

Kenneth D. Tolliver
TOLLIVER LAW FIRM, P.C.
P.O. Box 1913
Billings, MT 59103-1913
Telephone: (406) 256-9600

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Attorney for Defendant Environmental Contractors

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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| IN THE MATTER OF: |) | Docket No. RCRA-08-2015-0002 |
| |) | CAA-08-2015-0014 |
| The U.S. Bureau of Reclamation, National |) | |
| Electric Coil, Environmental Contractors, |) | Answer to FIRST AMENDED |
| LLC, and CTA Construction and |) | COMPLIANCE ORDER AND |
| Environmental, LLC. |) | NOTICE OF OPPORTUNITY FOR |
| |) | HEARING by Environmental |
| Yellowtail Dam Facility, |) | Contractors |
| EPA ID No. MT01423900446 |) | |
| |) | |

COMES NOW Defendant Environmental Contractors, LLC, by and through their counsel of record, and file an answer to FIRST AMENDED COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING.

ANSWER TO FIRST AMENDED COMPLIANCE ORDER

Environmental Contractors (hereinafter referred to as EC) is unable to respond to any claims, statement or allegation outside the scope of their contractual position as a time and materials sub-contractor. EC was sub-contracted to perform work at Yellowtail Dam by National Electric Coil (hereinafter referred to as NEC). The work plan was created by CTA Construction and Environmental, LLC (hereinafter referred to as CTA) at the request of NEC, who submitted

the work plan to the Bureau of Reclamation for approval. EC had no involvement of the creation of the work plan. As a time and materials sub-contractor, EC is unable to operate without direction from CTA and NEC on the work performed. Further, EC was unable to work at the site without the presence, direction and supervision of CTA and NEC, who at all times had the power to shut down any and all aspects of the project and exercised this right on occasion. All EC personnel were under the direct control in every aspect while present at the Yellowtail Dam site doing their sub-contractual duties as defined by CTA. The method and means for which the cleaning was completed by EC was done under the minute by minute control of CTA and NEC.

EC contracted to clean generator 4 of Yellowtail Dam under an asbestos abatement plan using carbon dioxide blasting, or commonly referred to as dry ice washing, (hereinafter referred to as washing) of the coils as directed by CTA. Under the asbestos abatement plan, as specified in the work plan CTA was to test for asbestos by a PIH/CIH [Certified Industrial Hygienist] and share all testing results with EC. EC was not informed of the results of these tests even after multiple requests for information concerning them. CTA also allowed testing to be done by an IH [Industrial Hygienist] instead of a PIH/CIH, which is outside the scope of the contract and agreement found in the asbestos abatement plan.

EC was unaware of the presence of lead or cadmium in the water until receiving the EPA Compliance Order. CTA failed to inform EC of these conditions by failing to provide the information received from their tests. As such, EC has no knowledge or ability to respond to RCRA violations stated in numbers 51 – 59.

As a time and materials sub-contractor, EC was under the direct control and supervision of CTA and NEC and was unable to take action on the work without specific direction from CTA and NEC. With no authority or power to move forward without approval from NEC, EC

can only respond to this compliance order and specifically address the asserted NESHAP violations and their visual inspection at the request of the BOR. The responses from EC to these assertions are as follows:

25. The BOR required a permit from the State of Montana in order to proceed with the project. As their previous inspection was out of date, they requested EC do a visual inspection of the site, during which EC determined visually that the facility contained Category II non-friable asbestos-containing material.

60. As previously stated in the Compliance Order and Notice of Opportunity for Hearing, paragraph 5, the EPA has sole jurisdiction and not the State of Montana. As such, all EPA standards were followed according to EPA rules.

61. 40 C.F.R. § 61.145(b) only applies to renovation or demolition projects. According to 40 C.F.R. § 61.141, demolition means the wrecking or taking out of any load supporting structural member of a facility together with any related handling operations or the intentional burning of any facility. This cleaning of the generator in general maintenance does not fall under the term demolition. According to 40 C.F.R. § 61.141, renovation means altering a facility or one or more facility components in any way, including stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions. RACM part (d) describes the asbestos-containing material that has become “crumbled, pulverized, or reduced to powder by the forces expected to act on the material *in the course of demolition or renovation* operations regulated by this subpart. As this material was generated in the 1980’s by the asbestos containing brakes were used to slow the coils, releasing asbestos into the air inside the generator, this cannot fall under these definition, and therefore there is no violation.

62. As stated in response to number 60, 40 C.F.R. § 61.145(b) only applies to renovation or demolition projects and this project does not fall under the sections definition of demolition or renovation.

63. The waste water is not RACM and is below the threshold of even being considered asbestos. Further, upon an EPA request to label the “tank” on May 22, 2015, the Bureau of Reclamation placed the required labeling for the tank including asbestos according to paragraph 46 and 47 of the Compliance Order and Notice of Opportunity for Hearing.

64. The waste water is not RACM and is below the threshold of even being considered asbestos. Furthermore, within the Compliance Order and Notice of Opportunity for Hearing, paragraphs 43 – 47 there is no statement made that there were no affixed labels to the 55 gallon drums, but rather the “tank” was not labeled. This was all done by a “State representative,” who according to paragraph 5 would have no authority as it is the sole jurisdiction of the EPA.

65. The cleaning of the generators does not fall under 40 C.F.R. § 61.145 as it is neither a demolition nor a renovation under the codes definitions. Beyond that, all parties to the Compliance Order and Notice of Opportunity for Hearing have been and are actively working together to determine the proper way to dispose of the waste.

66. The cleaning of the generators does not fall under 40 C.F.R. § 61.145 as it is neither a demolition nor a renovation under the code’s definitions.

DATED this 6 day of August, 2015.


Kenneth D. Tolliver
Attorney for Environmental Contractors, LLC

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a true and correct copy of the foregoing was served, by U.S. Mail, postage prepaid, on the 6 day of August, 2015 upon the following interested parties:

**TOLLIVER LAW FIRM, P.C.
P.O. Box 1913
Billings, MT 59103-1913**

By: 
Attorneys for Plaintiffs