

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

**NEW MEXICO ENVIRONMENT DEPARTMENT,
Plaintiff,**

v.

No. D-202-CV-2024-02715

**AMERISTAR CONSTRUCTION, INC.,
Defendant.**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, the New Mexico Environment Department (“NMED”), by and through counsel of record, Tatiana D. Engelmann, Special Assistant Attorney General, as grounds for its Complaint for Declaratory and Injunctive Relief against Defendant Ameristar Construction, Inc. (“Ameristar”) STATES:

JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter herein pursuant to N.M. Const. art. VI, 13.
2. Venue is proper pursuant to NMSA 1978, Section 38-3-1(A).

PARTIES

3. NMED is an executive state agency established pursuant to NMSA 1978, Section 9-7A-4 (1991, as amended through 2005). NMED is vested with the authority to enforce the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 to -17 (1953, as amended through 2023). Specifically, NMED is responsible for environmental management and consumer protection programs regarding hazardous waste. *See* NMSA 1978, § 74-1-7(A)(13) (2000).

NMED has statutory authority to pursue this matter of its own accord pursuant to NMED's power to sue. *See* NMSA 1978, § 74-1-6(A) (1953, as amended through 2009).

4. Ameristar is a domestic for-profit corporation duly incorporated under the laws of the State of New Mexico. Ameristar's principal place of business is in Bernalillo County. Ameristar's facility is located at 5801 Maplewood Ave. SW in Albuquerque, New Mexico (the "Facility"). Ameristar's registered agent is Ricky E. Jaramillo, whose registered agent physical address is also listed as 5801 Maplewood Ave. SW, Albuquerque, New Mexico.

5. Ameristar is a "person" within the meaning of the HWA. The term "person" is defined as "an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body." NMSA 1978, § 74-4-3(M) (2018). There is personal jurisdiction over Ameristar.

6. Pursuant to this district court's local rules, LR2-113(C) NMRA, Ameristar must be represented by counsel. NMED requests this Court enforce this Rule which allows this Court to "strike, by court order on its own motion, any papers filed by an unrepresented corporation." LR2-113(C) NMRA.

NATURE OF THE CASE

7. NMED files this matter against Ameristar for a declaratory judgment from the Court that Ameristar has violated the HWA, to immediately enjoin Ameristar from continuing to violate the HWA, to permanently enjoin Ameristar from violating the HWA, and to assess civil penalties against Ameristar for violations of the HWA.

8. Pursuant to the HWA, NMED has a duty to ensure the maintenance of the quality of the state's environment, confer optimum health, safety, comfort, and economic and social

well-being of its inhabitants, and protect the proper utilization of its lands. *See* NMSA 1978, § 74-4-2 (1977). NMED has the authority to regulate hazardous waste and issue regulations for that purpose, pursuant to Section 74-4-4 of the HWA. *See also*, Hazardous Waste Regulations (“Regulations”) at 20.4.1 NMAC (10/5/1978, as amended through 12/1/2018). The Regulations are equivalent to and at least as stringent as the federal regulations adopted by the U.S. Environmental Protection Agency (“EPA”). *See* NMSA 1978, Section 74-4-4(A).

9. The U.S. Environmental Protection Agency (“EPA”) has delegated authority to the State of New Mexico to implement the federal Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 to 6992k, within the state. The Regulations incorporate portions of 40 Code of Federal Regulation (“CFR”) §§ 260 through 270, 40 CFR § 279 and related federal regulations by reference. The state adopted the federal hazardous waste regulations by reference on June 14, 2000. The state subsequently amended the Regulations on March 1, 2009, and on December 1, 2018, to conform with changes to the federal hazardous waste regulations.

10. Pursuant to the Regulations, Ameristar is a “Very Small Quantity Generator” and a “Small Quantity Handler of Universal Waste”, under EPA I.D. Number NMR000019307.

11. NMED is not required to exhaust administrative remedies because the HWA confers upon NMED the authority to “commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.” NMSA 1978, § 74-4-10(A)(2) (2001).

FACTUAL ALLEGATIONS

12. On February 26, 2020, NMED conducted a routine Compliance Evaluation Inspection of Ameristar (“Inspection”).

13. The Inspection included a physical review of the Facility. Records identifying the hazardous wastes observed on the property were requested during the Inspection. On March 4,

2020, Ameristar submitted a generic list of hazardous wastes. The list comprised only a fraction of the hazardous wastes observed during the Inspection.

14. In addition, Ameristar's list identified that Ameristar had been "dropped off" some of the hazardous wastes observed to a household hazardous waste collection center operated by the City of Albuquerque. NMED communicated to Ameristar that household hazardous waste collection was not an appropriate disposal venue for their hazardous waste, in violation of Regulations. *See Exhibit 1.*

15. The Regulations provide that generators of solid waste must make an accurate determination as to whether the waste is hazardous waste. This is required to ensure all types of waste are properly managed, as required by 20.4.1.300 NMAC. *See 40 CFR § 262.11.*

16. Also during the Inspection, NMED observed a pallet of coating products, paints, and other products near the sandblasting building. Ameristar personnel identified these materials as waste at the time of inspection but could not identify which materials were hazardous wastes. Ameristar also could not provide any documentation demonstrating compliance with 20.4.1.300 NMAC (40 CFR § 262.11) for those waste containers. *See Exhibit 2.*

17. Ameristar failed to make a determination of the type of waste "dropped off" to the household disposal site and of the type of waste observed on the pallet. Thus, Ameristar violated the law by failing to follow the HWA and the Regulations.

18. On March 30, 2020, NMED issued Ameristar a Notice of Violation ("NOV"), via mail, requesting voluntary compliance and directing Ameristar to provide documentation to NMED of Ameristar's hazardous waste management procedures to ensure proper characterization and disposal of hazardous wastes in the future. *See Exhibit 3.*

19. NMED contacted Ameristar via telephone on June 23, 2020, to confirm delivery of the NOV. Ameristar responded that they had not received the NOV. NMED confirmed the email contact and re-sent the NOV via email. NMED reminded Ameristar that a response to the NOV was needed within 30 days. No response to the NOV was received from Ameristar.

20. Thus, on August 31, 2020, NMED issued a Notice to Comply, requesting voluntary compliance and providing notice of potential escalation of enforcement. *See* Exhibit 4. The Notice to Comply was first sent via certified mail, then emailed on October 30, 2020, emailed again on December 7, 2020, and emailed again on February 22, 2021.

21. In January 2021, NMED contacted Ameristar to come to a resolution on the NOV and the Notice to Comply. During this conversation NMED learned from Ameristar personnel that the sandblasting building on the property had collapsed. When questioned about the collapse, Ameristar indicated that no sampling of the sandblasting grit housed therein had occurred before or after the collapse.

22. NMED attempted a no-notice follow-up inspection in late January 2021 to assess the current condition of the Facility and to collect samples of the abandoned sandblasting grit left on the property after the building collapse, but no Ameristar personnel were present to provide access at that time.

