

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 SEP 21 P 12: 23  
REGIONAL HEARING  
CLERK

DATE: September 21, 2012

SUBJECT: PAN AMERICAN GRAIN CO.

Docket Nos. CWA-02-2011-3451; CWA-02-2010-3454;  
CWA-02-2012-3455; CWA-02-2012-3456

FROM: Eduardo J. Gonzalez  
Assistant Regional Counsel 

TO: Karen Maples  
Regional Hearing Clerk

Attached for filing, please find a foregoing fully executed Consent Agreement and Final Order bearing the above referenced docket number.

If you have any questions, please contact me at 637-3223.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2011 SEP 21 P 12: 23  
REGIONAL HEARING  
CLERK**

<p>IN THE MATTER OF:</p> <p>PAN AMERICAN GRAIN CO.</p> <p style="padding-left: 40px;">Central St., Sabana Ward, Guaynabo, Puerto Rico ("Sabana") Facility;</p> <p style="padding-left: 40px;">Corujo Industrial Park, Bayamon, Puerto Rico ("Bayamon") Facility;</p> <p style="padding-left: 40px;">Ponderosa Sector, Vega Alta, Puerto Rico ("Vega Alta") Facility;</p> <p style="padding-left: 40px;">Amelia Industrial Park, Guaynabo, Puerto Rico ("Amelia") Facility;</p> <p>Respondent</p>	<p style="text-align: center;"><b>CONSENT AGREEMENT AND FINAL ORDER</b></p> <p>Docket numbers:</p> <p>CWA-02-2011-3451;</p> <p>CWA-02-2012-3454;</p> <p>CWA-02-2012-3455;</p> <p>CWA-02-2012-3456.</p> <p>Proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the Clean Water Act 33 U.S.C. § 1319(g)</p>
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**CONSENT AGREEMENT AND FINAL ORDER**

**I. Preliminary Statement**

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g).
2. The following Findings of Fact and Order are issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Act, 33 U.S.C. § 1251 *et. seq.*, which authority has been duly delegated to the Regional Administrator of EPA-Region 2, and has been further re-delegated to the Director of the Caribbean Environmental Protection Division, EPA-Region 2.
3. With regard to the Sabana Industrial Park Facility, referenced above, this Consent Agreement and Final Order concludes the proceeding for the assessment of a civil penalty which EPA initiated on September 27, 2011 by issuing an administrative Complaint against Pan American Grain Co. ("Respondent") pursuant to Section 309(g) of

the Clean Water Act, 33 U.S.C. §1319(g).

4. In addition, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g) and 40 CFR §22.13(b), this Consent Agreement and Final Order simultaneously initiates and concludes a proceeding for the assessment of a civil penalty with regard to the facilities owned and operated by the Respondent, referenced in the case caption, above as follows:
  - a. Corujo Industrial Park, Bayamon, Puerto Rico (“Bayamon”) Facility;
  - b. Ponderosa Sector, Vega Alta, Puerto Rico (“Vega Alta”) Facility;
  - c. Amelia Industrial Park, Claudia St. #9, Guaynabo, Puerto Rico (“Amelia Facility”).
5. NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed and ordered as follows:

## **II. Factual Allegations**

### **With Respect to the Sabana Facility**

6. On September 27, 2011, EPA issued an Administrative Complaint against Respondent pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), with regard to a facility which is located in Central St., Sabana Ward, Guaynabo, Puerto Rico (“Sabana Facility”), and which is owned and operated by Respondent.
7. The Complaint alleges Respondent conducted unauthorized discharges of pollutants (storm water associated with its industrial activities) into waters of the United States without National Permit Discharge Elimination System (“NPDES”) permit coverage, in violation of Sections 301(a) and 402 of the Act, 33 U.S.C. §§1311(a) and 1342.

### **With Respect to the Bayamon Facility**

8. Respondent owns and operates a facility located in Corujo Industrial Park, Bldg # 9, Bayamon, Puerto Rico (“Bayamon Facility”).
9. EPA alleges that Respondent conducted unauthorized discharges of pollutants (storm water associated with its industrial activities) at the Bayamon Facility, into waters of the United States without NPDES permit coverage, in violation of Sections 301(a) and 402 of the Act, 33 U.S.C. §§1311 and 1342.

10. EPA alleges that at all relevant times Respondent discharged pollutants from the Bayamon Facility into waters of the United States without NPDES permit coverage, which became authorized through permit coverage on August 27, 2011.

