Amended Order, EPA approves of BOR, NEC and CTA's selected transporter and disposal facility.

The Order describes the actions necessary for the Respondents to achieve compliance with the asbestos NESHAP and RCRA generator requirements. Specifically, the Order requires that the Respondents perform the following work.

Within 40 days of receipt of the Amended Order, Respondents shall containerize the wastewater into airtight containers meeting asbestos requirements and RCRA pre-transport requirements, including packaging, labeling, marking, and placarding. Respondents shall also comply with any and all Department of Transportation or State requirements for transport of the hazardous waste and asbestos-containing wastewater.

After the wastewater is properly containerized for transportation but no later than 40 days after receipt of this Amended Order, Respondents shall ensure the tank is empty as defined by RCRA at 40 C.F.R. § 261.7. Respondents shall comply with asbestos requirements for management of the tank and all poly containers.

Respondents shall obtain all applicable State, Crow Tribal, and local permits for transportation and disposal prior to disposal off the Reservation.

Respondents shall use manifests for shipment and disposal of the wastewater and shall retain the manifest and associated paperwork.

Within 55 days of receipt of this Amended Order, Respondents shall notify the EPA that it has transported using the EPA approved transporter, and permanently disposed of the contaminated wastewater at the EPA approved RCRA Subtitle C disposal facility in a manner appropriate for both RCRA subtitle C and asbestos contaminated waste. Respondents shall include copies of the manifests and accompanying paperwork verifying the disposal.

Within 70 days of receipt of this Amended Order, Respondents shall submit to the EPA for review and approval modifications to the Asbestos Hazard Abatement Plan for abatement of the remaining three generators that specifies presampling, post abatement clearance, storage, transportation, equipment decontamination and disposal of hazardous and asbestos-contaminated waste in compliance with the NESHAPS and federal hazardous waste program requirements.

File a Biennial report in 2016 as required by 40 C.F.R. § 262.41.

The EPA is authorized by RCRA and the CAA to take appropriate enforcement actions necessary to secure prompt compliance with the statutory requirements and implementing regulations. Section 3008 of RCRA provides a variety of possible enforcement actions, including the filing of a civil, criminal or administrative action. (See 42 U.S.C. § 6928, subsections (d), (g).) Similarly, section 113 of the CAA authorizes the filing of a civil, criminal or administrative action. (See 42 U.S.C. § 7413, subsections (b), (c), (d).) Please be advised that issuance of this Order does not preclude civil or criminal U.S. District Court action or EPA administrative penalty proceedings for the violations cited in the Order. Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

A Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet was provided with the original Order. If you have any questions relating to technical issues raised in the Order, please contact Ms. Linda Jacobson for RCRA at (303) 312-6503 or Mr. Victor Zielinski for asbestos at (303) 312-6365. Any questions relating to legal issues should be directed to Mr. Charles L. Figur at (303) 312 6915 through July 23, 2015, and beginning on August 3, 2015, to Ms. Amy Swanson at (303) 312-6906 or by email at [swanson.amy@epa.gov](mailto:swanson.amy@epa.gov). Thank you for your attention to this matter.

Sincerely,

*for Eddie Q Serra*  
Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosures:

First Amended Compliance Order and Notice of Opportunity for Hearing

cc: Mr. Peter G. Stevenson, Soil Scientist  
Mr. Kurt Anderson  
Montana Area Office, U.S. BOR

Mr. Vic Feuerstein, MS, CH  
Ms. Sara Borders  
National Electric Coil

Mr. Alex Cummins, Asbestos Inspector  
Environmental Contractors, LLC

Mr. Mr. Nathan Shumate, Environmental Scientist  
CTA Construction and Environmental, LLC

The Honorable Darrin Old Coyote, Chairman  
Connie Howe, Environmental Director  
Crow Tribe

Mr. Mark Hall, Hazardous Materials Section Chief  
Montana Department of Environmental Quality

