

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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In the Matter of:	:	Proceeding to Assess Class II
Ft. Lincoln Retail, LLC	:	Administrative Penalty Under
a/k/a Fort Lincoln Retail, LLC,	:	Section 309(g) of the Clean Water Act
Respondent.	:	Docket No. CWA-03-2015-0037
	:	<b>ANSWER TO ADMINISTRATIVE</b>
	:	<b>PENALTY COMPLAINT,</b>
	:	<b>REQUEST FOR INFORMAL</b>
	:	<b>SETTLEMENT CONFERENCE, AND</b>
	:	<b>REQUEST FOR HEARING</b>

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**ANSWER TO ADMINISTRATIVE PENALTY COMPLAINT**

Respondent Ft. Lincoln Retail, LLC (“Respondent”), by and through its undersigned attorneys at Holland & Knight LLP, for their Answer and Defenses to the Administrative Penalty Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) issued by the United States Environmental Protection Agency (“EPA”) by letter dated April 29, 2015, and received on May 4, 2015, states as follows and, unless specifically answered otherwise, denies each and every allegation of the Complaint:

**I. STATUTORY AUTHORITY**

1. The allegations contained in Petitioner’s paragraph 1 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they recite provisions of law or regulation. To the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations.

2. Respondent admits that EPA proposes to assess a civil penalty against Respondent for alleged violations of the federal Clean Water Act (“CWA”). Respondent denies all other allegations in Petitioner’s paragraph 2.

**II. FACTUAL AND LEGAL ALLEGATIONS**

3. The allegations contained in Petitioner’s paragraph 3 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they recite provisions of law or regulation. To the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations.

4. The allegations contained in Petitioner’s paragraph 4 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they recite provisions of law or regulation. To the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations.

5. The allegations contained in Petitioner’s paragraph 5 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they recite provisions of law or regulation. To the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations.

6. The allegations contained in Petitioner’s paragraph 6 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they recite provisions of law or regulation. To the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations.

7. The allegations contained in Petitioner’s paragraph 7 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they recite provisions of law or regulation. To

the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations.

8. Respondent admits that Fort Lincoln Retail, LLC is a joint venture entity among Trammel Crow Company; CSG Urban Partners, LLC; and Fort Lincoln New Town Corporation.

9. The allegations contained in Petitioner's paragraph 9 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they recite provisions of law or regulation. To the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations.

10. The allegations contained in Petitioner's paragraph 10 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they recite or interpret provisions of law or regulation. To the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations.

11. The allegations contained in Petitioner's paragraph 11 purport to describe certain requirements of Part 1.4 of the EPA's 2012 Construction General Permit ("CGP"), which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations.

12. The allegations contained in Petitioner's paragraph 12 purport to describe certain requirements of Part 1.4 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations.

13. As to Petitioner's paragraph 13, Respondent admits that on or about May 16, 2012, Respondent (through its agent or representative) submitted an NOI for the construction site

known as Shops at Dakota Crossing located at 3301 Fort Lincoln Drive, NE, Washington, DC (the "Site") for coverage under the 2012 Construction General Permit (the "Permit" or "CGP").

14. As to Petitioner's paragraph 14, Respondent admits that on or about August 3, 2011, Respondent had prepared a Stormwater Pollution Prevention Plan ("SWPPP"), which it maintained on the Site.

15. As to Petitioner's paragraph 15, Respondent admits that coverage under the CGP began on June 13, 2012, and that Respondent was assigned Permit Tracking Number DCR12A010.

16. As to Petitioner's paragraph 16, Respondent admits that land-disturbing activities began at the Site on or about December 19, 2011.

17. The allegations contained in Petitioner's paragraph 17 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they recite or interpret provisions of law or regulation. To the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations.

18. Respondent admits that the Site drains to a storm drain system operated by DC Water that outfalls to the Anacostia River. Respondent denies all other factual allegations in Petitioner's paragraph 18.

19. The allegations contained in Petitioner's paragraph 19 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they recite or interpret provisions of law or regulation. To the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations.

20. In answer to Petitioner's paragraph 20, Respondent admits that representatives of EPA conducted an inspection (the "Inspection") of the Site on September 20, 2012.

21. Respondent is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of Petitioner's paragraph 21, and on that basis denies the allegations.

22. Respondent is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of Petitioner's paragraph 22, and on that basis denies the allegations.

23. In answer to Petitioner's paragraph 23, Respondent admits that it received a copy of an inspection report from EPA, dated March 21, 2013, via mail (hereafter, "EPA Inspection Report").