23. NMED contacted Ameristar repeatedly in January and February 2021 to arrange a follow-up inspection of the Facility. Ameristar indicated that it would comply with a follow-up inspection but never did.

24. Thus, on February 23, 2021, NMED notified Ameristar that it would pursue an administrative warrant for inspection of the Facility on March 1, 2021. Ameristar consented to a follow-up inspection on March 16, 2021.

25. On March 16, 2021, NMED conducted a follow-up inspection (“Subsequent Inspection”). *See* Exhibit 5.

26. The Subsequent Inspection included a physical review of the Facility. Records relating to the management of waste on the property in accordance with the previously issued NOV were requested during the Subsequent Inspection. No records were provided to NMED.

27. During the Subsequent Inspection, NMED collected 3 soil samples at distinct locations in and around the collapsed building and abandoned sandblasting grit. Total analysis showed an average concentration of the heavy metals Cadmium, Chromium, and Lead at 1.26 parts per million (“ppm”), 77 ppm, and 130 ppm, respectively. Analysis using the Toxicity Characteristic Leaching Procedure showed that the abandoned grit was below hazardous waste thresholds, however the concentrations detected are above NMED Soil Screening Levels, indicating that toxic metals were in fact present in the abandoned grit waste. *See* Exhibit 5.

28. As previously mentioned, the Regulations provide that generators of solid waste must make an accurate determination as to whether waste on the site is hazardous waste. This is required to ensure all types of waste are properly managed, as required by 20.4.1.300 NMAC. *See* 40 CFR § 262.11. Ameristar violated the law by failing to follow this requirement of the HWA and the Regulations regarding the sandblasting materials on site.

29. During the Subsequent Inspection, NMED observed several 5-gallon containers stored on the ground at various areas of the property in a waste-like manner. Ameristar personnel could not identify the contents of those containers. NMED also observed sandblasting grit that had been left in place following the collapse of the sandblasting building. Ameristar could not provide any documentation that a hazardous waste determination was performed for this material. Ameristar violated the law by failing to determine if the waste in the 5-gallon

containers was hazardous. Ameristar violated the law by failing to determine if the sandblasting waste was hazardous. *See Exhibit 5.*

30. Also during the Subsequent Inspection, NMED observed a burn pile consisting of burned product containers resembling the pallet observed during the initial Inspection and located at the same location near the collapsed sandblasting building. *See Exhibit 5.*

31. Ameristar is a “Very Small Quantity Generator” of hazardous waste and shall treat or dispose of hazardous wastes at a destination facility that is permitted, licensed, registered, or otherwise authorized to manage hazardous waste, as required by 20.4.1.300 NMAC. *See 40 CFR § 262.14(a)(5).* Thus, Ameristar is not a facility permitted, licensed, registered, or otherwise authorized to manage hazardous waste.

32. Instead of following the law, Ameristar opted to try to dispose of the waste themselves by burning the pallet and containers in and around the pallet. Incinerating potentially hazardous waste is not a proper disposal method. Ameristar has violated the law by failing to properly dispose of potentially hazardous waste.

33. Further, during the Subsequent Inspection, NMED observed several undated, universal waste lamps strewn on the ground at the property near the northeastern corner. Some of the universal waste lamps were broken. Ameristar could not provide documentation of universal waste accumulation on the property. *See Exhibit 5.*

34. The Regulations provide that Small Quantity Handlers of universal waste must store universal waste lamps in closed containers that can prevent breakage, as required by 20.4.1.1000 NMAC. *See 40 CFR § 273.13(d)(1).*

35. The Regulations also provide that Small Quantity Handlers of universal waste must label the lamps with the words “universal waste”, or with other wording to identify contents, as required by 20.4.1.1001(B) NMAC. *See also*, 40 CFR § 273.14(e).

36. The Regulations provide that Small Quantity Handlers of universal waste must demonstrate the length of time universal waste has accumulated, as required by 20.4.1.1000 NMAC. *See* 40 CFR § 273.15(c).

37. Ameristar has violated the law by failing to properly store and label potentially hazardous waste, and for failing to know the length of time that universal waste had been accumulating on the site.

38. On November 1, 2022, NMED issued Ameristar an NOV with Proposed Penalties, requesting voluntary compliance, and assessing a proposed penalty of \$77,960. *See* Exhibit 6.

39. Ameristar submitted a response to the NOV with Proposed Penalties via email on December 26, 2022. In their response, Ameristar describes the violations in NOV with Proposed Penalties as “ridiculous” and “harassment”. Ameristar did not provide substantive responses to NMED’s requests to cure their deficiencies.

40. Ameristar is violating the HWA and the Regulations by failing to perform hazardous waste determinations pursuant to 20.4.1.300 NMAC. *See* 40 CFR § 262.11. This violation was found during the Inspection.

41. Ameristar is violating the HWA and the Regulations by failing to perform hazardous waste determinations pursuant to 20.4.1.300 NMAC. *See* 40 CFR § 262.11. This violation was found during the Subsequent Inspection.

42. Ameristar is violating the HWA and the Regulations by failing to treat or dispose of hazardous wastes at a destination facility that is permitted, licensed, registered, or otherwise authorized to manage hazardous waste pursuant to 20.4.1.300 NMAC. *See* 40 CFR § 262.14(a)(5). This violation was found during the Subsequent Inspection.

43. Ameristar is violating the HWA and the Regulations by failing to store universal waste lamps in closed containers capable of preventing breakage pursuant to 20.4.1.1000 NMAC. *See* 40 CFR § 273.13(d)(1). This violation was found during the Subsequent Inspection.

44. Ameristar is violating the HWA and the Regulations by failing to label universal waste lamps with the words “universal waste”, or with other wording to identify contents, pursuant to 20.4.1.1001(B) NMAC. *See also*, 40 CFR § 273.14(e). This violation was found during the Subsequent Inspection.

45. Ameristar is violating the HWA and the Regulations by failing to demonstrate the length of time universal waste has accumulated pursuant to 20.4.1.1000 NMAC. *See* 40 CFR § 273.15(c). This violation was found during the Subsequent Inspection.

CLAIMS

Claim 1 – Declaratory Judgment

46. NMED incorporates the allegations in paragraphs 1 through 45.

47. The purpose of the Declaratory Judgment Act, NMSA 1978, Sections 44-6-1 to -15 (1975), is “to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and is to be liberally construed and administered.” NMSA 1978, § 44-6-14 (1975).

48. NMED seeks to define the parties’ rights through the Declaratory Judgment Act.

49. NMED is entitled to relief because this is a case of actual controversy, and this Court has power to declare rights, status and other legal relations. See NMSA 1978, § 44-6-2 (1975).

50. Further, this Court may properly grant declaratory and nondeclaratory relief in a single action when such relief is requested in the pleadings by the parties. *See Sunwest Bank of Clovis, N.A. v. Clovis IV*, 1987-NMSC-065, ¶ 19, 106 N.M. 149 (internal citations omitted). “The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.” Rule 1-057(A) NMRA.