Ms. Tina Artemis  
EPA Region 8 Regional Hearing Clerk

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2015 JUL 15 AM 8:13

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF:	)	Docket Nos. RCRA-08-2015-0002
	)	and CAA-08-2015-0014
	)	
The U.S. Bureau of Reclamation, National	)	FIRST AMENDED COMPLIANCE
Electric Coil, Environmental Contractors, LLC	)	ORDER AND NOTICE OF
and CTA Construction and Environmental, LLC	)	OPPORTUNITY FOR HEARING
	)	
Yellowtail Dam Facility	)	Proceeding pursuant to section 3008(a) of
EPA ID No. MT0142390046	)	the Resource Conservation and Recovery
	)	Act, 42 U.S.C. § 6928(a), and
	)	section 113(a)(3)(B) of the Clean Air Act,
Respondents.	)	42 U.S.C. § 7413(a)(3)(B)
	)	

**INTRODUCTION**

1. This First Amended Compliance Order and Notice of Opportunity for Hearing (Amended Order) is issued pursuant to section 3008(a) of the Solid Waste Disposal Act, as amended by, inter alia, the Resource Conservation and Recovery Act of 1976 (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).
2. The authority to issue this Amended Order is vested in the EPA Administrator by section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), and has been properly delegated to the undersigned officials.
3. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. part 22 (Consolidated Rules of Practice), a copy of which is enclosed.
4. This Amended Order is issued pursuant to 40 C.F.R. § 22.14(c). It amends the original order issued under these docket numbers on June 18, 2015 (Order). Pursuant to 40 C.F.R. § 22.14(c), each Respondent (defined in paragraphs 13 - 16 below) shall have 20 days from the date of service of this Amended Order to file its answer to this Amended Order.

**JURISDICTION**

5. The EPA has sole RCRA subtitle C (hazardous waste program) inspection and enforcement authority in Indian country defined by 18 U.S.C. § 1151, including the Crow Reservation. No other governmental entity has applied for and been approved to administer RCRA subtitle C within the exterior boundaries of the Crow Reservation. See, e.g., 65 Fed. Reg. 26750 (May 9, 2000); and 65 Fed. Reg. 81381 (December 26, 2000).
6. The EPA has sole authority to regulate federal facilities, including the Yellowtail Dam, pursuant to the regulations for implementation of the Asbestos National Emissions Standards and Hazardous Air

Pollutants (NESHAP) program within the State of Montana including, but not limited to, the Yellowtail Dam facility. 42 Fed. Reg. 44573 (September 6, 1977).

7. The EPA 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. 60 Fed. Reg. 49239 (September 22, 1995). See also, RCRA Authorization regulations at 40 C.F.R. § 271.1(h).

8. Pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the EPA Administrator is authorized to issue compliance orders whenever the Administrator determines that any person has violated or is in violation of any requirement of RCRA subtitle C, 42 U.S.C. §§ 6901-6991. This Amended Order sets forth specific actions Respondents are required to conduct within specified schedules to return Respondents to compliance with RCRA. Pursuant to section 3008(c) of RCRA, 42 U.S.C. § 6928(c), respondents who fail to achieve compliance within the timeframe specified in a compliance order are liable for additional civil penalties up to \$37,500 for each day of noncompliance, and where appropriate, the suspension or revocation of RCRA permits.

9. Section 6001 of RCRA, 42 U.S.C. § 6961, provides that each department, agency and instrumentality of the executive, legislative and judicial branches of the Federal Government 1) having jurisdiction over any solid waste management facility or disposal site, or 2) engaged in any activity resulting, or which may result, in the disposal or management of solid or hazardous waste shall be subject to, and comply with, all Federal, State, interstate and local requirements, both substantive and procedural, respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner and to the same extent as any person is subject to such requirements. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines.

10. Pursuant to section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), the EPA Administrator is authorized to issue an order requiring any person found by the Administrator to have violated or be in violation of any requirement or prohibition of section 7603, subchapter IV-A, subchapter V, or subchapter VI, other than of an applicable implementation plan or permit, to comply with such requirement or prohibition in accordance with section 113(a)(4), 42 U.S.C. § 7413(a)(4).

11. Section 118 of the CAA, 42 U.S.C. § 7418, provides that each department, agency and instrumentality of the executive, legislative and judicial branches of the Federal Government 1) having jurisdiction over any property or facility or 2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent or employee thereof, shall be subject to, and comply with, all Federal, State, interstate and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner and to the same extent as any nongovernmental entity.

