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Attorney for the U.S. Bureau of Reclamation

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:

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

Yellowtail Dam Facility
EPA ID No. MT0142390046

Respondents.

Docket Nos. RCRA-08-2015-0002
and CAA-08-2015-0014

ANSWER TO FIRST AMENDED
COMPLIANCE ORDER

Proceeding pursuant to section 3008(a) of
the Resource Conservation and Recovery
Act, 42 U.S.C. § 6928(a), and section
113(a)(3)(B) of the Clean Air Act, 42
U.S.C. § 7413(a)(3)(B)

Respondent Bureau of Reclamation (Reclamation) submits this Answer pursuant to 40
CFR § 22.15.

A. Answer to Factual Allegations.

1. Paragraph 1 contains only legal conclusions, and under 40 CFR § 22.15(b), an
answer is not required.

2. Paragraph 2 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

3. Paragraph 3 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

4. Paragraph 4 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

5. Paragraph 5 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required. To the extent that Paragraph 5 can be construed to contain factual allegations, Reclamation lacks knowledge or information sufficient to admit or deny those allegations.

6. Paragraph 6 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required. To the extent that Paragraph 6 can be construed to contain factual allegations, Reclamation lacks knowledge or information sufficient to admit or deny those allegations.

7. Paragraph 7 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required. To the extent that Paragraph 7 can be construed to contain factual allegations, Reclamation lacks knowledge or information sufficient to admit or deny those allegations.

8. Paragraph 8 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

9. Paragraph 9 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

10. Paragraph 10 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

11. Paragraph 11 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

12. Paragraph 12 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

13. Paragraph 13 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required. Nonetheless, Reclamation admits the allegations in Paragraph 13.

14. Paragraph 14 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

15. Paragraph 15 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

16. Paragraph 16 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

17. Reclamation admits the allegations in Paragraph 17.

18. Paragraph 18 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required. Nonetheless, Reclamation admits the allegations in Paragraph 18.

19. Paragraph 19 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

20. Reclamation admits the allegations in Paragraph 20.

21. Reclamation admits the allegations in Paragraph 21.

22. Reclamation admits the allegations in Paragraph 22.

23. Reclamation admits the allegations in Paragraph 23.

24. Answering Paragraph 24, Reclamation admits that Respondent EC performed asbestos removal activities, but denies directing EC's activities, as Reclamation's contractual relationship is with NEC.

25. Upon information and belief, Reclamation admits the allegations in Paragraph 25.

26. Upon information and belief, Reclamation admits the allegations in Paragraph 26.

27. Paragraph 27 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

28. Paragraph 28 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

29. Reclamation admits the allegations in Paragraph 29.

30. Paragraph 30 is contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

31. Reclamation admits the allegations in Paragraph 31.

32. Reclamation admits the allegations in Paragraph 32.

33. Reclamation lacks knowledge or information sufficient to admit or deny Paragraph 33.

34. Answering Paragraph 34, Reclamation admits that CTA's May 27, 2015 letter to Sara Borders at NEC indicates that water samples from the wastewater were collected for waste characterization purposes on August 18, 2014, and that the sample results showed a cadmium level of 1.02 mg/l. However, Reclamation avers that that report indicates asbestos concentrations in the wastewater of 380 million fibers per liter (MFL) for fibers greater than 10 microns, and 560 MFL for fibers greater than or equal to 0.5 microns. The remainder of the allegations in Paragraph 34 are legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

35. Answering Paragraph 35, Reclamation admits that CTA's October 1, 2014 Waste Production and Disposal Records report indicates that, on September 2, 2014, the cadmium concentration in the wastewater tank was 4.4 mg/l, that the cadmium concentration in a poly container was 1.83 mg/l, and that the lead concentration in the same poly container was 11.6 mg/liter. The remainder of the allegations in Paragraph 35 are legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

36. Paragraph 36 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

37. Paragraph 37 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

38. Answering Paragraph 38, Reclamation admits that the referenced letter exists, and asserts that it is the best evidence of its contents and reads as written.

39. Answering Paragraph 39, Reclamation admits that the referenced letter exists, and asserts that it is the best evidence of its contents and reads as written.

40. Upon information and belief, Reclamation admits the allegations in Paragraph 40.

41. Answering Paragraph 41, Reclamation admits that additional wastewater was added to the tank after initial sampling of wastewater on or about August 18, 2014. The remainder of the allegations in Paragraph 41 are legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

42. Answering Paragraph 42, Reclamation admits that the referenced email exists, and asserts that it is the best evidence of its contents and reads as written.

