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ANSWER TO COMPLAINT - 1

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DOCKET NO. CWA-10-2010-0065

GARCO CONSTRUCTION, INC. Whidbey Island Naval Air Station Oak Harbor, Washington,

In the Matter of:

RESPONDENT GARCO'S ANSWER TO COMPLAINT AND REQUEST FOR HEARING

Respondent.

Respondent Garco Construction, Inc. (hereinafter "Garco"), by and through its attorneys, Witherspoon Kelley, responds, defends, denies and admits as follows:

I. AUTHORITIES

1.1-1.3 Answering paragraphs 1.1, 1.2, and 1.3 of the Complaint, the allegations set forth therein are legal conclusions for which no answer is needed. Deny the same.

II. STATUTORY REGULATIONS BACKGROUND

2.1-2.17 Answering paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11,

2.12, 2.13, 2.14, 2.15, 2.16, and 2.17 of the Complaint, the allegations set forth therein are legal

conclusions for which no answer is needed. Deny the same.

ORIGINAL

WK WITHERSPOON·KELLEY
Attorneys & Counselors

422 W. Riverside Avenue, Suite 1100 Spokane, Washington 99201-0300

corporation registered under the laws of the State of Washington. The remaining allegation is a

Answering paragraph 3.1 of the Complaint, Respondent admits that it is a

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3.2 Answering paragraph 3.2 of the Complaint, the allegations set forth therein are legal conclusions for which no answer is needed, and Respondent denies the same.

legal conclusion for which no answer is needed, and Respondent denies the same.

3.3 Answering paragraph 3.3 of the Complaint, Respondent admits the same.

3.4 Answering paragraph 3.4 of the Complaint, Respondent is without sufficient information to form a belief as to the truth or falsity of the allegations therein and, therefore, denies the same at this time.

3.5 Answering paragraph 3.5 of the Complaint, the allegations set forth therein are legal conclusions for which no answer is needed, and Respondent denies the same.

3.6 Answering paragraph 3.6 of the Complaint, the allegations set forth therein are legal conclusions for which no answer is needed, and Respondent denies the same.

3.7 Answering paragraph 3.7 of the Complaint, Respondent admits that in or about September 2007, Respondent submitted an NOI to seek coverage under the CGP.

3.8 Answering paragraph 3.8 of the Complaint, Respondent admits the same.

3.9 Answering paragraph 3.9 of the Complaint, Respondent admits that on or about March 24, 2009, the EPA conducted an inspection of the Site.

ANSWER TO COMPLAINT - 2



Count 1 (Storm Water Pollution Prevention Plan Deficiencies in Violation of the CGP)

- 3.10 Answering paragraph 3.10 of the Complaint, Respondent realleges its responses to Paragraphs 1.1 though 3.9 with the same force and effect as if set forth verbatim at this point.
- 3.11 Answering paragraph 3.11 of the Complaint, Respondent admits the CGP speaks for itself and refers to the terms therein. Respondent denies the remaining allegations.
- 3.12 Answering paragraph 3.12 of the Complaint, Respondent admits that part 3.11 speaks for itself and refers to the terms therein. All other allegations are hereby denied.
- 3.13 Answering paragraph 3.13 of the Complaint, Respondent admits that on or about March 24, 2009, the EPA personnel examined certain copies of a SWPPP. Respondent denies the remaining allegations.
- 3.14 Answering paragraph 3.14 of the Complaint, the allegations contained therein call for legal conclusions to which no answer is required. To the extent an answer is required, Respondent denies the same.
- 3.15 Answering paragraph 3.15 of the Complaint, Respondent admits that the NOI was signed and certified and maintained as part of the SWPPP. Respondent admits the SWPPP showed to the EPA may not itself have been signed in addition to the attached NOI. The remaining allegations constitute legal conclusions to which no answer is required and thus Respondent denies the same.
- 3.16 Answering paragraph 3.16 of the Complaint, Respondent admits it added to the SWPPP that it had placed silt fences in locations where certain stock piles had been located in

ANSWER TO COMPLAINT - 3



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accordance with the CGP, but inadvertently failed to draw in the stock piles onto the site plan.

Respondent denies the remaining allegations.

