

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2012 OCT 19 PM 12:51

In the Matter of:

Cactus Hill Ranch Company,

Respondent.

)  
)  
)  
)  
)

**ANSWER AND REQUEST FOR  
HEARING**

Docket No. CWA-08-2012-0033

Cactus Hill Ranch Company (hereinafter "Respondent"), through its attorneys, Davis Graham & Stubbs LLP, hereby submits its Answer to the United States Environmental Protection Agency, Region 8 (hereinafter "EPA"), Complaint and Notice of Opportunity for Hearing as follows:

**ANSWER**

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Deny.
- 7.a. Deny.
- 7.b. Deny.
- 7.c. Admit.
- 7.d. Deny.
- 7.e. Deny.
- 7.f. Deny.
- 7.g. Deny.

7.h. Deny.

8. Deny.

9. Deny.

10. Admit.

11. Admit.

12. Admit.

13. Admit.

14. Deny.

15. Admit.

16. Paragraph 16 of EPA's Complaint does not contain any allegations against Respondent. To the extent this Paragraph contains allegations, they are denied.

17. Admit.

18. Deny.

19. Deny.

20. Admit.

21. Deny.

22. Deny.

23. Deny.

24. Admit.

25. Admit.

### **AFFIRMATIVE DEFENSES**

1. EPA's claims as alleged in Paragraph 22 of the Complaint are based on alleged violations that occurred more than five years before September 13, 2012 and thus are barred by the applicable statute of limitations. 28 U.S.C. § 2462; *United States v. Banks*, 115 F.3d 916,

918 (11th Cir. 1997), *cert. denied*, 522 U.S. 1075, 118 S. Ct. 852, 139 L.Ed.2d 752 (1998); *Britton Construction Co. et al.*, E.A.D. 261, 274-75 (EAB 1999).

2. There was no discharge of a “pollutant” and therefore, Respondent is not liable for penalties.

3. Discharges of pollutants, if any, did not come from Respondent’s property and were caused by third parties outside of Respondent’s control and therefore, Respondent is not liable for penalties.

4. There were no discharges of pollutants into a jurisdictional “water of the United States” and therefore, Respondent is not liable for penalties.

5. Evidence of Cactus Hill Ranch’s application for a state discharge permit does not establish EPA’s alleged violations.

### **PROPOSED ADMINISTRATIVE PENALTY**

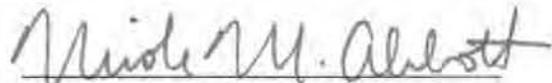
1. Respondent denies responsibility for EPA’s proposed penalty.
2. Respondent contests the amount and alleged basis for EPA’s proposed penalty.

### **REQUEST FOR HEARING**

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

RESPECTFULLY SUBMITTED this 18th day of October, 2012.

DAVIS GRAHAM & STUBBS LLP



Laura J. Riese, #18935

Nicole M. Abbott, #35897

Attorney for Cactus Hill Ranch Company

## CERTIFICATE OF SERVICE

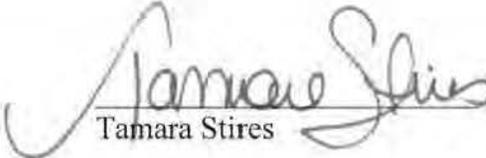
I hereby certify that on this 18th day of October, 2012, an original and one true and correct copy of the foregoing **ANSWER** were served on the following by Federal Express Overnight:

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 18th day of October, 2012, one true and correct copy of the foregoing **ANSWER** was served on each of the following by Federal Express Overnight:

Margaret J. Livingston  
Senior Enforcement Attorney  
U.S. Environmental Protection Agency (8ENF-L)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance, and Environmental Justice  
Region 8  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202

  
Tamara Stires