



REGION 9

SAN FRANCISCO, CA 94105

January 7, 2025

Via Email

Receipt Confirmation Requested

Michelle Freeark
Arizona Electric Power Cooperative, Inc.
Executive Director of Regulatory Affairs and Corporate Services
1000 S. Hwy 80
Benson, Arizona 85602

RE: Notice of Intent to File a Complaint Pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), Apache Generating Station

Dear Director Freeark:

This letter is to notify you that the United States Environmental Protection Agency ("EPA") is preparing to issue a civil administrative complaint against Arizona Electric Power Cooperative, Inc. ("AEPCO"), the owner and operator of the Apache Generating Station ("AGS"), located at 3252 N. Highway 191 in Cochise, Arizona (the "Facility") pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a). This action is for violations of 40 C.F.R. Part 257. These regulations were promulgated pursuant to Subtitle D of RCRA, as amended in 2016 by the Water Infrastructure Improvements for the Nation ("WIIN") Act. Together, these authorities grant the Administrator the authority to use Section 3008 of RCRA to enforce the prohibition on open dumping under Section 4005(a), 42 U.S.C. § 6945(a), with respect to coal combustion residual ("CCR") units [42 U.S.C. § 6945(d)(4)(A)(i)].

EPA identified the violations below through a desktop review of documents available on AGS's public CCR website, a review of documents requested from and received by AEPCO, information provided by AEPCO during meetings with EPA on June 20, 2023 and September 23, 2024, and information obtained during a Site Visit the EPA conducted at AGS on March 21, 2023.

The alleged violations include:

1. Failure to include all required elements in annual groundwater monitoring and corrective action reports, in violation of 40 C.F.R. § 257.90(e)(3);

2. Failure to comply with Groundwater Monitoring System Requirements in violation of 40 C.F.R. §§ 257.91(a), 257.91(b), 257.91(c) and 257.91(f);
3. Failure to establish background groundwater quality in a hydraulically upgradient well, or another appropriate method under the CCR Rule in violation of 40 C.F.R. § 257.93(d);
4. Failure to establish an assessment monitoring program within 90 days of identifying a statistically significant increase over background levels for a groundwater monitoring constituent in violation of 40 C.F.R. § 257.94(e)(1); and
5. Failure to cease receipt of waste and close or retrofit existing unlined CCR surface impoundments in violation of 40 C.F.R. § 257.101(a)(1).

These alleged violations are described in greater detail in the EPA's Notice of Violation letter to AEPCO dated July 12, 2024.

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the "Civil Monetary Penalty Inflation Adjustment Rule" (88 Fed. Reg. 89,309, December 27, 2023), authorizes a civil penalty of up to \$90,702 per day per violation for violations occurring after November 2, 2015, and where, as here, penalties are assessed on or after December 27, 2023.

EPA anticipates filing a Complaint, Compliance Order and Notice of Right to Request a Hearing ("Complaint") against the AEPCO within the next thirty (30) calendar days unless AEPCO advises EPA of substantial reasons not to proceed. EPA is extending to AEPCO the opportunity to submit any information that EPA should consider before issuing the Complaint. Relevant information may include any evidence of reliance on compliance assistance, additional compliance tasks performed after the inspection, or financial factors bearing on the AEPCO's ability to pay a civil penalty. Even if you are unaware of any mitigating or exculpatory factors, we are extending to you the opportunity to commence settlement discussions concerning the above-described violations.

Any penalty discussed in settlement negotiations for violations of RCRA and its implementing regulations will be calculated pursuant to EPA's June 2003 "RCRA Civil Penalty Policy." The penalty policies are subject to inflation adjustments under the applicable Civil Monetary Penalty Inflation Adjustment Rule, as well as potential changes in EPA guidance. Also, EPA's 2015 Update to the 1998 EPA Supplemental Environmental Projects (SEP) Policy describes the terms under which a commitment to perform an environmental project may be included in civil enforcement settlements.

Please note that, pursuant to regulations located at 40 C.F.R. Part 2, Subpart B, you are entitled to assert a business confidentiality claim covering any part of any submitted information as defined in 40 C.F.R. § 2.201(c). Failure to assert such a claim makes the submitted information subject to public disclosure upon request and without further notice to you, pursuant to the Freedom of Information Act, 5 U.S.C. § 552, et seq.

Thank you for your prompt attention to this matter. If you are interested in commencing settlement negotiations or have any questions regarding this notice, please contact Lydia Dorrance, EPA RCRA Inspector, at (415) 972-3461 or at dorrance.lydia@epa.gov, or have your attorney contact Brianna Fairbanks, Office of Regional Counsel, at (415) 972-3907 or at fairbanks.brianna@epa.gov.

Sincerely,

**RICHARD
SAKOW**

Digitally signed by
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Date: 2025.01.07 12:37:26
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Rick Sakow, Manager
Hazardous Waste and Chemicals Section

cc:

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