24. In answer to Petitioner's paragraph 24, Respondent admits that it is aware that EPA requested information from the listed entities on or about June 2, 2014.

25. In answer to Petitioner's paragraph 25, Respondent admits that it is aware that EPA received information in response to its information requests in June or July, 2014.

### **III. ALLEGED VIOLATIONS**

#### **Count 1: Unauthorized Discharge of Non-Stormwater Routed to Areas of Exposed Soil**

26. The allegations contained in Petitioner's paragraph 26 purport to describe certain requirements imposed by Part 1.3 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that such allegations may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations, and therefore denies them on that basis.

27. The allegations contained in Petitioner's paragraph 27 purport to describe certain requirements imposed by Part 1.3 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that such allegations may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations, and therefore denies them on that basis.

28. Respondent denies the allegations contained in Petitioner's paragraph 28. In the first instance, Respondent denies that the water line flushing was not contained; water line flushing was conducted via piping. Further, the facts outlined in the EPA Inspection Report itself, which is dated nearly six months following the inspection, do not support this allegation. The EPA Inspection Report does not allege, or provide any evidence or observation, that the water line flushings were contaminated in violation of Part 1.3 of the CGP or that the waters in question actually entered any of the three storm sewer inlets. The EPA Inspection Report correctly acknowledged that the storm sewer inlets in question were protected by Gutterbuddy Ditch Pavement Filters, which prevent sediment, debris and other pollutants from entering storm water systems.

29. Respondent denies the allegations contained in Petitioner's paragraph 29.

30. The allegations contained in Petitioner's paragraph 30 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 2: Failure to Post Notice of NPDES Permit Coverage

31. The allegations contained in Petitioner's paragraph 31 purport to describe certain requirements imposed by Part 1.5 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that such allegations may be deemed allegations of fact, Respondent

has no particular knowledge sufficient to admit or deny such allegations, and therefore denies them on that basis.

32. Respondent denies the allegations contained in Petitioner's paragraph 32. Signs and notices were posted conspicuously on the entrances to the Site. In fact, the photos taken by EPA that are referenced in the Inspection Report (photographs 4-6 and 9-10), although taken from within the entrance area, clearly show signage posted on the entrance gates to the Site.

33. Respondent denies the allegations contained in Petitioner's paragraph 33.

34. The allegations contained in Petitioner's paragraph 34 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 3: Failure to Maintain Erosion and Sediment Controls

35. The allegations contained in Petitioner's paragraph 35 purport to describe certain requirements of Part 2.1 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

36. The allegations contained in Petitioner's paragraph 36 purport to describe certain requirements of Part 2.1 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

37. Respondent denies the allegations contained in Petitioner's paragraph 37. The observations identified do not constitute failures to maintain erosion or sediment controls. The silt fence in question was operating as designed, having caught the silt and allowed the dissipation of silt-free water. There is no indication in the observations that any sediment

accumulated to one-half or higher of the above-ground height of any perimeter control. Any silt fencing that had fallen down or been separated from support fencing was either moved due to ongoing construction activities or impacted by recent weather events, and subject to regular maintenance.

38. Respondent denies the allegations contained in Petitioner's paragraph 38. The observations identified do not constitute failures to maintain erosion or sediment controls.

39. The allegations contained in Petitioner's paragraph 39 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 4: Failure to Install Sediment Controls Along Perimeter

40. The allegations contained in Petitioner's paragraph 40 purport to describe certain requirements of Part 2.1 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

41. The allegations contained in Petitioner's paragraph 41 purport to describe certain requirements of Part 2.1 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

42. In response to Petitioner's paragraph 42, Respondent denies that the Site did not include perimeter controls along Fort Lincoln Drive, NE. Respondent denies that sediment from stormwater flow was present on a sidewalk on the Site or outside the security fencing. The sidewalk was located *on* the Site and *up-gradient* from any earth-disturbing activities.



43. Respondent denies the allegations contained in Petitioner's paragraph 43. Silt fencing was not required to be installed along the portions of the Site bordering Fort Lincoln Drive, NE. The approved perimeter installation measures consisted of grading inward towards the Site construction work, with the sidewalk and outer fence at the high point of the Site up-gradient from earth-disturbing activities. All construction activities were lower than the perimeter fence and sidewalk, preventing stormwater flow in that direction and negating any need for siltation fencing.