51. NMED requests this Court declare that Ameristar and their business operations are not exempt from application of the HWA and the Regulations.

52. NMED requests this Court declare that Ameristar is obligated under the HWA to adhere to the law and the Regulations.

53. In addition, NMED requests this Court award costs pursuant to the Declaratory Judgment Act. See NMSA 1978, § 44-6-11 (1975). Payment of any award of costs shall be deposited into the hazardous waste emergency fund. *See* NMSA 1978 § 74-4-8 (1989).

Claim 2 – Preliminary and Permanent Injunctions

54. NMED incorporates the allegations in paragraph 1 through 53.

55. An injunction is an equitable remedy, which rests in the sound discretion of this Court. *State ex. rel. King v. B&B Inv. Group, Inc.*, 2014-NMSC-024, ¶ 28, 329 P.3d 658 (internal citations omitted). “Such discretion is not a mental discretion to be exercised as one pleases, but is a legal discretion to be exercised in conformity with the law.” *State ex. rel. King*, 2014-NMSC-024, ¶ 28 (internal citations omitted).

56. NMED is authorized to request injunctive relief against Ameristar. *See* NMSA 1978, § 74-4-10(A)(2) (The HWA authorizes NMED to “commence a civil action in district court for appropriate relief, **including a temporary or permanent injunction.**”) (emphasis added).

57. A plaintiff is entitled to a preliminary injunction if it shows to the satisfaction of the Court that: “1) the plaintiff will suffer irreparable injury unless the injunction is granted; 2) the threatened injury outweighs any damage the injunction might cause the defendant; 3) issuance of the injunction will not be adverse to the public’s interest; and 4) there is a substantial likelihood that the plaintiff will prevail on the merits.” *LaBalbo v. Hymes*, 1993-NMCA-010, ¶11, 115 N.M. 314, 850 P.2d 1017 (internal citations omitted).

58. First, given the clear violations described above and Ameristar’s blatant disregard for the environmental protection laws of this state, the State of New Mexico will suffer irreparable injury unless Ameristar is enjoined from further violating the law. If preliminary and permanent injunctions are not granted, Ameristar will likely continue to violate the HWA and the Regulations, as it has been since 2020, in a manner that will harm the environment and damage the public health, welfare, and safety of the state.

59. The longer Ameristar continues to and is allowed to violate the HWA and the Regulations in this manner, the greater the likelihood that irreparable injury due to ground and water contamination will be suffered.

60. Second, the threatened injury resulting from Ameristar’s continued violations of and disregard for the HWA and the Regulations far outweigh any damage to Ameristar. Ameristar will not suffer damages if enjoined since this injunction is requested to be issued pursuant to NMED’s authority to enforce the HWA and the Regulations.

61. Third, the issuance of a preliminary injunction against Ameristar will not be adverse to the public's interest. In fact, issuance of preliminary and permanent injunctions against Ameristar will be supportive of the public's interest in protecting the lands and waters of this state from pollution.

62. Finally, NMED will likely prevail on the merits of this matter given the obvious and clear violations of the HWA and the Regulations, as well as NMED's clear authority to act to protect the state and its inhabitants from hazardous waste contamination.

63. Given Ameristar's flagrant and continued disregard for the HWA and the Regulations since violations were brought to their attention over 3 years ago, Ameristar must be permanently enjoined from violating the HWA and the Regulations with its practices or lack thereof. This permanent injunction will remedy Ameristar's unconscionable practices and will be narrowly tailored to address each violative practice.

64. NMED is entitled to obtain a preliminary and permanent injunction against Ameristar.

65. NMED requests that the requirement to give security for this preliminary injunction be waived. *See* Rule 1-066(C) NMRA. The requirement of security in Rule 1-066 is "for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." Rule 1-066(C). However, the obligation to provide security may be waived and is left to the discretion of this Court. *See Id.*; *see also*, *Rhodes v. State ex rel. Bliss*, 1954-NMSC-085, ¶ 13, 58 N.M. 579, 273 P.2d 852. Given the arguments above, Ameristar will not be "wrongfully" enjoined by the issuance of a preliminary injunction requiring Ameristar to stop violating the HWA and the Regulations because the law

currently requires compliance with the HWA and the Regulations, which Ameristar has failed to do.

Claim 3 – Civil Violations of the Hazardous Waste Act

66. NMED incorporates the allegations in paragraph 1 through 65.

67. Pursuant to NMSA 1978, Sections 74-4-10(B) and 74-4-12 of the HWA, Ameristar may be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) for each day during any portion of which a violation occurs.

68. If Ameristar fails to comply in a timely manner the Court may assess additional civil penalties of up to \$25,000 for each day of continued noncompliance, pursuant to NMSA 1978, Section 74-4-10(C).

69. NMED requests this Court order Ameristar to pay civil violations in the amounts authorized by the HWA, for each and every violation of the HWA and the Regulations.

Request for Relief

Based on the foregoing and in the interest of public health and safety, NMED respectfully requests this Court:

A. Issue a declaratory judgment against Ameristar declaring they are not exempt from application of the HWA and the Regulations;

B. Issue a declaratory judgment against Ameristar declaring they are obligated under the HWA to adhere to the law and the Regulations;

C. Issue a declaratory judgment against Ameristar declaring they are in violation of the HWA and the Regulations;

D. Issue preliminary and permanent injunctions against Ameristar ordering them to cease the improper disposing of, or allowing the improper disposal of, hazardous waste in and from their Facility;

E. Issue preliminary and permanent injunctions against Ameristar ordering them to grant access to the Property for investigatory and cleanup purposes;

F. Order Ameristar to provide written confirmation of all actions taken by Ameristar in response to the violations identified herein, to include photos, procedures documents, and any other relevant records that document the actions taken by Ameristar to remedy the compliance deficiencies. The written confirmation shall also describe all corrective actions taken now and in the future, per both Notices of Violation.

G. Order Ameristar to reimburse NMED for any expenditures incurred from the Hazardous Waste Emergency Fund for cleanup activities on the Facility;

H. Impose civil penalties on Ameristar, pursuant to Section 74-4-10(C) of the HWA; and,

I. Order any other relief the Court deems just.

Respectfully submitted by,

NEW MEXICO ENVIRONMENT DEPARTMENT

/s/ Tatiana D. Engelmann
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Santa Fe, New Mexico 87505-6303

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HAZARDOUS WASTE COMPLIANCE
EVALUATION REPORT



Evaluation Type: CEI ☒ CAV ☐ Other ☐

Facility: Jaramillo Family Trust Property

Location: 5801 Maplewood Lane SW, Albuquerque, NM 87121

Business Owner: Rick Jaramillo

Facility Representative/Contact: [Signature]

Entry Conference:

Present credentials to facility representative

Cite authority to enter site, conduct inspection, obtain samples, take photos (NMSA § 74-4-4.3)

State reasons(s) for and nature of inspection

State objectives and procedures for inspection

Participants (Print):

Name

Title

Email address

Phone #

Aaron Coffman Environmental Scientist aaron.coffman@state.nm.us 505-476-6019

Rick Jaramillo Property Mgr. ameristarinc@aol.com 505-991-1933

Angela Jaramillo w/a " "

DATE OF LAST INSPECTION: 01/7/2014**CHECKLISTS COMPLETED:** ☒ VSQG ☐ SQG ☐ <90 Day ☐ Used Oil ☐ Other:**History, Size and Nature of Business:**

The Jaramillo Family Trust Property is an 11-acre area at the Pajarito Mesa area of the City of Albuquerque that formerly operated as Ameristar Construction, a sandblasting and coating business working on mainly Department of Defense equipment. The business has been mostly inactive since approximately 2014, following inspections by the Hazardous Waste Bureau, Solid Waste Bureau, Air Quality Bureau and other regulatory bodies following a series of complaints. Consequently, the business currently has no employees and performs approximately 2 sandblasting operations annually at this property. The property has not been a site of any coating work in the last 3 years.

