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4 BEFORE THE
5 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

6 In the Matter of:

DOCKET NO. CWA-10-2010-0065

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

RESPONDENT GARCO'S ANSWER
TO COMPLAINT AND REQUEST
FOR HEARING

10 Respondent.

11
12 Respondent Garco Construction, Inc. (hereinafter "Garco"), by and through its
13 attorneys, Witherspoon Kelley, responds, defends, denies and admits as follows:

14
15 I. AUTHORITIES

16 1.1-1.3 Answering paragraphs 1.1, 1.2, and 1.3 of the Complaint, the allegations
17 set forth therein are legal conclusions for which no answer is needed. Deny the same.

18
19 II. STATUTORY REGULATIONS BACKGROUND

20 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,
21 2.12, 2.13, 2.14, 2.15, 2.16, and 2.17 of the Complaint, the allegations set forth therein are legal
22 conclusions for which no answer is needed. Deny the same.

23
24 ORIGINAL

25 ANSWER TO COMPLAINT - 1



WITHERSPOON • KELLEY
Attorneys & Counselors

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III. ALLEGATIONS

3.1 Answering paragraph 3.1 of the Complaint, Respondent admits that it is a corporation registered under the laws of the State of Washington. The remaining allegation is a legal conclusion for which no answer is needed, and Respondent denies the same.

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.

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.

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

3 3.10 Answering paragraph 3.10 of the Complaint, Respondent realleges its responses
4 to Paragraphs 1.1 through 3.9 with the same force and effect as if set forth verbatim at this point.

5 3.11 Answering paragraph 3.11 of the Complaint, Respondent admits the CGP speaks
6 for itself and refers to the terms therein. Respondent denies the remaining allegations.

7 3.12 Answering paragraph 3.12 of the Complaint, Respondent admits that part 3.11
8 speaks for itself and refers to the terms therein. All other allegations are hereby denied.

9 3.13 Answering paragraph 3.13 of the Complaint, Respondent admits that on or about
10 March 24, 2009, the EPA personnel examined certain copies of a SWPPP. Respondent denies
11 the remaining allegations.
12

13 3.14 Answering paragraph 3.14 of the Complaint, the allegations contained therein
14 call for legal conclusions to which no answer is required. To the extent an answer is required,
15 Respondent denies the same.
16

17 3.15 Answering paragraph 3.15 of the Complaint, Respondent admits that the NOI
18 was signed and certified and maintained as part of the SWPPP. Respondent admits the SWPPP
19 showed to the EPA may not itself have been signed in addition to the attached NOI. The
20 remaining allegations constitute legal conclusions to which no answer is required and thus
21 Respondent denies the same.

22 3.16 Answering paragraph 3.16 of the Complaint, Respondent admits it added to the
23 SWPPP that it had placed silt fences in locations where certain stock piles had been located in
24

1 accordance with the CGP, but inadvertently failed to draw in the stock piles onto the site plan.
2 Respondent denies the remaining allegations.

3 3.17 Answering paragraph 3.17 of the Complaint, Respondent denies the allegations
4 contained therein. Respondent, in accordance with Part 3.4 of the CGP, maintained and posted
5 updated construction schedules "as part of the SWPPP," including those required by Part 3.4 of
6 the CGP.
7

8 3.18 Respondent denies the allegations of Paragraph 3.18 of the Complaint. As
9 required by Part 3.5 of the CGP, the SWPPP "identified all the allowable sources of non-storm
10 water discharges listed in Subpart 1.3B of the CGP." Section 5.3 of the SWPPP identified
11 concrete wash-out, accumulation of water in excavations, and describes the controls for water
12 for dust control, fire hydrants, air conditioning condensation from vehicles and trailers, and
13 potable water sources including waterline flushing.
14

15 3.19 Respondent denies the allegations set forth in Paragraph 3.19 of the Complaint.
16 The SWPPP, Section 8.6, documented the process undertaken to support a determination of
17 permit eligibility with regard to endangered species. Respondent recorded that it conferred
18 with NAS Whidbey Island Environmental Affairs, U.S. Navy's Natural Resources personnel,
19 who indicated there were not any listed or threatened or endangered species or critical habitat
20 located within the project area where storm water from construction activities will be
21 discharged into receiving waters, or in the immediate vicinity of the point of discharge to the
22 receiving waters.
23



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

3 3.32. Answering paragraph 3.32 of the Complaint, Respondent denies it failed to
4 install and maintain BMPs properly. Respondent complied with part 3.13 of the CGP.
5

6 3.33 Answering paragraph 3.33 of the Complaint, the allegations contained therein
7 are legal conclusions for which no answer is required, and Respondent denies the same.