44. The allegations contained in Petitioner's paragraph 44 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 5: Failure to Minimize the Track-out of Sediment  
from Vehicles Exiting the Construction Site

45. The allegations contained in Petitioner's paragraph 45 purport to describe certain requirements of Part 2.1 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

46. Respondent denies the allegations contained in Petitioner's paragraph 46. The allegations misinterpret the observations in the EPA Inspection Report, which indicate that the inspectors saw what they identified as "sediment residue" near construction entrances, not track-out of sediment. The CPG itself notes that fine-grained "staining" of roadways, like that shown in the EPA Inspection Report photographs, is not a violation. *See* CGP at Part 2.1.2.3 (Note). The EPA Inspection Report itself evidences that only the main entrance of the Site was used for construction and worker traffic, and the only alleged track-out was shown in photographs from the main entrance. Photographs 5, 6, and 8 of the EPA Inspection Report all clearly show new

stone and a clean wash down rack, as indicated in the Site's construction plans, across the extent of the 10 foot by 50 foot construction entrance. These measures constitute appropriate stabilization and additional controls pursuant to the CGP.

47. Respondent denies the allegation contained in Petitioner's paragraph 47. The photographs included in the EPA Inspection Report (4-7), taken on a single day, do not demonstrate a failure to minimize track out or to conduct regular maintenance.

48. The allegations contained in Petitioner's paragraph 48 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 6: Failure to Control Discharges from Stockpiled Sediment or Soil

49. The allegations contained in Petitioner's paragraph 49 purport to describe certain requirements of Part 2.1 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

50. Respondent denies the allegations contained in Petitioner's paragraph 50. Portions of the stockpiles were actively undergoing removal work and did not need to be stabilized. The remaining portions of the two stockpiles had been periodically seeded, which constituted sufficient temporary stabilization under the approved Erosion and Sediment Control Plan ("E&S Plan") for the Site. Further, the stockpiles were strategically placed acres away from the stormwater controls (as required by the SWPPP) and abutted drainage divides in order to divert any associated runoff to the sediment ponds on the Site.

51. Respondent denies the allegations contained in Petitioner's paragraph 51.

52. The allegations contained in Petitioner's paragraph 52 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 7: Failure to Protect Storm Drain Inlets

53. The allegations contained in Petitioner's paragraph 53 purport to describe certain requirements of Part 2.1 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

54. As to Petitioner's paragraph 54, Respondent admits that it had installed required inlet protection measures. Respondent denies all other factual allegations in paragraph 54.

55. Respondent denies the allegations contained in Petitioner's paragraph 55, and avers that EPA's Inspection Report provides no evidence that Respondent had previously been aware of sediment accumulation or failed to conduct maintenance as required by the CGP.

56. The allegations contained in Petitioner's paragraph 56 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 8: Failure to Prevent Erosion and Maintain Sediment Basins

57. The allegations contained in Petitioner's paragraph 57 purport to describe certain requirements of Part 2.1 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

58. The allegations contained in paragraph 58 purport to describe certain requirements of Part 2.1 of the CGP, which speaks for itself and is the best evidence of its

contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

59. Respondent denies the allegations contained in Petitioner's paragraph 59. Photographs 99-104 provided in the EPA Inspection Report clearly demonstrate that grasses and matting were present as controls at Sediment Basin #2. Respondent lacks sufficient information to identify the allegedly "ineffective velocity dissipation device" cited in paragraph 59, as no device was identified as such in the EPA Inspection Report, and there were various velocity dispensation devices (such as riprap) present on the Site. Respondent therefore denies Petitioner's allegations on that basis. Respondent admits that some rill erosion was present on the Site, as is typical on any construction site following a major rain event.

60. As to Petitioner's paragraph 60, Respondent admits that a section of the embankment of Sediment Basin #2 had been removed to provide for conveyance of stormwater *into* the basin. Respondents deny that a gully was present at the bottom of the cut in the embankment. What inspectors identified as a "gully" was an intentional channel that directed water flow *into* the sediment pond. Any erosion of the channel was a result of recent precipitation and was subject to ongoing maintenance at the time of the EPA Inspection.

61. As to Petitioner's paragraph 61, Respondent admits that it installed a sediment basin. Respondent denies the remaining allegations contained in Petitioner's paragraph 61.

62. The allegations contained in Petitioner's paragraph 62 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 9: Unauthorized Discharge of Accumulated Stormwater through  
Ineffectively Managed Controls

63. The allegations contained in Petitioner's paragraph 63 purport to describe certain requirements of Part 2.1 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

64. Respondent denies the allegations contained in Petitioner's paragraph 64. The photographs provided in the EPA Inspection Report do not support the inspector's assertion that water was being pumped from Sediment Basin #1 through the filtration device at the time of the inspection. Photograph 55 of the EPA Inspection Report shows that water was not being pumped through the filtration device at the time of the inspection. The filtration device in question was subject to regular maintenance by the Respondent's subcontractor responsible for erosion control. Respondent admits that a pipe lined with filter fabric was a component of the filter device and that the device filtered turbid water before it flowed into the yard drain. Respondent has insufficient information to admit or deny that water throughout the filtration device was turbid, and denies allegations related to the operation of the filter device on that basis.