### **PARTIES BOUND**

12. This Amended Order jointly and severally binds the Respondents, their officers, directors, operators, employees, contractors and subcontractors.

## FINDINGS OF FACT AND LAW

13. Respondent U.S. Bureau of Reclamation (BOR) is a department, agency, or instrumentality of the United States and therefore a “person” as defined by section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and section 302(e) of the CAA, 42 U.S.C. § 7602(e).
14. Respondent National Electric Coil (NEC) is a corporation and therefore a “person” as defined by section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and section 302(e) of the CAA, 42 U.S.C. § 7602(e).
15. Respondent Environmental Contractors, LLC (EC), is a corporation and therefore a “person” as defined by section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and section 302(e) of the CAA, 42 U.S.C. § 7602(e).
16. Respondent CTA Construction and Environmental, LLC (CTA), is a corporation and therefore a “person” as defined by section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and section 302(e) of the CAA, 42 U.S.C. § 7602(e).
17. Respondent BOR operates the Yellowtail Dam hydroelectric generation facility (facility) on federal land adjacent to the Big Horn River near Fort Smith, Montana, within the exterior boundaries of the Crow Reservation.
18. Respondent BOR is an “owner” and/or “operator” of the facility as defined at 40 C.F.R. §§ 260.10 and 61.141.
19. The facility is a “facility” as defined at 40 C.F.R. §§ 260.10 and 61.141.
20. Respondent BOR filed a site identification form for the facility with the EPA on March 9, 1984, identifying the facility as a small quantity generator of the following hazardous waste: (D001). The EPA assigned the facility RCRA identification number MT0142390046. The facility subsequently notified of their change in generator status to a conditionally exempt small quantity generator on March 12, 2010.
21. Respondent BOR does not have interim status to operate the facility as a hazardous waste treatment, storage or disposal facility.
22. Respondent BOR contracted with Respondent NEC to perform generator maintenance at the facility.
23. Respondent NEC subcontracted with Respondent EC to perform asbestos abatement associated with the generator maintenance project. The asbestos abatement project involved two areas: the rotors and the associated stator bars of Generator 3. Approximately 852 square feet of brake dust was removed from Generator 3. Future asbestos removal and rebuild is planned for Generators 1, 2 and 4.
24. Respondent EC performed the daily asbestos removal activities under the direction and supervision of representatives of Respondents BOR, NEC and CTA.
25. Respondent EC prepared a Limited Hazardous Materials Inspection of the facility’s Unit 3 Rotor and Stator at the request of Respondent BOR on June 17, 2014. No samples were collected. As a result of the inspection, Respondent EC determined, based on a visual inspection, that the facility contained Category II non-friable asbestos-containing material.

26. Respondent NEC retained Respondent CTA to perform industrial hygiene and environmental duties to assist with implementation of the Asbestos Hazard Abatement Plan. Respondent CTA submitted a signed and stamped Asbestos Hazard Abatement Plan, RSN 02 82 30-3, for Solicitation No. R13PS60127, on March 2013 on behalf of Respondent NEC and Respondent EC. Respondent CTA supervised and/or directed the asbestos cleanup project as outlined in the Asbestos Hazard Abatement Plan including, but not limited to, the dry-ice blasting and high-pressure washing of rotor 3. Respondent CTA oversaw sample collection, lab submission, interpretation and implementation of wipe, air and water sampling associated with the project.

27. The facility's asbestos abatement project is a renovation within the meaning of 40 C.F.R. § 61.141, and therefore subject to the "Standard for Demolition and Renovation" set forth in 40 C.F.R. § 61.145.

28. Respondents BOR, NEC, EC and CTA are "owners or operators of a demolition or renovation activity" as defined at 40 C.F.R. § 61.141.

29. Respondents BOR, NEC, EC and CTA began the asbestos abatement project at the facility on or about July 5, 2014. Respondents began dry ice blasting Rotor 3 on or about July 17, 2014, followed by high-pressure washing Rotor 3 at 1,500 pounds per square inch to remove the asbestos beginning on or about July 18, 2014.

30. The wastewater produced by the asbestos abatement project is within the meaning of "asbestos-containing waste materials" defined at 40 C.F.R. §61.141.

31. The wastewater generated by the asbestos abatement project initially was stored in 55-gallon poly containers at the facility.