43. Answering the allegations in Paragraph 43, Reclamation denies that the referenced asbestos abatement project was completed at the end of December, 2014, and avers

that the abatement project was completed at the end of February, 2015. Reclamation admits that the wastewater generated from the project remains stored in the tank at the facility.

44. Reclamation admits the allegations in Paragraph 44.

45. Reclamation admits the allegations in Paragraph 45.

46. Reclamation admits the allegations in Paragraph 46.

47. Reclamation admits the allegations in Paragraph 47.

48. Answering Paragraph 48, Reclamation admits that the referenced email exists, and asserts that it is the best evidence of its contents and reads as written.

49. Answering the allegations in the first sentence of Paragraph 49, Reclamation admits that the referenced submittal exists, and asserts that it is the best evidence of its contents and reads as written. The second sentence of Paragraph 49 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required. Upon information and belief, Reclamation admits the allegations in the third and fourth sentences of Paragraph 49.

50. Answering Paragraph 50, Reclamation admits that the referenced email exists, and asserts that it is the best evidence of its contents and reads as written.

51. Paragraph 51 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

52. Paragraph 52 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

53. Answering Paragraph 53, Reclamation admits that the subject wastewater was generated beginning on or about July 16, 2014, and has been stored for longer than 90 days. The remaining allegations in Paragraph 53 are legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

54. Paragraph 54 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

55. Paragraph 55 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

56. Paragraph 56 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

57. Paragraph 57 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

58. Paragraph 58 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

59. Answering Paragraph 59, Reclamation admits that a waste characterization was performed in August 2014, that the wastewater exhibited characteristics for cadmium and lead, and that wastewater continued to be added. The remaining allegations in Paragraph 59 are legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

60. Paragraph 60 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

61. Paragraph 61 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

62. Answering Paragraph 62, Reclamation admits that no pre-renovation notification was submitted to EPA. The remaining allegations in Paragraph 62 are legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

63. Paragraph 63 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

64. Answering Paragraph 64, Reclamation admits that no warning labels were affixed to the tank or poly containers stating that they carried asbestos-containing material until May 22, 2015. The remaining allegations in Paragraph 64 are legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

65. Paragraph 65 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

66. Paragraph 66 contains only legal conclusions, and under 40 CFR § 22.15(b), an answer is not required.

67. Answering Paragraph 67, Reclamation admits that Respondents submitted their selected hazardous waste transporter and treatment or disposal facility.

68. Paragraph 68 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

69. Paragraph 69 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

70. Paragraph 70 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

71. Paragraph 71 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

72. Paragraph 72 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

73. Paragraph 73 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

74. Paragraph 74 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

75. Paragraph 75 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

76. Paragraph 76 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

77. Paragraph 77 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

78. Paragraph 78 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

79. Paragraph 79 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

80. Paragraph 80 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

81. Paragraph 81 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

82. Paragraph 82 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

83. Paragraph 83 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

84. Paragraph 84 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

85. Paragraph 85 contains only legal conclusions, directives, or otherwise non-factual allegations, and under 40 CFR § 22.15(b), an answer is not required.

86. Reclamation denies any and all factual allegations not specifically responded to above.

B. Defenses.

Pursuant to 40 CFR § 22.15(b), Reclamation states the circumstances or arguments which constitute the grounds of any defense:

1. The contents of the tanks may not be a “hazardous waste” as defined by applicable regulations.

2. Reclamation may not be a “large quantity generator” as defined by applicable regulations.

3. In a meeting on-site on March 23, 2015, respondents were told by the Montana Department of Environmental Quality that the subject wastewater was not a hazardous waste, and consequently, that Reclamation was not a large quantity generator.


4. The EPA may not have jurisdiction over the subject lands, which are located entirely within the external boundaries of the Crow Indian Reservation.

5. At the time of the alleged violations, or at least until May 21, 2015, Reclamation was proceeding under the informed and reasonable understanding that MTDEQ, not EPA, had jurisdiction over the subject lands and project.

C. Hearing.

Reclamation does not request a hearing at this time.

Respectfully submitted August 13, 2015.



Bryan Wilson
Attorney for Bureau of Reclamation

CERTIFICATE OF SERVICE

On August 13th, 2015, I served a copy of this document as follows:

The original and one copy were sent by overnight delivery to:

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