65. Respondent is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of Petitioner's paragraph 65, and on that basis denies the allegations.

66. The allegations contained in Petitioner's paragraph 66 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 10: Failure to Initiate Soil Stabilization Measures

67. The allegations contained in Petitioner's paragraph 67 purport to describe certain requirements of Part 2.2 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

68. As to Petitioner's paragraph 68, Respondent admits that some areas of the Site along South Dakota Avenue had been stabilized, while others had not been stabilized because they were subject to ongoing earth-disturbing activities. Respondent denies all other allegations in Petitioner's paragraph 68.

69. Respondent denies the allegations contained in Petitioner's paragraph 69. Petitioner has provided no evidence or allegation regarding when or where earth-disturbing activities on the Site had permanently or temporarily ceased.

70. The allegations contained in Petitioner's paragraph 70 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 11: Failure to Eliminate the Discharge of Water from  
the Washout and Cleanout of Concrete

71. The allegations contained in Petitioner's paragraph 71 purport to describe certain requirements of Part 2.3 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

72. Respondent admits that at the time of the EPA Inspection a sub-contractor's employee was observed washing out a cement truck into an area of ponded water. Respondent has no particular knowledge sufficient to admit or deny the remaining allegations regarding the

area of ponded water. Respondent denies that a wash-out area was not designated on the Site SWPPP. The E&S Plan clearly shows a leak-proof wash rack located at the construction entrance. *See* SEC 2 and SEC 12.

73. As to Petitioner's paragraph 73, Respondent denies the allegations.

74. The allegations contained in Petitioner's paragraph 74 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 12: Failure to Conduct and/or Document Site Inspections

75. The allegations contained in Petitioner's paragraph 75 purport to describe certain requirements of Part 4.1 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

76. Respondent is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of Petitioner's paragraph 76, and on that basis denies the allegations.

77. Respondent is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of Petitioner's paragraph 77, and on that basis denies the allegations.

78. Respondent is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of Petitioner's paragraph 78, and on that basis denies the allegations.

79. The allegations contained in Petitioner's paragraph 79 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 13: Failure to Complete Corrective Action Reports

80. The allegations contained in Petitioner's paragraph 80 purport to describe certain requirements of Part 5.4 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

81. As to Petitioner's paragraph 81, Respondent admits that the EPA Inspection Team requested copies of corrective action reports for the Site and that Respondent was unable to provide such reports in the model format included at Appendix F of the SWPPP for dates prior to September 20, 2012. Respondent denies that it did not provide corrective action reports, in that the Site Inspection Log provided to inspectors included substantially similar information in the comments section, including the nature of conditions identified, the date and time of identification, and any resulting follow-up actions.

82. As to Petitioner's paragraph 82, Respondent denies the allegations.

83. The allegations contained in Petitioner's paragraph 83 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 14: Failure to Maintain Copies of Corrective Action Reports

84. The allegations contained in Petitioner's paragraph 84 purport to describe certain requirements of Part 5.4 of the CGP, which speaks for itself and is the best evidence of its



contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

85. As to Petitioner's paragraph 85, Respondent admits that the EPA Inspection Team requested copies of corrective action reports for the Site and that Respondent was unable to provide such reports in the model format included at Appendix F of the SWPPP for dates prior to September 20, 2012. Respondent denies that it did not maintain corrective action reports, in that the Site Inspection Log provided to inspectors included substantially similar information in the comments section, including the nature of conditions identified, the date and time of identification, and any resulting follow-up actions.