32. On or about August 9, 2014, a 9,100 gallon steel frac tank (tank) arrived at the facility for storage of the asbestos-contaminated wastewater. The interior of the tank measures 8 feet high, 8 feet, 6 inches wide, and 21 feet, 2 inches in length. The tank is stored under a tarp in the facility's parking area. Wastewater from the asbestos abatement project initially stored in the 55-gallon poly drums and tote, and generated subsequently, was placed in the tank.

33. On or about August 15, 2014, the frac tank leaked resulting in the unauthorized discharge of hazardous and asbestos-contaminated wastewater, and a sucker truck and technician arrived to fix the leak.

34. On August 18, 2014, water samples from the wastewater were collected for waste characterization purposes. The sample results showed that the cadmium level of 1.02 mg/l exceeded the RCRA toxicity characteristic leaching procedure (TCLP) levels, making the wastewater a hazardous waste and subject to the hazardous waste program. The wastewater carries the hazardous waste code of D008 for cadmium. The asbestos concentration was 380 million fibers per liter (MFL) for fibers greater than 10 nanometers ( $\mu\text{m}$ ) and 560 MFL for fibers equal to or greater than 10  $\mu\text{m}$ .

35. On September 2, 2014, water samples were collected from two positions in the tank and a sample was collected from the cubic meter poly container. The cadmium concentration in the wastewater in the tank was 4.4 mg/l, exceeding the TCLP value of 1.0 mg/l. This wastewater carries the hazardous waste of D008 for cadmium. The sample for the poly container had metal results of 1.83 mg/l for cadmium and

11.6 mg/l for lead, making this wastewater a characteristically hazardous waste. The wastewater carries the hazardous waste codes of D006 for lead and D008 for cadmium.

36. The tank and 55-gallon poly containers are “containers” as defined in 40 C.F.R. § 260.10, since they are portable devices in which a material is stored and, thus, are subject to the requirements for hazardous waste container storage.

37. Respondents BOR, NEC, EC and CTA are generators of hazardous waste as defined in 40 C.F.R. § 260.10.

38. In a September 29, 2014, letter to Respondent NEC, Respondent CTA recommended that Respondents CTA, BOR and NEC “collaborate to develop a hazardous waste management plan in handling potential exposures to metals/VOCs and ensure occupational/environmental impacts are not occurring at the site.” The letter specified that only HAZWOPER trained workers can assist with the current waste. The letter estimated the total volume of hazardous wastewater at approximately 3,000 gallons.

39. In a January 13, 2015, letter to Respondent NEC, Respondent CTA included the results of a 5-micron filter test on 55-gallons of effluent hazardous wastewater removed from the tank, a draft of the 8700-12 Notification of Hazardous Waste Activity form to change the Yellowtail Dam facility’s generator status, and a hazardous waste removal plan. The Chain of Custody Form lists the sample as HAZWASTE-01.

40. On behalf of Respondent BOR, Respondent CTA submitted a new 8700-12 Form, notification of hazardous waste activity, in February 2015, in which Respondent CTA notified the State of Montana of the facility’s change of generator status from a conditionally exempt small quantity generator of hazardous waste to a large quantity generator of hazardous waste. Because Respondent CTA did not sign the form, despite an email from the State reminding Respondent CTA of the missing signature on February 13, 2015, the generator status change was not processed by the State.

41. After the initial waste characterization was performed and the wastewater was determined to be a characteristic hazardous waste for cadmium (D006) and lead (D008), Respondents BOR, NEC, EC and CTA continued to add wastewater from the asbestos abatement project to the tank storing hazardous wastes.

42. In an email dated March 23, 2015, with a subject line “Results of Metals/PCBs per last week Wastewater Tank,” Respondent CTA wrote: “[l]ooks like now, with the additional washing from the Rotor...we are not dealing with a Haz Waste...simply the asbestos.” Respondent CTA attached and referred to the March 13, 2015, stratified sample collection results. (An email from Respondent BOR in May 2015 indicated that the tank may have been agitated prior to the “stratified” sampling episode, negating the intent of the stratified sampling approach.)