Process Description

During sandblasting operations, existing partially used media is loaded into a hopper in the sandblasting containment area (as mandated by AQB and other entities). Any remaining media is retained for later use.

The property is in a continuing gradual state of cleanup and upgrade. Periodically waste expired coatings, paints and other hazardous materials are collected when determined waste and placed on a shrink wrapped pallet. The property ownership representatives stated that these items would previously be disposed with Advanced Chemical Treatment as Household Hazardous Waste. The NMED inspector confirmed that at least some of the materials in the pallet that was observed at the property were wastes from the prior operations of Ameristar Construction, and are therefore VSQG wastes that are not eligible for disposal as Household Hazardous Waste.

Waste Streams

Waste stream	Waste code	Process, location, container size	Transporter & EPA id # and TSDF w/ EPA id	Monthly generation
Expired/excess materials	Undetermined, but likely including D001	Waste paints, coatings and other materials during cleanout of storage areas on the Property as they're come across. Stored on a pallet near the NE corner of the property.	Self-transported to Advanced Chemical Treatment NMD002208627	<1 pound

Results of Inspection

The NMED inspector met with property managers Rick and Angela Jaramillo, conducted an entry conference, discussed current and historic uses of the property, and performed a walkthrough of the property including the sandblasting area and waste storage area. Used media was stored at the sandblasting area in a manner resembling product, and per the property management representative never actually becomes a waste. NMED advised the property management representative to ensure any eventual waste media is sampled prior to disposal.

NMED observed a pallet containing old paint cans, unmixed epoxies, coatings, and other old hazardous materials near the NE corner of the property. The property representative explained that much of this material pre-dated their occupancy of the property (which houses not a little old solid waste and scrap cars), but confirmed at least one item, a waste bottle of Dupont Imron VGM-6005 Activator, was derived from Ameristar Construction site activities. NMED also observed a can of Polyurethane Component A that was rusted and beginning to leak, which the property management representative stated was also consistent with prior operations.

Potential violations are listed below.

Summary of Potential Violations

Please be advised that this list may not be inclusive and additional violations may be added after reviewing notes, pictures and documents.

1. Regulation: 40 CFR 262.11 – Failure to make a hazardous waste determination

The NMED inspector observed a pallet of waste paints, coatings, and other materials gathered from cleanup of the property and discarding of unneeded materials from when the business was conducting coating operations. The property management representative could not provide the NMED inspector with an accounting of the hazardous wastes that were present in the pallet and their relevant hazards. Furthermore, during the inspection the property management representative stated that such materials had been disposed at the City of Albuquerque Household Hazardous Waste collection improperly. Wastes generated by a business are not eligible for the Household Hazardous Waste exemption.

The Jaramillo Family Trust Property must make a hazardous waste determination for all materials resulting from operations during Ameristar Construction operations and manage any hazardous wastes in accordance with all applicable laws and regulations.

Areas of Concern

- a. Please remember that any waste sandblasting media or debris (including screened material), should be sampled to determine whether or not it is a hazardous waste (key analytes to look out for: lead, cadmium, chromium). Please be aware that, should the entire pile of media be deemed waste at one time, and if this quantity is over 220 lbs., Jaramillo Family Trust Property would need to manage this material under the regulations for Small or Large Quantity Generators.
- b. Also, be cognizant of potential stormwater issues with the piles of sandblast media. If the media does contain heavy metals in its current form it could result in a wider area of contamination on the property.
- c. Please be aware that disposal of hazardous wastes, that were generated by a business, at a Household Hazardous Waste collection is improper disposal. Wastes generated on-site by Ameristar Construction must be managed in accordance with 40 CFR 262.14, including ensuring disposal a proper storage and disposal facility and preventing and/or remediating any releases. Jaramillo Family Trust Property management should retain documentation of all such disposal events.
- d. For future instances where a coating or other on-site contracted job generates a waste, please be aware that Jaramillo Family Trust Property must make a hazardous waste determination for all such wastes. The client may include in its contract that it shall make arrangements for disposal of hazardous wastes, however Jaramillo Family Trust Property may not offer waste to clients for offsite transport without arrangement for proper disposal. If such wastes were not properly disposed once off-site, Jaramillo Family Trust Property would have some liability for any releases as the waste generator.
- e. Please ensure that any hardened batches of coatings are hazardous waste upon reaction. Please keep in mind that Parts A and B of a batch, if hazardous, may not be combined for the sole reason of reducing the amount of hazardous waste.
- f. Please ensure all of the wastes that are on the pallet are in good condition, or for the ones that are not please place in an appropriate overpack container.

HWB PHOTO SHEET



Facility: Ameristar Construction

Photo #: 13

Date/Time: 02/26/20 1040hrs

Location: near NE corner of property, by some scrap metal

Description: Another photo of the pallet

Potential Violation(s): 40
CFR 262.11



Facility: Ameristar Construction

Photo #: 14

Date/Time: 02/26/20 1040hrs

Location: near NE corner of property, by some scrap metal

Description: Another photo of the pallet

Potential Violation(s): 40
CFR 262.11



Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

MAR 30 2020

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Rick Jaramillo
Vice President
Ameristar Construction
4612 Breece Road SW,
Albuquerque, NM 87105

**RE: NOTICE OF VIOLATION
AMERISTAR CONSTRUCTION
EPA ID# NMR000019307**

Dear Mr. Jaramillo:

On February 26, 2020, the New Mexico Environment Department ("NMED") conducted a hazardous waste Compliance Evaluation Inspection ("Inspection") at the Ameristar Construction (Ameristar), also known as the Jaramillo Family Trust Property, located at 5801 Maplewood Lane, Albuquerque, New Mexico ("Property"). Ameristar Construction operates a sandblasting business on the Property, and formerly performed painting and coating work. Current activities periodically generate small amounts of paint waste.

Based on observations and review of the information obtained, NMED has determined that the Ameristar is a Very Small Quantity Generator ("VSQG") of hazardous waste as defined in 40 Code of Federal Regulations ("CFR") 262.13. Furthermore, NMED has determined that Ameristar has violated the New Mexico Hazardous Waste Management Regulations ("HWMR") 20.4.1 New Mexico Administrative Code ("NMAC") as specified below.

