

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )  
 )  
BP America Production Company, ) ANSWER AND REQUEST FOR  
 ) HEARING  
 )  
Respondent. ) Docket No. CWA-08-2014-0037  
 )

Respondent, BP America Production Company, answers the Complaint as follows:

**JURISDICTIONAL ALLEGATIONS**

1. This Complaint is issued under the authority vested in the EPA by section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). The authority to issue this Complaint has been delegated to the undersigned official.

**ANSWER:** Paragraph 1 of EPA's Complaint contains legal conclusions to which no response is required.

2. This proceeding is subject to the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. part 22, a copy of which is being provided to the Respondent with this Complaint.

**ANSWER:** Paragraph 2 of EPA's Complaint contains legal conclusions to which no response is required. Respondent admits that a copy of the Consolidated Rules was provided.

**GENERAL ALLEGATIONS**

3. The Respondent is a Delaware corporation.

**ANSWER:** Admit.

4. The Respondent is a "person" as that term is defined in section 502(5) of the Act, 33 U.S.C. § 1362(5).

**ANSWER:** Admit.

5. The Respondent owns and/or operates a pipeline known as the Y#1 Lateral (Pipeline) located in the Northeast ¼ of the Northwest ¼, Section 13, Township 33 North, Range 7 West, La Plata County, Colorado, within the exterior boundaries of the Southern Ute Indian Reservation (Reservation).

**ANSWER:** Respondent admits the allegations contained in Paragraph 5 of EPA's Complaint except that the Pipeline is located in the Southeast ¼ of the Northwest ¼, Section 13, Township 33 North, Range 7 West, La Plata County, Colorado.

6. The Pipeline transports a two-phase gas and water stream consisting of coal bed methane and water produced as a waste product from oil and/or gas drilling operations.

**ANSWER:** Respondent admits that the Pipeline transports a two-phase stream consisting of coal bed methane and produced water, which is naturally occurring in the formation and does not contain any liquid hydrocarbons. Respondent denies the remaining allegations contained in Paragraph 6 of EPA's Complaint.

7. On or about March 15, 2013, and for an unknown number of days prior to that date, the Respondent discharged unknown quantities (between five and 200 barrels) of produced water from the Pipeline into Spring Creek and/or an unnamed tributary of Spring Creek and/or wetlands adjacent to Springs Creek and/or adjacent to its unnamed tributary.

**ANSWER:** Respondent admits that a release was discovered on March 15, 2013. Respondent is not aware of evidence that the release extended beyond the wetland bench. Downstream water quality data reveals no evidence of a discharge. On information and belief, no more than five barrels of produced water were released. Respondent denies the remaining allegations contained in Paragraph 7 of EPA's Complaint.

8. The EPA learned of the discharge referenced in paragraph 7, above, upon receiving a letter dated May 17, 2013, from URS Corporation, on behalf of the Respondent, requesting water quality certification pursuant to section 401 of the Act, 33 U.S.C. § 1341, in connection with a project to replace the Pipeline that had caused the discharge.

**ANSWER:** Respondent is without sufficient information regarding the truth of how and when EPA first learned of the release. Respondent admits that URS Corporation did submit a letter to EPA dated May 17, 2013, which speaks for itself.

9. Prior to the letter described in paragraph 8, above, the Respondent had not notified the EPA or National Response Center of the discharge referenced in paragraph 7, above.

**ANSWER:** Admit. No reporting requirements to EPA or the National Response Center were triggered by the release.

10. The certification referenced in paragraph 8, above, related to a pre-construction notice (PCN) that URS Corporation provided on the same date to the United States Army Corps of Engineers (Corps) for the replacement of fill and temporary impact to the waters referenced in paragraph 7, above. Submittal of the PCN was a requirement for obtaining authorization for placement of that fill pursuant to Nationwide Permit No. 3 (NWP No. 3). NWP No. 3 is a type of general permit that section 404(e) of the Act, 33 U.S.C. § 1344(e), authorizes the Corps to issue for certain discharges of dredged or fill material. The Corps issued the relevant version of NWP No. 3 as described in 77 Fed. Reg. 10184, 10191-10193 (February 21, 2012).

**ANSWER:** Paragraph 10 of EPA's Complaint contains legal conclusions to which no response is required. To the extent Paragraph 10 attempts to characterize URS's submission on May 17, 2013 to the United States Army Corps of Engineers, Respondent states that the document speaks for itself. The business decision to submit a PCN to perform restoration and repair work and to cross Spring Creek does not establish the alleged discharge at issue, of a pollutant to a jurisdictional water of the United States.

11. The unnamed tributary referenced in paragraph 7, above, is at least an intermittent tributary of Spring Creek.

**ANSWER:** Respondent admits that the release area is near an unnamed tributary that is at least an intermittent tributary of Spring Creek.

12. The unnamed tributary referenced in paragraph 7, above, is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and a "water of the United States" as defined in 40 C.F.R. § 122.2.

**ANSWER:** Respondent is without sufficient information regarding the truth of the allegations contained in Paragraph 12 of EPA's Complaint and therefore, denies the same.

13. Spring Creek flows year-round most years and is, therefore, at least seasonal.

**ANSWER:** Respondent is without sufficient information regarding the truth of the allegations contained in Paragraph 13 of EPA's Complaint and therefore, denies the same.