43. Respondents BOR, NEC, EC and CTA completed the asbestos abatement project involving hydro-blasting Rotor 3 with water around the end of December 2014. The wastewater generated from the project remains stored in the tank at the facility.

44. On March 23, 2015, representatives from the State of Montana’s hazardous waste and asbestos control programs visited the facility.



45. The State representatives observed 13 asbestos-contaminated poly 55 gallon drums, one larger poly container, and the tank storing wastewater generated during the asbestos abatement work.
46. The State representatives observed that the tank did not have hazardous waste labels or placards and was not labeled as containing asbestos.
47. In a May 22, 2015, conversation with Respondent BOR, the EPA requested that Respondent BOR label the tank as containing hazardous wastes and begin conducting weekly inspections.
48. In a June 2, 2015, email, the EPA received a report of a weekly inspection conducted by Respondent NEC on May 28, 2015, and photos of the tank showing labeling for both hazardous waste and asbestos affixed to the tank.
49. In a May 27, 2015, submittal shared with the EPA, Respondent CTA included the following waste streams as being added to the tank: liquid effluents from the dry ice blasting on the Rotor; liquid effluents from the high pressure washing of the Rotor using water and a degreasing product called Simple Green; liquid effluents from the Hotsy high temperature/pressure washing including detergents/degreasers; liquid effluents from the dry ice blasting on the Stator component; liquid effluents from the Hotsy unit with associated detergent/degreaser used to wash the Stator and associated air housing chamber; liquid effluents from the final cleaning of the Stator unit using wet wiping methodologies. Wastewaters up to this point had tested as hazardous waste for metals. In December 2014, liquid effluents from the Hotsy unit used to remove cured encapsulant from the Rotor and using both the Hotsy in conjunction with wet wiping methodologies to clean the Rotor and Rotor Containment surfaces were added to the frac tank. On February 12, 2015, Respondent CTA was notified by Respondent NEC that the liquid effluent from decontamination and showering were added to the frac tank.
50. In a May 27, 2015, email, Respondent CTA clarified that the current volume of wastewater from the asbestos abatement project stored in the tank was 5,125 gallons.

## **FINDINGS OF VIOLATION**

### **RCRA Subtitle C**

51. Section 3005 of RCRA prohibits the treatment, storage or disposal of hazardous waste at a facility except in accordance with a permit or interim status.
52. 40 C.F.R. § 262.34(a) allows a generator to accumulate hazardous waste on-site for 90 days or less without a permit or without interim status provided specified conditions are met.
53. Respondents stored hazardous wastes at the facility greater than 90 days. Respondents began generating this wastewater on or about July 16, 2014, and performed a hazardous waste determination in August 2014. The hazardous waste has remained in storage since at least July 16, 2014, to present without a storage permit or interim status, in violation of section 3005 of RCRA.
54. 40 C.F.R. § 262.34(a)(2) and (3) require generators to mark on each container the date each period of accumulation begins and label or mark clearly each container with the words "Hazardous Waste" while being accumulated on-site in order for storage that occurs less than 90 days to be eligible for a permit or interim status exemption.

55. Because Respondents failed to label containers for hazardous waste until after directed to do so by the EPA in a phone conversation on May 22, 2015, Respondents were required to have a permit or interim status in order to store hazardous waste. Respondents' failure to comply with the exemption condition to label the containers as hazardous waste constitutes a violation of section 3002 of RCRA.

56. 40 C.F.R. § 262.34(a)(1)(i) requires generators to comply with applicable requirements of 40 C.F.R. part 265, subpart I, including the requirement to conduct weekly inspections of containers storing hazardous waste to check for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors (40 C.F.R. § 265.174).

57. Because Respondents failed to conduct weekly inspections of the tank from at least August 2014 and continuing until sometime after May 22, 2015, Respondents were required to have a permit or interim status in order to store hazardous waste. Respondent's failure to conduct weekly inspections constitutes a violation of 40 C.F.R. § 265.174 and the failure to have a storage permit or interim status is a violation of section 3005 of RCRA.

58. 40 C.F.R. § 268.3 prohibits dilution as a substitute for treatment to achieve treatment standards for hazardous waste.