8 **IV. PROPOSED PENALTIES**

9
10 4.1 Answering paragraph 4.1 of the Complaint, the allegations contained therein are
11 legal conclusions for which no answer is required, and Respondent denies the same.

12 4.2. Answering paragraph 4.2 of the Complaint, the allegations contained therein are
13 legal conclusions for which no answer is required, and Respondent denies the same.

14 4.3 Answering paragraph 4.3 of the Complaint, the allegations contained therein are
15 legal conclusions for which no answer is required, and Respondent denies the same.

16 4.4 Answering paragraph 4.4 of the Complaint, Respondent admits the same.

17 4.5 Answering paragraph 4.5 of the Complaint, Respondent admits it has no history
18 of violating the Act.
19

20 4.6 Answering paragraph 4.6 of the Complaint, Respondent denies the same.

21 4.7. Answering paragraph 4.7 of the Complaint, Respondent denies the same because
22 it incurred costs associated with installing and maintaining BMPs as described above, and it
23 incurred the costs associated with compiling and maintaining records as part of the SWPPP and
24

1 by conducting inspections more frequently than required by the CGP.

2 4.8 Answering paragraph 4.8 of the Complaint, Respondent denies the same.

3
4 **V. OPPORTUNITY TO REQUEST A HEARING**
(Respondent's Request for a Hearing)

5 5.1. Answering paragraph 5.1 of the Complaint, the allegations contained therein are
6 legal conclusions to which no answer is required. Notwithstanding the foregoing, **Respondent**
7 **hereby requests a hearing concerning the contested issues in this matter.**

8 5.2. Answering paragraph 5.2 of the Complaint, the allegations contained therein are
9 statement of facts or contentions to which an answer is required. To the extent an answer is
10 required, it is denied.

11
12 **VI. FAILURE TO FILE AN ANSWER**

13 6.1 Answering paragraph 6.1 of the Complaint, the allegations contained therein are
14 legal conclusions for which no answer is required, and Respondent denies the same.

15 6.2 Answering paragraph 6.2 of the Complaint, the allegations contained therein are
16 legal conclusions for which no answer is required, and Respondent denies the same.

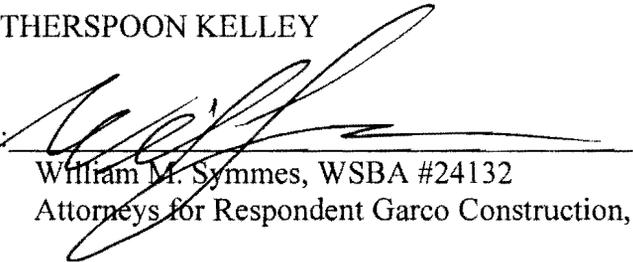
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18 **VII. INFORMAL SETTLEMENT CONFERENCE**

19
20 7.1 Answering paragraph 7.1 of the Complaint, the allegations contained therein are
21 legal conclusions for which no answer is required, and Respondent denies the same.

22 7.2 Answering paragraph 7.2 of the Complaint, the allegations contained therein are
23 legal conclusions for which no answer is required, and Respondent denies the same.

1 DATED this 16 day of March, 2010.

2 WITHERSPOON KELLEY

3
4 By: 

5 William M. Symmes, WSBA #24132
6 Attorneys for Respondent Garco Construction, Inc.
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CERTIFICATE OF SERVICE

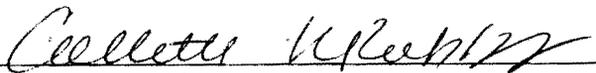
On March 16, 2010, I served the document described as RESPONDENT GARCO'S ANSWER TO COMPLAINT AND REQUEST FOR HEARING on the following interested party to this action as follows:

Jennifer Byrne
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave., Suite 900, Mail Stop ORC-158
Seattle, WA 98101

- Hand Delivery
- U.S. Mail
- Overnight Mail
- Facsimile Transmission
- Via Electronic Mail

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
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Seattle, WA 98101

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Collette N. Robbins

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

CNR:cnr
Enclosures