- 3.17 Answering paragraph 3.17 of the Complaint, Respondent denies the allegations contained therein. Respondent, in accordance with Part 3.4 of the CGP, maintained and posted updated construction schedules "as part of the SWPPP," including those required by Part 3.4 of the CGP.
- 3.18 Respondent denies the allegations of Paragraph 3.18 of the Complaint. As required by Part 3.5 of the CGP, the SWPPP "identified all the allowable sources of non-storm water discharges listed in Subpart 1.3B of the CGP." Section 5.3 of the SWPPP identified concrete wash-out, accumulation of water in excavations, and describes the controls for water for dust control, fire hydrants, air conditioning condensation from vehicles and trailers, and potable water sources including waterline flushing.
- 3.19 Respondent denies the allegations set forth in Paragraph 3.19 of the Complaint. The SWPPP, Section 8.6, documented the process undertaken to support a determination of permit eligibility with regard to endangered species. Respondent recorded that it conferred with NAS Whidbey Island Environmental Affairs, U.S. Navy's Natural Resources personnel, who indicated there were not any listed or threatened or endangered species or critical habitat located within the project area where storm water from construction activities will be discharged into receiving waters, or in the immediate vicinity of the point of discharge to the receiving waters.

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3.20 Answering paragraph 3.20 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.

Count 2 (Failure to Conduct Inspections in Violation of the CGP)

- 3.21 Answering paragraph 3.21 of the Complaint, Respondent realleges its responses to Paragraphs 1.1 though 3.9 with the same force and effect as if set forth verbatim at this point.
- 3.22 Respondent admits that the CGP speaks for itself and refers to the terms therein. Respondent denies any remaining allegations.
- 3.23 Answering paragraph 3.23 of the Complaint, Respondent admits that, though the CGP only required an inspection at least every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater, Respondent delineated in Section 6.1 of its SWPPP that it would conduct inspections more frequently by doing so "once a week" and within 24 hours of the end of a storm event of 0.5 inches or greater, which it in fact did. Respondent denies any remaining allegations.
- 3.24 Answering paragraph 3.24 of the Complaint, Respondent admits that it submitted to EPA a complete set of self-inspection reports that may or may not have indicated that Respondent conducted inspections ever 7 "calendar" days; however such a schedule was not required by the SWPP or the CGP. Respondent admits the reports establish that Garco conducted inspections once very work week and within 24 hours of a storm event of greater than 0.5 inches, a frequency rate greater than required by the CGP.

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	3.25	Answering paragraph 3.25 of the Complaint, Respondent denies the allegations
Each	self-insp	pection report contained a certification that the site was in compliance with the
storm	n water p	revention plan and the permit.

- 3.26 Answering paragraph 3.26 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.
- 3.27 Answering paragraph 3.27 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.
- 3.28 Answering paragraph 3.28 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.

Count 3 (Failure to Select, Install, and/or Maintain Best Management Practices Properly)

- 3.29 Answering paragraph 3.29 of the Complaint, Respondent realleges its responses to Paragraphs 1.1 though 3.9 with the same force and effect as if set forth verbatim at this point.
- 3.30 Answering paragraph 3.30 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.
- 3.31 Answering paragraph 3.31 of the Complaint, Respondent denies the same. Notwithstanding what the EPA may have observed and the conclusions drawn therefrom, Respondent had duly installed erosion control socks where necessary, maintained silt fences, replaced catch basins, installed and maintained stabilizer rock on the entrances to the site, and implemented erosion control measures at ground water seeps and around large stockpiles on the site. Respondent, in doing so, consulted and relied upon a U.S. Navy Base Environmentalist

ANSWER TO COMPLAINT - 6



and a Certified Erosion and Sediment Control Lead ("CESCL") in maintaining and installing BMPs on the site.

- 3.32. Answering paragraph 3.32 of the Complaint, Respondent denies it failed to install and maintain BMPs properly. Respondent complied with part 3.13 of the CGP.
- 3.33 Answering paragraph 3.33 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.

IV. PROPOSED PENALTIES

- 4.1 Answering paragraph 4.1 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.
- 4.2. Answering paragraph 4.2 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.
- 4.3 Answering paragraph 4.3 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.
 - 4.4 Answering paragraph 4.4 of the Complaint, Respondent admits the same.
- 4.5 Answering paragraph 4.5 of the Complaint, Respondent admits it has no history of violating the Act.
 - 4.6 Answering paragraph 4.6 of the Complaint, Respondent denies the same.
- 4.7. Answering paragraph 4.7 of the Complaint, Respondent denies the same because it incurred costs associated with installing and maintaining BMPs as described above, and it incurred the costs associated with compiling and maintaining records as part of the SWPPP and

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by conducting inspections more frequently than required by the CGP.