The NMED Inspector observed the following violation:

1. Failure to make a hazardous waste determination, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.11. Specifically, the NMED Inspector observed a pallet of paint wastes, including some boxes labeled "Flammable Liquid", near the northeastern corner of the property (Photos 1-6). Mr. Jaramillo did not know, if the

pallet of waste paints and coatings were hazardous wastes.

On February 28, 2020, during the inspection exit conference, the NMED Inspector stressed, as discussed during the inspection, that wastes generated by a business may not be disposed at a Household Hazardous Waste ("HHW") collection center, as wastes generated by a business do not get the HHW exemption found in 40 CFR 261.4(b)(1).

On March 4, 2020, Ameristar sent an email with a list of materials, two cans of NAPA paint, two quarts of activators Imron, and 5 cans with no labels that were "dropped off" at ACT, a local hazardous waste Treatment, Storage and Disposal Facility ("TSD") that also operates a HHW collection center. Mr. Jaramillo was contacted that day to determine if he had received any disposal documentation from ACT, which Mr. Jaramillo replied that he was told by ACT that the drop off was "free." Based on this information, NMED has determined that Ameristar disposed of hazardous wastes generated by a business at an HHW collection center.

Ameristar did not make any attempt to make a hazardous waste determination for the wastes listed in his email (e.g. "5 unlabeled cans"). Additionally, the list provided by email does not include the volume of materials observed during the inspection.

Corrective Action: NMED requires Ameristar to provide a listing of all hazardous wastes remaining at the property, including all required elements of 40 CFR 262.11 (i.e. the wastes must be evaluated to determine whether or not they are hazardous wastes).

NMED is requesting that Ameristar develop and submit a Waste Management Plan ("WMP"), to demonstrate that Ameristar understands its regulatory obligations as a generator of hazardous waste and to ensure that hazardous wastes generated by Ameristar are disposed at appropriate facilities in the future.

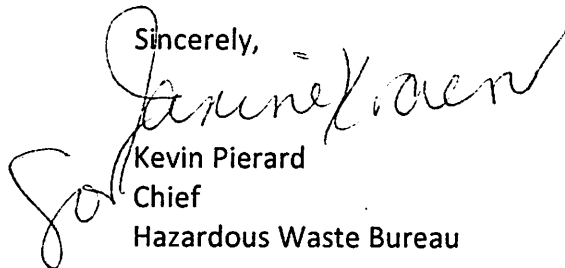
NMED is requesting that the Ameristar provide to NMED within thirty (30) days of receipt of this letter a written description of the actions taken by property management to address the violation described above or a schedule for implementation of corrective actions not yet completed.

This Notice of Violation is considered an informal enforcement response in accordance with NMED's Enforcement Response Protocol. Please be aware that failure to address the above violations and any future substantial deviations from regulatory requirements may result in your Property being considered for an elevated enforcement action. Also, be aware that any corrective action taken during our Inspection, or in response to this letter, does not relieve Ameristar of its obligation to comply with any and all other applicable laws and regulations.

Mr. Jaramillo
Inspection Date: February 26, 2020
Page 3 of 5

If you have any questions regarding this letter, please contact Aaron Coffman of my staff at 505-476-6019 or by email at aaron.coffman@state.nm.us. Please address any written response to the attention of Aaron Coffman at the address on the letterhead.

Sincerely,



Kevin Pierard
Chief
Hazardous Waste Bureau

KP: ac

cc: Aaron Coffman, NMED HWB
Janine Kraemer, NMED HWB
John Rhoderick, NMED District I Manager

File: Library # 4213

Near NE corner of property;
Pallet of undetermined wastes



Near NE corner of property;
Photo of a coating product from inside
pallet,



Near NE corner of property;
Photo of coating product from inside pallet



Near NE corner of property;
Rear side of container depicted in Photo #3:

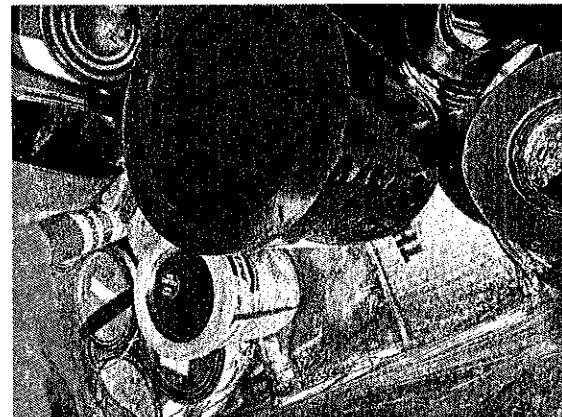


Photo 5:

Near NE corner of property

Thinner-like containers in center of pallet:

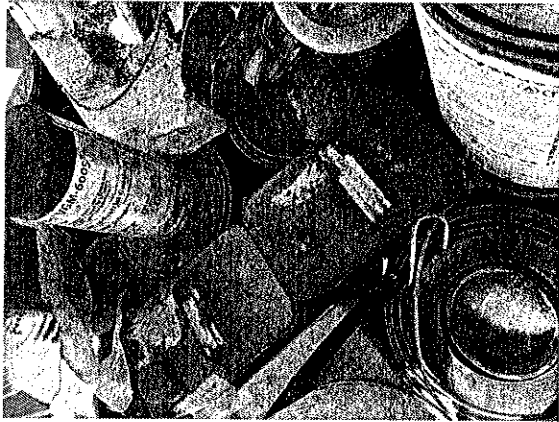


Photo 6:

Near NE corner of property





Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Hazardous Waste Bureau

2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6313
Phone (505) 476-6000 Fax (505) 476-6030

www.env.nm.gov



James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

August 31, 2020

Rick Jaramillo
Property Manager
Jaramillo Family Trust Property
4612 Breece Road SW,
Albuquerque, NM 87105

Angela Jaramillo
Property Manager
Jaramillo Family Trust Property
4612 Breece Road SW,
Albuquerque, NM 87105

**RE: NOTICE TO COMPLY
AMERISTAR CONSTRUCTION
EPA ID# NMR000019307**

Dear Mr. and Ms. Jaramillo:

On February 26, 2020, the New Mexico Environment Department ("NMED") conducted a hazardous waste Compliance Evaluation Inspection ("Inspection") at Ameristar Construction ("Ameristar"), also known as the Jaramillo Family Trust Property, located at 5801 Maplewood Lane, Albuquerque, New Mexico ("Property").

Based on observations and review of the information obtained, NMED has determined that Ameristar is a Very Small Quantity Generator ("VSQG") of hazardous waste as defined in 40 Code of Federal Regulations ("CFR") 261.3. Furthermore, NMED has determined that Ameristar has violated the New Mexico Hazardous Waste Management Regulations ("HWMR") 20.4.1 New Mexico Administrative Code ("NMAC") as specified below.