59. Respondents performed a waste characterization in August 2014, determining that the wastewater exhibited hazardous characteristics for cadmium (D006) and lead (D008). Respondents continued to add wastewater to the stored hazardous waste, resulting in impermissible dilution as demonstrated by the results of the March 13, 2015 sampling event, in violation of 40 C.F.R. § 268.3 and section 3005 of RCRA.

#### **Asbestos NESHAP Program**

60. The asbestos-contaminated wastewater stored in the in the tank and 55-gallon poly containers was not handled in accordance with the "[s]tandard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations" absent an alternative accepted by the State of Montana and the EPA. 40 C.F.R. § 61.150.

61. 40 C.F.R. § 61.145(b) requires the owner/operator of an asbestos abatement activity to notify the EPA at least 10 working days before asbestos stripping or removal work or any other activity begins, such as site preparation, that would break up, dislodge or similarly disturb asbestos material.

62. Respondents failed to submit pre-renovation notification to the EPA at least 10 working days before asbestos stripping or removal work or any other activity begins, such as site preparation, that would break up, dislodge or similarly disturb asbestos material, as required by 40 C.F.R. § 61.145(b).

63. 40 C.F.R. § 61.150(a)(1)(iv) requires all containers of asbestos-containing waste material to be labelled with warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration under 29 C.F.R. §§ 1910.1001(j)(4) or 1926.1101(k)(8).

64. Respondents failed to affix warning labels to the tank or poly containers stating that they carried asbestos-containing waste material in violation of 40 C.F.R. § 61.150(a)(1)(iv).

65. 40 C.F.R. § 61.150(b) requires all asbestos-containing waste material to be deposited as soon as is practical by the waste generator at a waste disposal site operated in accordance with the provisions of 40 C.F.R. § 61.154.

66. Respondents failed to remove contaminated wastewater as soon as practical in violation of 40 C.F.R. § 61.154.

### **FIRST AMENDED COMPLIANCE ORDER**

Based upon the Findings of Violation and the Findings of Fact and Law alleged above and pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6908(a), and section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), Respondents are hereby ordered to take the following actions in the specified timeframes.

67. Upon receipt of the original Order, Respondents BOR, NEC and CTA submitted for the EPA's approval their selected hazardous waste transporter and treatment or disposal facility. EPA approves of BOR, NEC and CTA's selected transporter and disposal facility.

68. Within 40 days of receipt of this Amended Order, Respondents shall 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, which include packaging, labeling, marking, and placarding. Respondents shall also comply with any and all Department of Transportation or State requirements for transport of the hazardous waste and asbestos-containing wastewater.

69. After the wastewater is properly containerized for transportation but no later than 40 days after receipt of this Amended Order, Respondents shall ensure the tank is empty as defined by RCRA at 40 C.F.R. § 261.7. Respondents shall comply with asbestos requirements for management of the tank and all poly containers.

70. Respondents shall obtain all applicable State, Crow Tribal, and local permits for transportation and disposal prior to disposal off the Reservation.

71. Respondents shall 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). Respondents also shall comply with the exception reporting requirements of 40 C.F.R. § 262.42, if warranted.

72. Respondents shall retain the manifest and associated paperwork as required by 40 C.F.R. § 262.40 and 40 C.F.R. § 61.150(d).

73. Within 55 days of receipt of this Amended Order, Respondents shall notify the EPA that it has transported using the EPA approved transporter, and permanently disposed of the contaminated wastewater at the EPA approved RCRA Subtitle C disposal facility in a manner appropriate for both RCRA subtitle C and asbestos contaminated waste. Respondents shall include copies of the manifests and accompanying paperwork, including the Land Disposal Restrictions set forth in 40 C.F.R. part 268, verifying the disposal with their notice.

74. Within 70 days of receipt of this Amended Order, Respondents shall submit to the EPA for review and approval modifications to the Asbestos Hazard Abatement Plan for abatement of the remaining three generators that specifies presampling, post abatement clearance, storage, transportation, equipment decontamination and disposal of hazardous and asbestos-contaminated waste in compliance with the NESHAPS and federal hazardous waste program requirements.

