

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF
Clearwater USA, Inc.

Docket No. CWA-07-2023-0028

**ANSWER TO COMPLAINT
AND REQUEST FOR
HEARING**

Respondent.

Respondent Clearwater USA, Inc. (“Clearwater”), for its Answer to Complaint, states:

Jurisdiction

1. In response to paragraph 1, Clearwater admits that the above-referenced matter is an administrative action. In further response, Clearwater states that the referenced Clean Water Act provisions speak for themselves, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater is without sufficient information or knowledge to admit or deny the remaining allegations of paragraph 1, and therefore denies the same.

2. In response to paragraph 2, Clearwater states that the referenced NPDES permit and Clean Water Act provisions speak for themselves, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater is without sufficient information or knowledge to admit or deny the remaining allegations of paragraph 2, and therefore denies the same.

3. In response to paragraph 3, Clearwater is without sufficient information or knowledge to admit or deny the alleged authority under which the Administrator of the U.S. Environmental Protection Agency (“EPA”) has acted and is without sufficient information or knowledge to admit or deny what authority the Administrator has delegated, and therefore denies said allegations. In further response, Clearwater states that the referenced Clean Water Act provisions speak for themselves, and Clearwater denies any allegation inconsistent therewith.

4. In response to paragraph 4, Clearwater admits that Clearwater was a Kansas corporation, but denies paragraph 4’s remaining allegations.

Statutory and Regulatory Framework

5. In response to paragraph 5, Clearwater states that the referenced Clean Water Act provisions speak for themselves, and Clearwater denies any allegation inconsistent therewith.

6. In response to paragraph 6, Clearwater states that the referenced Clean Water Act provisions speak for themselves, and Clearwater denies any allegation inconsistent therewith.

7. In response to paragraph 7, Clearwater states that the referenced Clean Water Act provisions speak for themselves, and Clearwater denies any allegation inconsistent therewith.

8. In response to paragraph 8, Clearwater states that the referenced Clean Water Act provisions speak for themselves, and Clearwater denies any allegation inconsistent therewith.

9. In response to paragraph 9, Clearwater is without sufficient information or knowledge to admit paragraph 9's allegations regarding the process by which the EPA promulgates regulations, and therefore denies said allegations. In further response, Clearwater states that the referenced Clean Water Act provisions speak for themselves, and Clearwater denies any allegation inconsistent therewith.

10. In response to paragraph 10, Clearwater states that the referenced Code of Federal Regulation provisions speak for themselves, and Clearwater denies any allegation inconsistent therewith.

11. In response to paragraph 11, Clearwater states that the referenced Code of Federal Regulation provisions speak for themselves, and Clearwater denies any allegation inconsistent therewith.

12. In response to paragraph 12, Clearwater is without sufficient information or knowledge to admit paragraph 12's allegations, and therefore denies the same.

FACTUAL BACKGROUND

13. In response to paragraph 13, Clearwater states that the referenced Clean Water Act provisions speak for themselves, and Clearwater denies any allegation inconsistent therewith.

14. In response to paragraph 14, Clearwater denies these allegations.

15. Clearwater admits paragraph 15's allegations. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during

the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

16. In response to paragraph 16, Clearwater acknowledges that water from the Site flows to a tributary arm of Coffee Creek, but Clearwater denies that the Site is “Respondent’s Site.” In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

17. In response to paragraph 17, Clearwater is without information or knowledge sufficient to admit or deny the allegations, and therefore denies the same. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

18. In response to paragraph 18, Clearwater is without information or knowledge sufficient to admit or deny the allegations, and therefore denies the same. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

19. Clearwater is without information or knowledge sufficient to admit or deny paragraph 19’s allegations, and therefore denies the same.

20. Clearwater is without information or knowledge sufficient to admit or deny paragraph 20's allegations, and therefore denies the same.

21. Clearwater is without information or knowledge sufficient to admit or deny paragraph 21's allegations, and therefore denies the same. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

22. In response to paragraph 22, Clearwater is without information or knowledge concerning paragraph 22's allegations concerning "Respondent's discharge of pollutants associated with industrial activity", and therefore denies the same. In further response, Clearwater states that the referenced Clean Water Act and Code of Federal Regulation provisions speak for themselves, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

23. Clearwater admits paragraph 23's allegations, but it denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

24. In response to paragraph 24, Clearwater admits that the Permit requires a Stormwater Pollution Prevention Plan (“SWPPP”). Clearwater also admits that paragraph 24 identifies various requirements for a SWPPP. In further response, Clearwater denies it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

25. In response to paragraph 25, Clearwater admits that EPA personnel inspected the site on September 21, 2021. In further response, Clearwater is without information or knowledge sufficient to admit or deny paragraph 25’s remaining allegations, and therefore denies the same. In further response, Clearwater denies it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

