

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 DEC 17 P 2:07
REGIONAL HEARING
CLERK

In the matter of:

Pan American Grain Manufacturing Co., Inc.

Respondent

Docket No. EPCRA-02-2010-4004

Complaint under Section 325 of the
Emergency Planning and Community Right
to Know Act, 42 U.S.C. § 11045

ANSWER TO ADMINISTRATIVE COMPLAINT

TO THE HONORABLE PRESIDING OFFICER:

Pan American Grain Manufacturing Co., Inc. ("PAGM") respectfully answers the
Complaint:

STATUTORY AUTHORITY

1. The allegations of paragraph one (1) on the "Statutory Authority" section of the
Administrative Complaint ("Complaint") is the United States Environmental Protection
Agency's ("EPA") interpretation on the nature of the action, and as such, do not require a
responsive pleading. Nevertheless, they are denied insofar as a responsive pleading may be
warranted.

2. The allegations of paragraph two (2) on the "Statutory Authority" section of the
Complaint includes statements of law upon which EPA has elected to set forth its jurisdictional
claims and as such do not require a responsive pleading from the PAGM. Nevertheless, they are
denied insofar as a responsive pleading may be warranted, except for the Section II and Section
III of the Complaint, Findings of Violations Section allegations, including, but not limited to,
Counts I, II and III, which are hereby expressly denied.

3. The allegations of paragraph three (3) on the "Statutory Authority" section of the Complaint includes statements of law upon which EPA has elected to set forth its jurisdictional claims and as such do not require a responsive pleading from the PAGM. Nevertheless, they are denied insofar as a responsive pleading may be warranted, except for the Section II and Section III of the Complaint, which are hereby expressly denied.

FINDINGS OF VIOLATIONS

4. The allegation included in paragraph number four (4) of the Complaint is hereby denied insofar as the allegation is used as a basis to state the claims of violations allegedly occurring at the 9 Claudio Street, Guaynabo Puerto Rico plant ("Plant").

5. The allegations included in paragraph number five (5) of the Complaint are admitted only and insofar as they refer to the PAGM processes and manufactures products for human and animal consumption and agriculture and that section 329(4) of EPCRA defines the term "Facility". The rest of the allegations included in paragraph five (5) of the Complaint, including the conclusion that the Plant is a "facility" under Section 329(4) of EPCRA subject to this administrative order are hereby denied, as drafted.

6. The allegation included in paragraph number six (6) of the Complaint is hereby denied, as drafted.

7. The allegation included in paragraph number seven (7) of the Complaint is denied, as drafted. PAGM denies that the Plant was inspected by EPA at the time of the referenced inspection.

8. The allegations included in paragraph number eight (8) of the Complaint are statements and/or issues of law and as such do not require a responsive pleading from the PAGM. Nevertheless, they are denied insofar as a responsive pleading may be warranted.

9. The allegations included in paragraph number nine (9) of the Complaint are statements and/or issues of law and as such do not require a responsive pleading from the PAGM. Nevertheless, they are denied insofar as a responsive pleading may be warranted.

10. The allegations included in paragraph number ten (10) of the Complaint are hereby denied, as drafted.

11. The allegations included in paragraph number eleven (11) of the Complaint are hereby denied, as drafted.

12. The allegations included in paragraph number twelve (12) of the Complaint are hereby denied, as drafted.

13. The allegations included in paragraph number thirteen (13) of the Complaint are hereby denied, as drafted.

14. The allegations included in paragraph number fourteen (14) of the Complaint are denied insofar as the Tier II forms were not submitted for the Plant subject to the administrative order.

15. The allegations included in paragraph number fifteen (15) of the Complaint are denied, as drafted.

16. The allegations included in paragraph number sixteen (16) of the Complaint are denied, as drafted.

17. The allegations included in paragraph number seventeen (17) of the Complaint are denied, as drafted.

COUNT I

18. The PAGM realleges its responsive pleadings included in paragraph one (1) through seventeen (17) of this document, accordingly, as an answer to the allegation included in paragraph number eighteen (18) of the Complaint.

19. The allegations included in paragraph number nineteen (19) of the Complaint are hereby denied, as drafted. PAGM denies the conclusions of violation relative to the Plant.

20. The allegations included in paragraph twenty (20) of the Complaint are denied, insofar as the reporting requirements claimed in the administrative order were not met for the Plant.