75. Respondents shall file a Biennial report in 2016 as required by 40 C.F.R. § 262.41.
76. All documents required to be submitted by this Order shall be sent to the attention of:

Ms. Linda Jacobson  
8ENF-RC  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Jacobson.linda@epa.gov  
(303) 312-6503

Mr. Victor Zielinski  
8ENF-AT  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Zielinski.victor@epa.gov  
(303) 312-6365

#### **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

77. Each Respondent has the right to request a hearing in accordance with 40 C.F.R. §§ 22.15 and 22.5.
78. In accordance with section 3008(b) of RCRA, 42 U.S.C. § 6928(b), 40 C.F.R. §§ 22.14(c) and 22.37(b), the RCRA requirements of this Amended Order shall become final thirty (30) days after service of this Amended Order unless Respondents request a hearing in accordance with 40 C.F.R. § 22.15 no later than twenty (20) days after service of this Amended Order.

#### **GENERAL PROVISIONS**

79. Respondents shall fully implement each item of this Amended Order in accordance with the requirements and timeframes herein. Respondents' failure to fully implement all requirements of this Amended Order in the manner and time period required shall be deemed a violation of this Amended Order.
80. Any failure to comply with the requirements of this Amended Order shall constitute a violation of this Amended Order and may subject Respondents to penalties as provided under section 3008(c) of RCRA, 42 U.S.C. § 6928(c), and/or section 113(d) of the CAA, 42 U.S.C. § 7413(d).
81. This Amended Order does not constitute a waiver or election by the EPA to forego any civil or criminal action to seek penalties, fines or other relief under RCRA or the CAA. Section 3008(g) of RCRA, 42 U.S.C. 6928(g), as adjusted for inflation by 40 C.F.R. part 19, authorizes the imposition of civil penalties of up to \$37,500 per day for each violation of the subchapter. Section 3008(d) of RCRA, 42 U.S.C. § 6928(d), authorizes fines and imprisonment for knowingly transporting, generating, treating, storing, or disposing of hazardous waste. Section 113(d)(1)(B) of the CAA, 42 U.S.C. 7413(d)(1)(B), as adjusted for inflation by 40 C.F.R. part 19, authorizes the administrative assessment of civil penalties of up to \$37,500 per day for each violation, in part, of any order issued or approved under the chapter. Any

person who knowingly violates any order under section 113(a) of the CAA may be punished by fine or imprisonment or both under section 113(c) of the CAA, 42 U.S.C. § 7413(c).


82. Nothing in this Amended Order shall be construed to prevent the EPA from taking whatever action(s) it deems appropriate for the violations cited in the Amended Order or to relieve Respondents from responsibilities, liabilities or penalties pursuant to any applicable federal or tribal law or regulation.

83. This Amended Order does not relieve Respondents of any responsibilities or liabilities established pursuant to any applicable local, tribal or federal law.

84. Respondents may seek federal judicial review of this Amended Order pursuant to section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1).

85. Respondents may seek administrative review of this Amended Order issued under section 3008(a) of RCRA in accordance with 40 C.F.R. part 22, and once this Amended Order is final and reviewable pursuant to section 3008(b) of RCRA and 40 C.F.R. part 22, judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY REGION 8,  
COMPLAINANT.**



---

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

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing FIRST AMENDED COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING, Docket Nos. RCRA-08-2015-0002 and CAA-08-2015-0014:

Mr. Brent Esplin, Area Manager  
Montana Area Office  
Bureau of Reclamation  
U.S. Department of the Interior  
P.O. Box 30137  
Billings, Montana 59107-0137

Ms. Toni J. Kolendich, Registered Agent  
Environmental Contractors, LLC  
P.O. Box 80107  
Billings, Montana 59108-0107

Certified Return Receipt Nos.

7008 3230 0003 0725 2356

7008 3230 0003 0725 2363

Registered Agent  
National Electric Coil  
CSC Lawyers Incorporating  
SVC, Inc.  
150 South Perry Street  
Montgomery, Alabama 36104-4227

Mr. Keith Cron, CIH  
Director of Environmental Services  
Environmental, LLC  
CTA Construction and  
219 2<sup>nd</sup> Avenue South  
Great Falls, Montana 59405

Certified Return Receipt Nos.

7008 3230 0003 0725 2370

7008 3230 0003 0725 2387

The original and two copies were hand-delivered to:

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

Signature: Sue L. Zaynard

Sue L. Zaynard

Date: 7/15/2015