

July 6, 2015

VIA U.S. MAIL & E-MAIL (swanson.amy@epa.gov)

Ms. Amy Swanson, Esq.
Office of Regional Counsel
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

RE: 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 Ms. Swanson:

On behalf of CTA Construction and Environmental, LLC ("CTA"), a listed Respondent in the above-captioned Compliance Order, I am responding to correspondence dated June 18, 2015 and an attached Compliance Order and Notice of Opportunity for Hearing regarding certain alleged violations of the Resource Conservation and Recovery Act and Section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7413(a)(3)(B), which involve a refurbishment project currently underway at the U.S. Bureau of Reclamation's Yellowtail Dam Facility, on property owned by the Bureau and operated as a hydroelectric dam within the boundaries of the Crow Indian Reservation, near Billings, Montana.

Response to Paragraph 66

The Compliance Order (Paragraph 66) purports to direct Respondents, within 10 days of the Receipt of the Compliance Order, 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 (the receiving facility) permitted to treat or dispose of RCRA hazardous waste per a permit issued according to the standards in 40 C.F.R. part 264."

CTA received the above-referenced Compliance Order on June 25, 2015. CTA identifies the following transporter and disposal facility to satisfy Paragraph 66 of the Compliance Order:

Transporter: MP Environmental
3748 Green Acres Drive
Billings, MT 59101
EPA ID#: CAT000624247

Disposal Facility: U.S. Ecology Idaho, Inc.
20400 Lemley Road
Grand View, Idaho 83624
EPA ID#: IDD073114654

CTA reserves the right to specify an alternate transporter and/or treatment or disposal facility in the event that the previously identified companies are not approved by EPA in a timely fashion, or in the event CTA is unable to reach satisfactory terms for the transport or disposal of the wastewater which is the subject of the Compliance Order.

No Waiver

CTA submits this response under protest and without waiving any rights, defenses or prejudice to contesting all claims, findings of violation and directives set forth in the Compliance Order. CTA will timely file an Answer to the Compliance Order, and request a hearing on EPA claims in and underlying the Compliance Order.

We further note that the Compliance Order is either internally inconsistent or EPA is attempting to circumvent the rights of respondents. The findings of the Compliance Order are subject to the hearing procedures of 40 C.F.R. part 22, and the Compliance Order itself provides it is not final if CTA timely files a hearing request.

Therefore, we do not believe we are obligated to comply with the Compliance Order until those proceedings are concluded. Nevertheless, we submit the enclosed information in a good faith effort to avoid needless conflict, and ask EPA to extend the courtesy of informing us if our interpretation of the regulations is mistaken since there are obviously other items listed in the Compliance Order that similarly are not final at this time.

If you have any questions regarding the contents of this letter or wish to discuss CTA's position with respect to the Compliance Order, please feel free to contact me at your earliest convenience. You may also contact my associate, Greg Dorrington in our Helena office, at 406-449-4165, or gdorrington@crowleyfleck.com.

Sincerely,
Crowley Fleck, PLLP


for Mark Stermitz
Attorneys for CTA

MS/gfd

cc: Suzanne J. Bohan, Asst. Reg. Administrator, USEPA, Region 8 (By email and U.S. Mail)
Linda Jacobson, USEPA, Region 8 (By email and U.S. Mail)
Victor Zielinski, USEPA, Region 8 (By email and U.S. Mail)
Tina Artemis, USEPA, Region 8 (By email and U.S. Mail)
Keith Cron, CTA Construction and Environmental, LLC (By email and U.S. Mail)
Karan Dunnigan, Esq., Bureau of Reclamation (By U.S. Mail)
Christopher R. Schraff, Esq., National Electric Coil (By U.S. Mail)
Brian Meier, Environmental Contractors, LLC (By U.S. Mail)
Robert J. Schmidt, Esq. (By U.S. Mail)

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EPA REGION VIII
HEARING CLERK

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Crowley Fleck, PLLP



for Mark Stermitz
Attorneys for CTA

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