

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE ADMINISTRATOR**

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**In the Matter of:**

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

Respondents.

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) **Docket Nos. RCRA-08-2015-0002**  
) **and CAA-08-2015-0014**  
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**STATUS REPORT**

Complainant United States Environmental Protection Agency, Region 8 (EPA), by and through its undersigned attorney, provides the following Status Report (Report) in the above-referenced matter upon coordination with Respondent National Electric Coil's (NEC) counsel pursuant to the PREHEARING ORDER issued by the Honorable M. Lisa Buschmann, Administrative Law Judge, dated December 30, 2015.

1. The parties did not schedule a settlement conference prior to the filing of this Report. The parties have not collectively conferred since the final Alternative Dispute Resolution conference call in this matter on December 22, 2015.

2. Counsel for EPA and NEC spoke on January 15, 2016, regarding the Report and matters associated with the filing of the prehearing exchange documents. Based on this discussion, EPA and NEC respectfully request that a prehearing conference call be scheduled with Judge Buschmann and the parties to discuss and clarify the following procedural issues in advance of the EPA's deadline for filing Complainant's Initial Prehearing Exchange.

- a. The scope of the hearing. The parties seek confirmation that the scope of the hearing is limited to the RCRA-portion of the compliance order. The Prehearing Order appears to pertain to both the CAA and RCRA cases. However, it is EPA's understanding based on the applicable statutes and Part 22 rules that only the findings made, violations alleged and order issued pursuant to section 3008(a) of RCRA are subject to administrative review. The CAA does not provide for administrative hearings on compliance orders issued pursuant to section 113(a)(3)(B) of the CAA, nor is the issuance of a compliance order pursuant to section 113(a)(3)(B) of the CAA governed by the administrative adjudicatory proceedings set forth in Part 22. Respondents NEC and CTA filed a petition for review of the alleged violations of the CAA with the 9<sup>th</sup> Circuit Court of Appeals

in September 2015 pursuant to section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1). This litigation is on-going concurrent with the administrative proceeding.

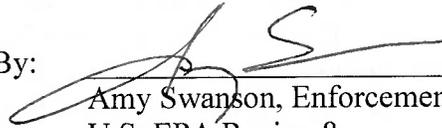
- b. The parties. The parties seek clarification regarding which parties are entitled to and/or desire a hearing on the RCRA compliance order. The Prehearing Order was addressed to all four Respondents. However, while Respondents NEC and CTA requested a hearing, Respondent Environmental Contractors, LLC, did not. Respondent Bureau of Reclamation specifically states in its Answer to the Amended Order dated August 13, 2015, that "Reclamation does not request a hearing at this time." It is the EPA's contention that the Amended Order automatically became a final order as to these two Respondents effective August 21 and 22, 2015, respectively, and any participation by these Respondents at hearing should be strictly as a non party. Even if the Administrative Law Judge determines that Respondents EC and BOR are entitled to put forth evidentiary information, the EPA is uncertain whether either or both party cares to do so.

Respectfully Submitted,

Date:

1/15/2016

By:



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## CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2016, copies of the foregoing Settlement Status Report were sent to the persons indicated below in the manner indicated:

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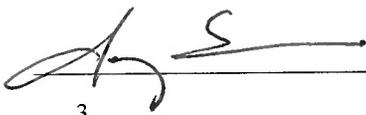
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Date: 1/15/2016

By:   
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