4.8 Answering paragraph 4.8 of the Complaint, Respondent denies the same.

V. <u>OPPORTUNITY TO REQUEST A HEARING</u> (Respondent's Request for a Hearing)

- 5.1. Answering paragraph 5.1 of the Complaint, the allegations contained therein are legal conclusions to which no answer is required. Notwithstanding the foregoing, Respondent hereby requests a hearing concerning the contested issues in this matter.
- 5.2. Answering paragraph 5.2 of the Complaint, the allegations contained therein are statement of facts or contentions to which an answer is required. To the extent an answer is required, it is denied.

VI. FAILURE TO FILE AN ANSWER

- 6.1 Answering paragraph 6.1 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.
- 6.2 Answering paragraph 6.2 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.

VII. INFORMAL SETTLEMENT CONFERENCE

- 7.1 Answering paragraph 7.1 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.
- 7.2 Answering paragraph 7.2 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.

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- 7.3 Answering paragraph 7.3 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.
 - 7.4 Respondent hereby requests an informal settlement conference.

VIII. RESERVATIONS

8.1 Answering paragraph 8.1 of the Complaint, the allegations contained therein are legal conclusions for which no answer is required, and Respondent denies the same.

IX. <u>AFFIRMATIVE DEFENSES</u>

9.1 Respondent reserves the right to rely on any defenses that may become available or apparent during the course of this action and Respondent specifically reserves the right to amend its Answer and to assert any such affirmative defenses.

X. REQUEST FOR A HEARING

10.1 In response to the Complaint, Respondent hereby requests a hearing be held in accordance with all applicable law.

RELIEF REQUESTED

WHEREFORE, having fully answered plaintiff's Complaint, the Respondent asks that the same be dismissed with prejudice and that the defendant be awarded whatever costs and or reasonable attorney fees it may be entitled to under applicable law or equity, together with such other relief as may be just and equitable.

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ANSWER TO COMPLAINT - 9



DATED this _____ day of March, 2010.

WITHERSPOON KELLEY

mmes, WSBA #24132

Attorneys for Respondent Garco Construction, Inc.

ANSWER TO COMPLAINT - 10

WK WITHERSPOON·KELLEY Attorneys & Counselors

422 W. Riverside Avenue, Suite 1100 Spokane, Washington 99201-0300

1	CERTIFICATE OF SERVICE		
2			
3	On March 16, 2010, I served the document described as RESPONDENT GARCO'NSWER TO COMPLAINT AND REQUEST FOR HEARING on the following interested		
4	party to this action as follows:		
5	Jennifer Byrne Hand Delivery		
6	Assistant Regional Counsel U.S. Mail U.S. Environmental Protection Agency, Region 10 Overnight Mail		
7	1200 Sixth Ave., Suite 900, Mail Stop ORC-158		
8	Regional Hearing Clerk Hand Delivery		
9	U.S. Environmental Protection Agency, Region 10 U.S. Mail		
10	1200 Sixth Ave., Suite 900, Mail Stop ORC-158 Seattle, WA 98101 Overnight Mail Facsimile Transmission		
1	☐ Via Electronic Mail		
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14	Collette V. Robbins		
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ANSWER TO COMPLAINT - 11

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March 16, 2010

Regional Hearing Clerk U.S. Environmental Protection Agency, Region 10 1200 Sixth Ave., Suite 900, Mail Stop ORC-158 Seattle, WA 98101

Re: In the Matter of Garco Construction, Inc.,

Whidbey Island Naval Air Station, Oak Harbor, Washington

Dear Sir/Madam:

Enclosed for filing please Respondent Garco's Answer to Complaint and Request for Hearing. Please conform the copy and return it in the envelope provided. Should you have any questions please do not hesitate to call.

Very truly yours,

WITHERSPOON • KELLEY

Collette N. Robbins

Legal Assistant to William M. Symmes

Callety Wroth

CNR:cnr Enclosures

Tel: 509.624.5265