COUNT II

21. PAGM realleges its responsive pleadings included in paragraph one (1) through twenty (20) of this document, accordingly, as an answer to the allegation included in paragraph number twenty one (21) of the Complaint.

22. The allegations included in paragraph twenty two (22) of the Complaint are hereby denied, as drafted. PAGM denies the conclusions of violation relative to the Plant.

23. The allegations included in paragraph number twenty three (23) of the Complaint are hereby denied, insofar as the reporting requirements claimed in the administrative order were not met for the Plant.

24. The PAGM realleges its responsive pleadings included in paragraph one (1) through twenty three (23) of this document, accordingly, as an answer to the allegation included in paragraph number twenty four (24) of the Complaint.

25. The allegations included in paragraph number twenty five (25) of the Complaint are hereby denied, as drafted. PAGM denies the conclusions of violation relative to the Plant.

26. The allegations included in paragraph number twenty five (26) of the Complaint are hereby denied, insofar as the reporting requirements claimed in the administrative order were not met for the Plant.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

27. The first paragraph of Section III of the Complaint includes statements and conclusions of law upon which EPA has elected to set forth its claims and as such do not require a responsive pleading from the PAGM. Nevertheless, they are denied insofar as a responsive pleading may be warranted. The second paragraph and proposed penalties for Count I, II and III are hereby expressly denied. PAGM denies the conclusions of violation relative to the Plant. The third and fourth paragraphs are denied, for lack of information or knowledge with respect to the veracity and/or mendacity of such allegations.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

28. The allegations included in Section IV of the Complaint are statements and/or issues of law and as such do not require a responsive pleading from PAGM. Nevertheless, they are denied insofar as a responsive pleading may be warranted.

INFORMAL SETTLEMENT CONFERENCE

29. The allegations included in Section V of the Complaint are statements and/or issues of law and as such do not require a responsive pleading from PAGM. Nevertheless, they are denied insofar as a responsive pleading may be warranted.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

30. The allegations included in Section VI of the Complaint are statements and/or issues of law and as such do not require a responsive pleading from PAGM. Nevertheless, they are denied insofar as a responsive pleading may be warranted.

AFFIRMATIVE DEFENSES

1. PAGM realleges all of its responsive pleadings, as included in this document, and incorporates the same to this section of affirmative defenses.

2. Unless otherwise specified, any and all allegations not expressly admitted should be deemed denied for all practical and legal matters.

3. The Plant was not inspected by EPA on or about April 21, 2010.

4. EPA did not make any finding of violation with respect to the Plant.

5. EPA did not notify PAGM of such findings in a Notice of Violation.

6. The Complaint fails to state facts and a claim upon which relief may be granted in favor of EPA and against PAGM

7. The Complaint fails to state a cognizable claim against PAGM under Section 312 of EPCRA, which would warrant a relief under Section 329 of EPCRA based.

8. Penalties alleged in the Complaint are improper and/or unwarranted.

9. EPA is not entitled to the penalties requested in the Complaint and/or to any other type of penalties.

10. PAGM respectfully reserves the right to amend the Answer to the Complaint and to include one or more affirmative defenses, after conducting proper discovery procedures which shall include written interrogatories, request for production and inspection of documents and the taking of several depositions.

11. PAGM expressly reserves the right to raise additional defenses and/or to amend those already raised upon completion of the discovery proceedings in the instant case.

WHEREFORE, the PAGM respectfully requests this Honorable Presiding Officer, to take notice of the aforementioned, deny and dismiss the Complaint in all its parts, plus award the costs of this administrative procedure, together with reasonable attorneys fees, and any other and further relief or remedies as this Honorable Presiding Officer may deem appropriate and proper. In the alternative, PAGM hereby respectfully requests a hearing, in the event that the Complaint.

RESPECTFULLY SUBMITTED.

I HEREBY CERTIFY: That on this same date, a true and exact copy of the foregoing document was sent, through regular mail, to; Lauren Charney, Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 290 Broadway -- 17th Floor, New York, New York 10007.

In San Juan, Puerto Rico, this 9th day of December, 2010.

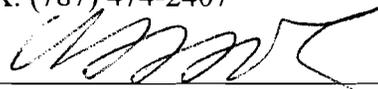
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