NMED inspectors observed the following violation:

Failure to make a hazardous waste determination, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.11. Specifically, NMED observed a pallet of paint wastes, including some stored in boxes labeled "Flammable Liquid", near the northeastern corner of the property. The Property manager could not provide

Plaintiff's Exhibit 4

details regarding the materials present in this pallet of waste paints and coatings, or state which or whether any of the materials were hazardous wastes. The Property manager stated that these materials are periodically generated when maintenance of the Property reveals expired, abandoned or other waste materials left over from prior activities, or from prior to Ameristar's occupation of the Property.

On February 28, 2020, during the inspection exit conference, the NMED Inspector stressed, as discussed during the inspection, that wastes generated by a business may not be disposed at a Household Hazardous Waste ("HHW") collection center, as wastes generated by a business do not get the HHW exemption found in 40 CFR 261.4(b)(1).

On March 4, 2020, Ameristar sent an email with a list of materials, two cans of NAPA paint, two quarts of activators Imron, and 5 cans with no labels that were "dropped off" at ACT, a local hazardous waste Treatment, Storage and Disposal Facility ("TSDF") that also operates a HHW collection center. Mr. Jaramillo was contacted that day to determine if he had received any disposal documentation from ACT, which Mr. Jaramillo replied that he was told by ACT that the drop off was "free." Based on this information, NMED has determined that Ameristar disposed of hazardous wastes generated by a business at an HHW collection center.

Ameristar did not make any attempt to make a hazardous waste determination for the wastes listed in his email (e.g. "5 unlabeled cans"). Additionally, the list provided by email does not include the volume of materials observed during the inspection.

Corrective Action: NMED requires Ameristar to provide a listing of all hazardous wastes remaining at the property, including all required elements of 40 CFR 262.11 (i.e. the wastes must be evaluated to determine whether or not they are hazardous wastes).

NMED is requesting that Ameristar develop and submit a Waste Management Plan ("WMP"), to demonstrate that Ameristar understands its regulatory obligations as a generator of hazardous waste and to ensure that hazardous wastes generated by Ameristar are disposed at appropriate facilities in the future.

A Notice of Violation was issued on March 30, 2020 requesting a response in 30 days. NMED has made several attempts to contact Ameristar via telephone and email since this time, including a conversation with Ms. Angela Jaramillo on June 23, 2020 that also included a resend of the Notice of Violation via electronic mail, and a specific requirement to respond within 30 days. NMED also attempted to contact Ameristar via email on August 5, 2020. To date, NMED has not received any documentation of corrective actions relevant to the Notice of Violation from Ameristar.

In accordance with New Mexico Statutory Authority 1978, Section 74-4-10, NMED may: (1) issue a Notice of Violation requesting voluntary compliance within a specified time period; (2) issue a Compliance Order requiring compliance immediately or within a specified time period or assess a civil penalty for any past or current violations of up to \$10,000 per day of non-compliance for each violation, or both; or (3) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction.

This Notice to Comply is considered an informal enforcement response in accordance with NMED's Enforcement Response Protocol. NMED is requesting that Ameristar provide to NMED within ten (10) days of receipt of this letter a written description of the actions taken by Ameristar to address the violations described above or a schedule for implementation of corrective actions not yet completed.

Please be aware that any future substantial deviations from regulatory requirements may result in your facility being considered for an elevated enforcement action.

Pursuant to the NMED Delegation Order dated January 15, 2020, the Cabinet Secretary has delegated the authority to issue Notices to Comply under the Hazardous Waste Act and HWMRs to the Chief of the Hazardous Waste Bureau. If you have any questions regarding this letter, please contact Aaron Coffman of my staff at 505- 476-4372 or by email at aaron.coffman@state.nm.us. Please send documentation to the address at the top of the letterhead or by email.

Sincerely,

**Kevin
Pierard** Digitally signed
by Kevin Pierard
Date: 2020.08.31
16:33:03 -06'00'

Kevin M. Pierard, Chief
Hazardous Waste Bureau

KP: ac

cc: Aaron Coffman, NMED HWB
Janine Kraemer, NMED HWB
John Rhoderick, NMED District I Manager

File: Library # 4213



NEW MEXICO
ENVIRONMENT DEPARTMENT
Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Phone (505) 476-6000 Fax (505) 476-6030



www.env.nm.gov

INSPECTION TYPE: ☐ Routine ☐ Complaint ☒ Follow-Up ☐ Compliance Assistance ☐ Pre-Arranged

DATE: 3/16/2021 **TIME:** 1000

FACILITY NAME Ameristar Construction **EPA ID #** NMR000019307

BUSINESS OWNER & ADDRESS Angela Jaramillo. 5801 Maplewood Ave. SW, Albuquerque, NM 87121

MAILING ADDRESS 5801 Maplewood Ave. SW, Albuquerque, NM 87121

PROPERTY OWNER & ADDRESS Jaramillo Family Trust. 4612 BREECE RD SW
ALBUQUERQUE NM 87105 6405

NOTIFIED AS: ☐ N/A

- ☒ VSQG (<100 kg/mo.)
☐ SQG (100-1000 kg/mo.)
☐ LQG (>1000 kg/mo.)
☐ Transporter
☐ Transfer Facility
☐ TSD Facility - Unit Type(s): OBOD (pending closure)
☐ Used Oil:

CURRENT STATUS:

- ☒ VSQG (<100 kg/mo.)
☐ SQG (100-1000 kg/mo.)
☐ LQG (>1000 kg/mo.)
☐ Transporter
☐ Transfer Facility
☐ TSD Facility - Unit Type(s): OBOD (pending closure)
☐ Used Oil:

ENTRY CONFERENCE:

Present credentials to facility representative

Cite authority to enter site, conduct inspection, obtain samples, take photos (NMSA § 74-4-4.3)

State reasons(s) for and nature of inspection

State objectives and procedures for inspection



RESPONSIBLE OFFICIAL(s):

Name	Title
Shaw Jaramillo	Son of Owner

INSPECTION PARTICIPANTS:

Name	Title	Email	Phone Number
Aaron Coffman	Environmental Scientist	Aaron.coffman@state.nm.us	505-476-6019
Janine Kraemer	Program Manager	janine.kraemer@state.nm.us	505-476-9624
Shaw Jaramillo			5050-918-9660

DATE OF LAST INSPECTION: 02/26/2020**CHECKLISTS COMPLETED: ☒ VSQG ☐ SQG ☐ <90 Day ☐ Used Oil ☐ Other:****History, Size and Nature of Business:**

The Jaramillo Family Trust Property/Ameristar Construction is an 11-acre area at the Pajarito Mesa area of the City of Albuquerque that was formerly the location of sandblasting and coating operations, working on mainly Department of Defense equipment. The business has been mostly inactive since approximately 2014, following inspections by the Hazardous Waste Bureau, Solid Waste Bureau, Air Quality Bureau and other regulatory bodies following a series of complaints. Since the most recent inspection, the facility per conversations with ownership mostly consists of equipment storage at this time and has not done any coating work in the last 3 years. The sandblasting building that was observed in 2020 has collapsed, and the sandblasting grit left in place or having had blown away.