86. As to Petitioner's paragraph 86, Respondent denies the allegations.

87. The allegations contained in Petitioner's paragraph 87 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

Count 15: Failure to Maintain Records of Modifications to the SWPPP

88. The allegations contained in Petitioner's paragraph 88 purport to describe certain requirements of Part 7.4.3 of the CGP, which speaks for itself and is the best evidence of its contents. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

89. Respondent denies the allegations contained in Petitioner's paragraph 89. The alleged erosion and sediment control items listed either were identified in the SWPPP and corresponding E&S Plan, or did not constitute erosion and sediment control items requiring revision. Temporary stockpiles on the Site were provided for in the E&S Plan. *See* SEC-11. An excavated area of a topsoil stockpile filled with water from a recent rain event was caused by

ongoing construction activity and was not a sediment trap. The alleged berm was the base of a future retaining wall, not an erosion and sediment control item. Respondent lacks sufficient information to admit or deny that inlet protection for a yard drain near a purported new construction entrance was not included in the E&S Plan, and denies the allegation on that basis, but further notes that the E&S Plan provides for inlet protection of yard drains at the Site. The E&S Plan called for inflow of waters into Sediment Basin #2, and the modification of this basin constituted a required change consistent with changes in grading contemplated by SEC-7 of the E&S Plan. Use of a filtration device was consistent with best practices associated with the use of a pumping station, which is shown on SEC-2 and SEC-11.

90. Respondent denies the allegations contained in Petitioner's paragraph 90. The alleged erosion and sediment control items listed either were identified in the SWPPP and corresponding E&S Plan, or did not constitute erosion and sediment control items requiring revision.

91. The allegations contained in Petitioner's paragraph 91 require no responsive pleading pursuant to 40 C.F.R. §22.15(b) in that they are conclusions of law. To the extent that they may be deemed allegations of fact, Respondent denies such allegations.

#### **IV. REMAINDER OF ALLEGATIONS**

The allegations set forth in Petitioner's paragraphs 92-114 are not factual allegations, and therefore do not require a response admitting or denying same. To the extent that they may be deemed allegations of fact, Respondent has no particular knowledge sufficient to admit or deny such allegations, and on that basis denies the allegations.

**V. GENERAL DENIAL**

Respondent denies any allegations of the Complaint, whether express or implied, that are not specifically admitted, denied or qualified herein.

**VI. DEFENSES AND MITIGATING FACTORS**

1. EPA's inspection occurred during the morning and early afternoon of September 20, 2012, after nearly two days of rain, while Respondent was implementing regular maintenance and returning to regular operations at the Site. Respondent undertook immediate and extensive efforts to make modifications consistent with EPA's observations, even when unwarranted, at the Site. Respondent notified EPA of its corrective action efforts in early October, long before it received a copy of the EPA Inspection Report.

2. The proposed civil penalty is excessive, unreasonable and is not supported by the individual facts and circumstances present in this case, including but not limited to the existence of mitigating factors which should be taken into consideration.

3. Respondent obtained no economic benefit from any of the alleged non-compliance with the applicable regulatory requirements.

4. Respondent has shown EPA good faith and commitment in maintaining its operations in compliance with the applicable regulations, and intends to cooperate with EPA to seek a negotiated resolution of this Complaint.

5. Respondent expressly reserves the right to raise additional affirmative defenses that may arise during discovery or under other procedures associated with the present Complaint.

**VII. REQUEST FOR INFORMAL SETTLEMENT CONFERENCE**

Prior to any hearing on this matter, Respondent respectfully requests an informal settlement conference to discuss the case, the proposed penalty, and the possibility of settling this matter.

**VIII. REQUEST FOR HEARING**

Pursuant to Part 22 of the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*, the Respondent requests a hearing on the matters set forth in this Complaint and the appropriateness of the penalties proposed herein.

**IX. PRAYER FOR RELIEF**

WHEREFORE, the Respondent has answered the Petitioner's Complaint, and having requested an informal settlement conference, and further requesting a formal hearing on the matters herein, and further, requests the following relief: That the Complaint be dismissed and/or that the proposed civil penalty amount be significantly reduced and adjusted to reflect all the mitigating factors presented herein.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Amy L. Edwards  
Andrew H. Emerson  
800 17<sup>th</sup> Street NW, Suite 1100  
Washington, DC 20006  
202-955-3000

DATE: July 6, 2015

**CERTIFICATE OF SERVICE**

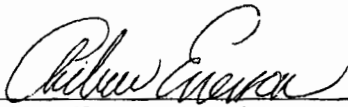
I hereby certify that on this day, I caused to be sent the original and one copy of Respondent's Answer to Administrative Penalty Complaint, Request for Informal Settlement Conference, and Request for Hearing in the above-captioned case, via UPS, to:

Regional Hearing Clerk (3RC00)  
US EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

I further certify that I caused a copy of the same to be sent to the following individual, via UPS and electronic mail:

Kelly Gable, Esq.  
Assistant Regional Counsel (3RC20)  
US EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Date: 7/6/15

  
Andrew H. Emerson, Esq.  
Holland & Knight LLP  
800 17<sup>th</sup> Street, NW  
Washington, DC 20006

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