14. Spring Creek is a tributary of the Pine River, which is sometimes known as the Los Pinos River.

**ANSWER:** Respondent is without sufficient information regarding the truth of the allegations contained in Paragraph 14 of EPA's Complaint and therefore, denies the same.

15. Spring Creek is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and a "water of the United States" as defined in 40 C.F.R. § 122.2.

**ANSWER:** Respondent is without sufficient information regarding the truth of the allegations contained in Paragraph 15 of EPA's Complaint and therefore, denies the same.

16. The Pine River is navigable-in-fact.

**ANSWER:** Respondent is without sufficient information regarding the truth of the allegations contained in Paragraph 16 of EPA's Complaint and therefore, denies the same.

17. The Pine River is a perennial stream.

**ANSWER:** Respondent is without sufficient information regarding the truth of the allegations contained in Paragraph 17 of EPA's Complaint and therefore, denies the same.

18. The Pine River originates in Colorado outside of the Reservation, enters and flows through the Reservation, and flows out of the Reservation into New Mexico. The Pine River eventually enters the Navajo Reservoir, which is an impoundment of the Pine River, the Piedra River, and the San Juan River.

**ANSWER:** Respondent is without sufficient information regarding the truth of the allegations contained in Paragraph 18 of EPA's Complaint and therefore, denies the same.

19. The Pine River is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and a "water of the United States" as defined in 40 C.F.R. § 122.2.

**ANSWER:** Respondent is without sufficient information regarding the truth of the allegations contained in Paragraph 19 of EPA's Complaint and therefore, denies the same.

20. The San Juan River is navigable-in-fact.

**ANSWER:** Respondent is without sufficient information regarding the truth of the allegations contained in Paragraph 20 of EPA's Complaint and therefore, denies the same.

21. The San Juan River is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and a "water of the United States" as defined in 40 C.F.R. § 122.2.

**ANSWER:** Respondent is without sufficient information regarding the truth of the allegations contained in Paragraph 21 of EPA's Complaint and therefore, denies the same.

22. The wetlands adjacent to Spring Creek and/or adjacent to the tributary of Spring Creek, as referenced in paragraph 7, above, are "navigable waters" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and "waters of the United States" as defined in 40 C.F.R. § 122.2.

**ANSWER:** Respondent is without sufficient information regarding the truth of the allegations contained in Paragraph 22 of EPA's Complaint and therefore, denies the same.

23. The produced water referenced in paragraph 7, above, constitutes a "pollutant" as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6).

**ANSWER:** Paragraph 10 of EPA's Complaint contains legal conclusions to which no response is required.

24. The produced water referenced in paragraph 7, above, was discharged from a "point source" as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14).

**ANSWER:** Respondent admits that a small quantity of produced water was accidentally released from the Pipeline. Respondent admits that a pipe is a point source as defined by the Act. Respondent denies the remaining allegations in Paragraph 24 of EPA's Complaint.

25. The discharge described in paragraph 7, above, constituted a discharge of a pollutant as defined in section 502(12) of the Act, 33 U.S.C. § 1362(12).



**ANSWER:** Deny.

26. The discharge described in paragraph 7, above, was not authorized by any permit issued pursuant to the Act or by any provision of the Act.

**ANSWER:** Respondent admits that it did not have a permit for the accidental release from the Pipeline. Respondent denies the remaining allegations contained in Paragraph 26 of EPA's Complaint.

27. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits any person from discharging any pollutant into navigable waters except as in compliance with sections 301, 312, 306, 307, 308, 402, and 404 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1342, and 1344.

**ANSWER:** Paragraph 27 of EPA's Complaint contains legal conclusions to which no response is required.

28. The discharge described in paragraph 7, above, constitutes a violation of section 301(a) of the Act, 33 U.S.C. § 1311(a), for each day of the discharge's occurrence. For each day of violation, the Respondent is liable for civil administrative penalties pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g).

**ANSWER:** Deny.

Any allegation not expressly admitted is denied.

#### **AFFIRMATIVE DEFENSES**

1. There was no discharge of pollutants into a jurisdictional "water of the United States" and therefore, Respondent is not liable for penalties.
2. EPA's proposed penalty is arbitrary and unreasonable and should be reduced or dismissed based on the relevant evidence.

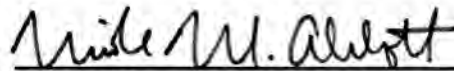
#### **PROPOSED PENALTY**

1. Respondent denies responsibility for penalties.
2. Respondent contests the amount of, and alleged basis for, EPA's proposed penalty.

#### **REQUEST FOR HEARING**

Respondent hereby requests a hearing in this matter pursuant to 33 U.S.C. 1319(g)(2)(B) and 40 C.F.R. § 22.15(c).

Dated: November 6, 2014.



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### CERTIFICATE OF SERVICE

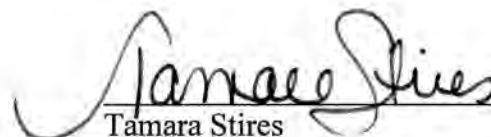
I hereby certify that on this 6th day of November, 2014, an original and one true and correct copy of the foregoing **ANSWER AND REQUEST FOR HEARING** were served on the following by Federal Express overnight service:

Tina Artemis  
Regional Hearing Clerk  
U.S. Environmental Protection Agency (8RC)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

I further hereby certify that on this 6th day of November, 2014, one true and correct copy of the foregoing **ANSWER AND REQUEST FOR HEARING** was served on each of the following by Federal Express overnight service:

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