26. In response to paragraph 26, Clearwater is without knowledge or information sufficient to admit or deny paragraph 26’s allegations, and therefore denies the same. In further response, Clearwater denies it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

27. In response to paragraph 27, Clearwater is without knowledge or information sufficient to admit or deny paragraph 27's allegations, and therefore denies the same. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

28. In response to paragraph 28, Clearwater admits that the SWPPP, erosion control map, and notice of intent was provided to the EPA, but Clearwater is without sufficient information or knowledge to admit paragraph 28's remaining allegations, and therefore denies the same. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

FINDINGS OF VIOLATION

Count 1

Failure to Properly Select, Install and/or Maintain BMP's and Fully Implement the Provisions of the SWPPP

29. In response to paragraph 29, Clearwater restates and incorporates its responses to paragraphs 1 through 28 as though fully set forth herein.

30. In response to paragraph 30, Clearwater states that the Permit speaks for itself, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater denies that it is or was the owner and operator of the Site

during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

31. In response to paragraph 31, Clearwater states that the Permit speaks for itself, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

32. In response to paragraph 32, Clearwater states that the Permit speaks for itself, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

33. In response to paragraph 33, Clearwater states that the Permit speaks for itself, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

34. In response to paragraph 34, Clearwater states that the Permit speaks for itself, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

35. In response to paragraph 35, Clearwater is without information or knowledge sufficient to admit or deny the EPA inspector's observations, and therefore denies the same.

36. In response to paragraph 36, Clearwater is without information or knowledge sufficient to admit or deny the EPA inspector's observations, and therefore denies the same.

37. Clearwater is without information or knowledge sufficient to admit or deny paragraph 37's allegations, and therefore, denies the same.

Count 2

Failure to Conduct and/or Document Inspections

38. In response to paragraph 38, Clearwater restates and incorporates its responses to paragraphs 1 through 37 as though fully set forth herein.

39. In response to paragraph 39, Clearwater states that the Permit speaks for itself, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit

during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

40. In response to paragraph 40, Clearwater states that the Permit speaks for itself, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

41. In response to paragraph 41, Clearwater states that the Permit speaks for itself, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

42. In response to paragraph 42, Clearwater is without information or knowledge sufficient to admit or deny paragraph 42's first sentence. In further response, Clearwater admits paragraph 42's second sentence, but Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

43. In response to paragraph 43, Clearwater admits paragraph 43's allegations. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

44. Clearwater is without information or knowledge sufficient to admit or deny paragraph 44's allegations, and therefore denies the same.

Count 3

Failure to Maintain SWPPP Onsite

45. In response to paragraph 45, Clearwater restates and incorporates its responses to paragraphs 1 through 44 as though fully set forth herein.

46. In response to paragraph 46, Clearwater states that the Permit speaks for itself, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

47. In response to paragraph 47, Clearwater states that the Permit speaks for itself, and Clearwater denies any allegation inconsistent therewith. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit

during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

48. In response to paragraph 48, Clearwater is without information or knowledge sufficient to admit or deny paragraph 48's allegations, and therefore denies the same. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

49. Clearwater is without information or knowledge sufficient to admit or deny paragraph 49's allegations, and therefore denies the same.

Relief

50. Paragraph 50 calls for a legal conclusion to which no response is required. To the extent a response is required, Clearwater is without information or knowledge sufficient to admit or deny paragraph 50's allegations and therefore denies the same.

51. In response to paragraph 51, Clearwater is without information or knowledge sufficient to admit or deny the authority upon which the EPA relies for its proposed Administrative Penalty, and therefore denies the same. In further response, Clearwater is without information or knowledge sufficient to admit or deny the propriety of the proposed Administrative Penalty, and therefore denies the same. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the

Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

52. In response to paragraph 52, Clearwater is without information or knowledge sufficient to admit or deny the factors upon which the proposed penalty is based, and therefore denies the same. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

53. In response to paragraph 53, Clearwater is without information or knowledge sufficient to admit or deny the factors upon which the proposed penalty is based, and therefore denies the same. In further response, Clearwater admits that the proposed penalty may be adjusted downward based on issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty. In further response, Clearwater denies that it is or was the owner and operator of the Site during the applicable time periods and denies that it is or was the holder of the Permit during the applicable time periods. As such, Clearwater denies that it has or had obligations under the Permit or applicable law.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

54. Paragraphs 54 through 64 contain various provisions concerning hearing rights to which no response is required.

REQUEST FOR HEARING

55. Clearwater requests a hearing on the issues raised by the Complaint to the extent the issues raised by the Complaint cannot be resolved through settlement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Answer to Complaint and Request for Hearing was served on August 21, 2023, to the following parties in the manner indicated below.

Original by OALJ E-Filing System

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Administrative Law Judge Christine Donelian Coughlin

Copy by Electronic Mail

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