Process Description

According to the facility representatives, this property is currently used as a storage location and corrals for livestock. The business conducts construction work at federal facility off-site. According to the facility, the property stores equipment and not waste. However a large amount of solid waste was observed at the property, some of which was observed in the prior inspection.

Waste Streams

Waste stream	Waste code	Process, location, container size	Transporter & EPA id # and TSDF w/ EPA id	Monthly generation
Expired/excess materials	Undetermined, but likely including D001	Waste paints, coatings and other materials during cleanout of storage areas on the Property as they're come across. Stored on a pallet near the NE corner of the property.	Most recent disposal was self-transported to Advanced Chemical Treatment NMD002208627 per the facility representative, likely as Household Hazardous Waste if accurate.	<1 pound

Results of Inspection

The NMED inspector met with property ownership representative and son of the property owners Shaw Jaramillo, conducted an entry conference, discussed the 2020 inspection and the outstanding Notice to Comply that Ameristar Construction has not yet responded to, and performed a walkthrough of the property including the former sandblasting area. Abandoned sandblast media was observed at the collapsed sandblasting building, however much of this material had blown away after this collapse. NMED collected 4 samples of this sandblast media. Cadmium, Chromium, and Lead were detected in the samples taken of this material at a maximum concentration of 1.6 mg/kg, 100 mg/kg, and 130 mg/kg. Toxicity Characteristic Leaching Procedure ("TCLP") analysis was subsequently performed for two of these samples, with lead being detected at a maximum concentration of 0.32 mg/L, which is below the toxicity characteristic level for lead.

NMED observed a large amount of various wastes and material claimed as equipment and supplies for customers. However, much of this material was managed in a waste-like manner. NMED observed loose fluorescent lamps, several tires, exposed lighting fixtures, scrap metal, C&D waste, rusted and old containers, hydraulic oil containers, and also a small pile of apparently burned material including several burned containers. This material appeared similar to the pallet of excess chemicals observed in the 2020 inspection that Ameristar had claimed was dropped off at Advanced Chemical Transport. Based on this claim and after having not provided waste

characterizations as specified in the 2020 inspection report, NMED cited Ameristar for failure to perform a hazardous waste determination and required Ameristar to submit a waste management plan describing Ameristar's methods of waste characterization for future wastes. It was also noted by NMED that no actual waste disposal documentation was provided, only a claim via email that this material was dropped off.

Despite requests from NMED, the facility representative was unable or unwilling to allow access to the main building at the property.

Potential violations are listed below.

Summary of Potential Violations

Please be advised that this list may not be inclusive and additional violations may be added after reviewing notes, pictures and documents.

1. **Regulation: 40 CFR 262.11 – Failure to perform hazardous waste determinations prior to on-site burning, disposal and/or abandonment of waste**

The NMED inspector observed several wastes on the property, as depicted in attached photos. Included in these observed wastes were a pile of ashes and burned material containing several containers resembling those observed in 2020 (see photo). Also, despite having been instructed that the sandblast media would need to undergo a hazardous waste determination prior to disposal, the material was abandoned at the property without having been sampled. NMED also observed a variety of materials and rusted containers that the facility representative could not confirm whether or not the material is hazardous.

NMED has repeatedly emphasized the need for waste characterization during written and verbal communication with Ameristar, and has not received any explanation or documentation of the waste management procedures at the facility. Ameristar has not been responsive to the Notice to Comply letter sent August 31, 2020, and most recently re-sent to the email contact provided by Ameristar on February 22, 2021.

Ameristar must demonstrate to NMED based on appropriate disposal documentation and company procedures that Ameristar has conducted, is conducting, and shall conduct proper hazardous waste determinations in accordance with 40 CFR 262.11. Based on Ameristar's unwillingness to demonstrate compliance, inability to demonstrate proper disposal of wastes observed in February 2020, and observations from this follow-up inspection (specifically the burned pile of waste), NMED has determined that Ameristar has disposed of waste at the property, potentially including hazardous wastes.



-Pile of burned waste observed 3/16/2021



-Pallet of waste claimed by Ameristar to have been dropped off at ACT following 2020 inspection, photo taken 2/26/2020



-Loose, unlabeled containers

2. **Regulation: NMSA § 74-4-4.3(A)(1)(a) – Failure to allow inspection of the property where hazardous wastes are suspected to have been/are currently stored or generated**

NMED was not allowed access by the facility representative to the building at the southeast corner of the property, stated to be a storage area for which the facility representative did not have a key.

NMED had made several arrangements with facility ownership to inspect the property, which were consistently delayed. NMED made it clear to Ameristar that inspection of the property was mandatory based on provisions of NMSA 74-4-4.3. NMED was unable to view all pertinent areas of the property requested by NMED after an approximate 2 month delay in inspection after repeated cancellations by Ameristar ownership.

3. **Regulation: 40 CFR 273.13(d)(1) – Failure to store universal waste lamps in closed containers capable of preventing breakage**

The NMED inspectors observed loose waste fluorescent lamps on the ground at the property, as depicted in the photo below.

4. **Regulation: 40 CFR 273.14(e) and 20.4.1.1001(B) NMAC – Failure to label universal waste lamps with the words “universal waste”, or other words to identify the waste**

The NMED inspectors observed loose, unlabeled waste fluorescent lamps on the ground at the property, as depicted in the photo below.

5. **Regulation: 40 CFR 273.15(c) – Failure to demonstrate the length of time universal waste has accumulated.**

The NMED inspectors observed loose, unlabeled waste fluorescent lamps on the ground at the property, as depicted in the photo below.



-Loose fluorescent lamps

Areas of Concern

- a. Please be aware that waste materials on the property must be properly managed. Hazardous wastes must be managed in compliance with the hazardous waste management regulations, and must undergo a hazardous waste determination and must be properly managed on-site and sent to a Treatment, Storage and Disposal Facility.

Likewise, wastes that are non-hazardous but still contain heavy metals contamination/other solid wastes must be properly managed. NMED has referred information, including the presence of the abandoned grit containing the heavy metals cadmium, chromium and lead, to the NMED Solid Waste Bureau for potential compliance issues.



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

November 1, 2022

Angela and Rick Jaramillo
President and Vice President
Ameristar Construction
4801 Maplewood Ave. SW,
Albuquerque, NM 87121

**RE: NOTICE OF VIOLATION WITH PROPOSED PENALTIES
AMERISTAR CONSTRUCTION
EPA ID# NMR000019307**

Dear Mr. and Ms. Jaramillo:

On March 16, 2021, the New Mexico Environment Department (“NMED”) conducted a hazardous waste Follow Up Inspection at Ameristar Construction (“Ameristar”), also known as the Jaramillo Family Trust Property, located at 5801 Maplewood SW, Albuquerque, New Mexico. The inspection was conducted to determine if the violations cited in the Notice of Violation, dated March 30, 2020; and the Notice to Comply, dated August 31, 2020 had been corrected. Ameristar representatives have not provided corrective action documentation.

