

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

2018 JAN 31 AM 8:45

BEFORE THE ADMINISTRATOR

C&S ENTERPRISE, L.L.C.  Respondents	ANSWER AND REQUEST FOR HEARING  Docket No. CWA-07-2018-0095
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COMES NOW the Respondent, C&S Enterprise, L.L.C., by and through their attorney, Eldon L. McAfee, and for its Answer to the EPA's Complaint and Notice of Opportunity for Hearing, states:

1. Respondent admits paragraph 1.
2. Respondent denies paragraph 2.
3. Respondent admits paragraph 3.
4. Respondent admits paragraph 4.
5. Respondent admits paragraph 5.
6. Respondent admits paragraph 6.
7. Respondent admits paragraph 7.
8. Respondent admits paragraph 8.
9. Respondent admits paragraph 9.
10. Respondent admits paragraph 10.
11. Respondent admits paragraph 11.
12. Respondent admits paragraph 12.
13. Respondent admits paragraph 13.

14. Respondent admits paragraph 14.
15. Respondent denies paragraph 15. Without limitation of the foregoing, Respondent specifically denies placement of fill material into a water of the U.S. and denies filling in a wetlands.
16. Respondent denies paragraph 16 for lack of information sufficient to form a belief.
17. Respondent denies paragraph 17.
18. Respondent denies paragraph 18.
19. Respondents denies paragraph 19.
20. Respondent denies paragraph 20.
21. Respondent denies paragraph 21.
22. Respondent denies paragraph 22.
23. Respondent denies paragraph 23.
24. Respondent admits paragraph 24.
25. Respondent denies paragraph 25.
26. No allegations are made in paragraph 26 and therefore no response is necessary.
27. Respondent denies paragraph 27.
28. No allegations are made in paragraph 28 and therefore no response is necessary.
29. No allegations are made in paragraph 29 and therefore no response is necessary.

30. No allegations are made in paragraph 30 and therefore no response is necessary.

31. No allegations are made in paragraph 31 and therefore no response is necessary.

32. No allegations are made in paragraph 32 and therefore no response is necessary.

33. No allegations are made in paragraph 33 and therefore no response is necessary.

34. No allegations are made in paragraph 34 and therefore no response is necessary.

35. No allegations are made in paragraph 35 and therefore no response is necessary.

36. No allegations are made in paragraph 36 and therefore no response is necessary.

37. No allegations are made in paragraph 37 and therefore no response is necessary.

38. No allegations are made in paragraph 38 and therefore no response is necessary.

## DEFENSES TO PROPOSED CIVIL PENALTY

Respondent submits that the EPA's proposed penalty is inappropriate considering the statutory factors and specific facts of this case. In particular, there was no discharge of pollutants to a water of the U.S. in that the alleged tributary of Deep Creek is not a water of the U.S. Further, Respondent's actions were minimal and do not qualify as "discharge of fill material" as the terms "fill material" and "discharge of fill material" are defined in 40 C.F.R. §232.2 and as required pursuant to 40 C.F.R. §232.3(b). Further, Respondent's actions were minimal and are exempt under 40 C.F.R. §232.3, including but not limited to 40 C.F.R. § 232.3(c)(1) and (c)(3).

## **REQUEST FOR A HEARING**

Pursuant to 40 C.F.R. Part 22, Respondent requests a hearing on the issues raised in the Complaint and in this Answer.

Dated this 29th day of January, 2018.

BRICK GENTRY, P.C.

  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause herein at their respective addresses disclosed on the pleadings of record on the 29th day of January, 2008.

By:  U.S. Mail  FAX  
 Hand Delivered  Overnight Courier  
 Federal Express  Other: \_\_\_\_\_

Signature: Nancy Franklin

Original and one copy to:  
Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

Copy to:  
Chris Muehlberger, Assistant Regional Counsel,  
U.S. EPA, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
[Muehlberger.Chris@epa.gov](mailto:Muehlberger.Chris@epa.gov)