Based on the inspection and review of the information obtained, NMED has determined that Ameristar is a Very Small Quantity Generator of hazardous waste, as defined in 40 Code of Federal Regulations (“CFR”) 262.13. Furthermore, NMED has determined that Ameristar has violated the New Mexico Hazardous Waste Management Regulations 20.4.1 NMAC) as specified below.

NMED observed the following violations:

- 1.) Failure to make a hazardous waste determination, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.11. Specifically, NMED observed abandoned, uncharacterized wastes at Ameristar. The facility representative could not identify several 5-gallon containers stored on the property in a waste-like manner. Also, the facility had abandoned spent sandblast media containing lead and chromium on the property after a building collapse and had not performed a hazardous waste determination for this material.

Corrective Action: Ameristar must provide NMED with hazardous waste determinations

Plaintiff's Exhibit 6

001

for all of the waste materials present at the property. Ameristar must develop a plan for disposal for hazardous wastes present at the property and provide NMED with a copy of this waste management plan.

- 2.) Failure to treat or dispose of hazardous waste at a destination facility that is permitted, licensed, registered, or otherwise authorized to manage hazardous waste, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.14(a)(5). Specifically, NMED observed evidence of burned hazardous waste containers bearing a strong resemblance to uncharacterized wastes observed during the 2020 inspection for which NMED has not received disposal documentation (see attached photos below).

Corrective Action: Ameristar must provide NMED with documentation of the identity of the burned materials depicted in the attached photograph. Ameristar must develop a plan for disposal for hazardous wastes present at the property and provide NMED with a copy of this waste management plan.

- 3.) Failure to store universal waste lamps in closed containers that are capable of preventing breakage, which is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.13(d)(1). Specifically, NMED inspectors observed loose spent fluorescent lamps on the ground at the property near the northeastern corner.

Corrective Action: Ameristar must containerize all spent fluorescent lamps on the property in container(s) capable of preventing breakage and arrange for proper disposal or recycling.

- 4.) Failure to label universal waste lamps with the words "universal waste", or with other words to identify contents, which is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.14(e) and 20.4.1.1001(B) NMAC. Specifically, NMED inspectors observed loose spent fluorescent lamps on the ground at the property near the northeastern corner.

Corrective Action: Ameristar must label all spent fluorescent lamps on the property and arrange for proper disposal or recycling.

- 5.) Failure to demonstrate the length of time universal waste has accumulated, which is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.15(c). Specifically, NMED inspectors observed loose spent fluorescent lamps on the ground on the property near the northeastern corner.

Corrective Action: Ameristar must demonstrate the amount of time spent fluorescent lamps have been accumulating with an accumulation start date or log.

NMED is requesting that Ameristar provide to NMED within thirty (30) days of receipt of this letter a written description of the actions taken by Ameristar to address the violations described above or a schedule for implementation of corrective actions not yet completed.

In accordance with New Mexico Statutory Authority 1978, Section 74-4-10, NMED may: (1) issue a Notice of Violation requesting voluntary compliance within a specified time period; (2) issue a Compliance Order requiring compliance immediately or within a specified time period or assess a civil penalty for any past or current violations of up to \$10,000 per day of non-compliance for each violation, or both; or (3) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction.

Due to the nature of the violations listed above, and Ameristar's lack of response to the Notice of Violation, Notice to Comply, as well as numerous email and telephone requests, NMED will propose a civil penalty for these violations in a separate Notice of Proposed Penalty letter, a settlement privileged document in accordance with NMED's Civil Penalty policy, dated March 2017.

Any action taken in response to this letter does not relieve Ameristar of its obligation to comply with any other applicable laws and regulations. Pursuant to the NMED Delegation Order dated October 20, 2022, the Cabinet Secretary has delegated the authority to issue Notices of Violation under the Hazardous Waste Act and HWMRs to the Chief of the Hazardous Waste Bureau. If you have any questions regarding this letter, please contact Aaron Coffman of my staff at (505) 690-5211 or by email at aaron.coffman@env.nm.gov.

Sincerely,

Rick Shean
Bureau Chief and Acting CTAP Program Manager
Hazardous Waste Bureau

RS: ac

cc: Rick Shean, NMED HWB
Aaron Coffman, NMED HWB
Levi Cole, NMED District I Manager

file: Library #4213



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

November 1, 2022

CONFIDENTIAL FOR SETTLEMENT PURPOSES ONLY

Angela and Rick Jaramillo
President and Vice President
Ameristar Construction
4801 Maplewood Ave. SW,
Albuquerque, NM 87121

**RE: NOTICE OF PROPOSED PENALTIES
AMERISTAR CONSTRUCTION
EPA ID# NMR000019307**

Dear Mr. and Ms. Jaramillo:

On February 26, 2020, the New Mexico Environment Department (“NMED”) conducted a hazardous waste Compliance Evaluation Inspection at Ameristar Construction (“Ameristar”), also known as the Jaramillo Family Trust Property, located at 5801 Maplewood SW, Albuquerque, New Mexico.

Pursuant to the New Mexico Hazardous Waste Act (HWA), NMSA 1978, §§ 74-4-1 to 74-4-14, NMED proposes to assess a civil penalty of \$77,960 to settle the violations of the HWA and the Hazardous Waste Management Regulations set forth in the NOV. The civil penalty is assessed as follows:

- | | | |
|----|--|----------|
| 1. | Failure to make a hazardous waste determination, which is a violation of 20.4.1.300 NMAC, incorporating 40 Code of Federal Regulations (“CFR”) § 262.11. | \$70,400 |
| 2. | Failure to treat or dispose of hazardous waste at a destination facility that is permitted, licensed, registered, or authorized to manage hazardous waste, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.14(a)(5). | \$6,300 |
| 3. | Failure to store universal waste lamps in closed containers that are capable of preventing breakage, which is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.13(d)(1). | \$420 |

Plaintiff's Exhibit 6

004

4. Failure to label universal waste lamps with the words “universal waste”, or with other wording to identify contents, which is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.14(e) and 20.4.1.1001(B) NMAC. \$420
5. Failure to demonstrate the length of time that universal waste has accumulated, which is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.15(c). \$420

Pursuant to the NMED Delegation Order dated October 20, 2022, the Cabinet Secretary has delegated the authority to issue Notices of Proposed Penalties under the Hazardous Waste Act and HWMRs to the Chief of the Hazardous Waste Bureau. If you would like to discuss the civil penalty, please contact Aaron Coffman of my staff at (505) 690-5211 or by e-mail at aaron.coffman@env.nm.gov within 30 days of receipt of this notice to schedule an informal conference concerning resolution of this matter. If no response is received from you within 30 days, a Stipulated Final Order (“SFO”) will be prepared for your signature to settle the case.

Sincerely,

Rick Shean
Bureau Chief and Acting CTAP Program Manager
Hazardous Waste Bureau

RS: ac

cc: Rick Shean, NMED HWB
Aaron Coffman, NMED HWB
Levi Cole, NMED District 1 Manager

file: Library #4213