**With Respect to the Vega Alta Facility**

11. Respondent owns and operates a facility located in Ponderosa Sector, Vega Alta, Puerto Rico (“Vega Alta Facility”).
12. EPA alleges that Respondent conducted unauthorized discharges of pollutants (storm water associated with its industrial activities) at the Vega Alta Facility, into waters of the United States without NPDES permit coverage, in violation of Sections 301(a) and 402 of the Act, 33 U.S.C. §§1311 and 1342.
13. EPA alleges that at all relevant times Respondent discharged pollutants from the Vega Alta Facility into waters of the United States without NPDES permit coverage, which became authorized through permit coverage on November 12, 2011.

**With Respect to the Amelia Facility**

14. Respondent owns and operates a facility located in Amelia Industrial Park, Claudia St. #9, Guaynabo, Puerto Rico (“Amelia Facility”).
15. EPA alleges that Respondent conducted unauthorized discharges of pollutants (storm water associated with its industrial activities) at the Amelia Facility, into waters of the United States without NPDES permit coverage, in violation of Sections 301(a) and 402 of the Act, 33 U.S.C. §§1311 and 1342.
16. EPA alleges that at all relevant times Respondent discharged pollutants from the Amelia Facility into waters of the United States without NPDES permit coverage, which became authorized through permit coverage on August 27, 2011.
17. EPA alleges that from July 28, 2011 to December 6, 2011, Respondent failed to comply with certain requirements of the MSGP and that Respondent conducted industrial activities at the site without implementing permit conditions.

**III. Conclusions of Law and Jurisdiction**

18. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides, in part, that the discharge of any pollutants by any person from a point source to a navigable water of the United States shall be unlawful except, *inter alia*, in accordance with the terms and conditions of a duly issued permit pursuant to Section 402 of the Act, 33 U.S.C. §1342.

19. Section 402 of the Act, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a (“NPDES”) permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
20. The Atlantic Ocean is a navigable water of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7).
21. The Respondent’s Facilities: Sabana, Bayamon, Vega Alta, and Amelia, are subject to the NPDES requirements pursuant to Section 402 of the Act, 33 U.S.C. §1342 and Section 301(a) of the Act, 33 U.S.C. §1311(a).
22. Based upon the Factual Allegations set forth above, Respondent operated the facilities referenced above in violation of Sections 301 and 402 of the Act, 33 U.S.C. §1311(a) and §1342
23. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, EPA has jurisdiction over the subject matter of this action and over the Respondent.

### **III. Consent Agreement**

24. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
25. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and for all claims for civil penalties pursuant to the CWA for the violations alleged herein relative to the Respondent and/or the Bayamon, Sabana, Vega Alta and Amelia Facilities, it is hereby voluntarily and knowingly agreed by and between EPA and Respondent as follows:

### **IV. Terms of Settlement**

26. For the purpose of this proceeding, Respondent:
  - a) Admits the jurisdictional allegations of this CA/FO;
  - b) Neither admits or denies the factual allegations contained herein;
  - c) Waives its right to contest the allegations, at a judicial or administrative hearing, or to appeal this CA/FO;
  - d) Consents to the payment of the civil penalty in the amount of *Thirty Two Thousand Dollars (\$32,000.00)*, as stated in Paragraph 27, below.

**V. Payment Of Civil Penalty**

27. Respondent shall pay a civil penalty in the amount of *Thirty Two Thousand Dollars (\$32,000.00)*, to the "Treasurer of the United States of America."
28. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Debit and Credit Card Payments	<a href="https://www.pay.gov/paygov/">https://www.pay.gov/paygov/</a>		
Checks from U.S. Banks			
Finance Center Contacts: Craig Steffen (513-487-2091)	Check Payments – Fines and Penalties	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028 Contact: Natalie Pearson 314-418-4087
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati OH 45268-0001		
Wire Transfers (any currency)	Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York NY 10045 Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"		
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts:  John Schmid (202-874-7026)  REX (Remittance Express), 1-866-234-5681	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking  Physical location of US Treasury facility: 5700 Rivertech Court Riverdale MD 20737		

## **ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

Respondent shall also send copies of this payment to each of the following:

Tere Rodriguez, Chief  
Multimedia Permits and Compliance Branch  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency, Region 2  
City View Plaza II - Suite 7000  
#48 Road 165, Km. 1.2,  
Guaynabo, Puerto Rico 00968-8069  
and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007.

The payment must be received at the above address on or before forty-five (45) calendar days after the date of filing of this Consent Agreement and Final Order (the date by which payment must be received shall hereafter be referred to as the “due date”).

29. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
30. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
31. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. You also may be required to pay



attorneys fees and costs for collection proceedings in connection with nonpayment.

32. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.

#### **VI. Supplemental Environmental Project ("SEP")**

33. Respondent shall complete the following supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvements. Pursuant to the terms described below, Respondent shall undertake the purchase of a regenerative vacuum sweeper truck ("VST"), which Respondent shall donate to the Municipality of Guaynabo, Puerto Rico to be used by the Municipality in maintenance and storm water control works.
34. Respondents shall complete the SEP as follows: The VST employs containment or disposal techniques which results in a decrease in the amount and/or toxicity of the pollutants or contaminants entering any receptor waters through the MS4. The pollutants or contaminants typically associated with stormwater consist of trash, debris, dust and even trace metals generated or released by vehicular transit and human activity. If uncollected, these pollutants end up being carried away by storm water runoff into the Guaynabo MS4 systems and ultimately to tributaries, rivers and the San Juan Bay, which is a water of the United States, as defined by Section 502(7) of the Act, 33 U.S.C § 1362(7). By implementing the VST SEP, PAGM will provide the Municipality with a tool which enhances the Municipality's ability to collect, store and safely dispose of all collected waste materials in accordance with applicable standards. The SEP is more specifically described in the Scope of Work in Paragraph 35, below.

#### **Scope of Work**

35. No more than forty five (45) days after receiving a copy of this Consent Agreement and Final Order signed by the Regional Administrator, Respondent shall place a purchase order with the supplier of the VST, specifying that the VST will be shipped to the Municipality of Guaynabo, Puerto Rico. Respondent shall transmit to EPA a copy of the documents which evidence fulfillment of this requirement. Pursuant to the representations made by Respondent, the VST will have the following specifications:

One (1) 2001 used (brand-new never used hopper) Schwarze Model A-7000 dual engine VST with a 115 horse power Turbo/4-cylinder John Deere auxiliary engine and 7.0 cubic yard. capacity (usable) hopper as per included brochure, duly mounted atop a used 2001 Sterling Model SC8000 (3,482hrs/59,440 mi) cab-over chassis with main specifications and the following options: dual gutter brooms w/power tilt, GEO, dual steering station, water tank low-level light, spray bar, bumper mounted and 7-nozzle hopper spray bar, water tank, 440 gallons,

hydraulic DC back-up system, sound suppression kit, standard 90" vacuum head, 32 inch fan, sweeper mounted rotating beacon w/guard, one (1) year warranty on hopper body, and sweeper manuals set.

36. No more than one hundred and eighty (180) days after receiving a copy of this Consent Agreement and Final Order signed by the Regional Administrator, Respondent shall have completed with the Municipality of Guaynabo any processes required to formalize the Municipality's authority to accept the transfer of title of the VST. In the event that the Municipality of Guaynabo fails to provide Respondent with authority to accept the transfer of title of the VST, then Respondent shall pay SIXTY SEVEN THOUSAND AND FIVE HUNDRED DOLLARS (\$ 67, 500.00) in addition to the civil penalty indicated in Paragraph 27 and pursuant to Section V above. Respondent shall transmit to EPA a copy of the documents which evidence fulfillment of this requirement.
37. No more than three hundred and sixty five days (365) days after receiving a copy of this Consent Agreement and Final Order signed by the Regional Administrator, Respondent shall coordinate the delivery of the VST, described in Paragraph 33 above, to the Municipality of Guaynabo. Respondent, however, agrees to undertake a physical inspection of the VST prior to delivery to the Municipality receiving delivery thereof from the shipping entity to assure that the equipment meets the specifications described in Paragraph 35 above. Respondent shall transmit to EPA copy of the documents which evidence fulfillment of this requirement.
38. Respondent shall conduct the SEP as described above in accordance with the Scope of Work provided above.
39. **SEP Cost:** The total expenditure for the SEP, at cost to the Respondent, shall be not less than EIGHTY FOUR THOUSAND FOUR HUNDRED AND SIX DOLLARS (\$84, 406.00). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.
40. **Certification:** Respondent hereby certifies that, as of the date of this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent or Third Party (if applicable) required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.
41. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA within sixty (60) calendar days after the completion of all activities that are part of the Work Plan. The SEP Completion Report shall contain the following information:

- a. Itemized costs - In itemizing its costs in the SEP Completion Report,

Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made;

- b. A description of any operating problems encountered and the solutions thereto;
  - c. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO and Scope of Work.
42. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required above shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties pursuant to paragraph 47 below.
43. Respondent shall submit all notices and reports required by this Consent Agreement and Order to by first class mail to:

Multimedia Permits and Compliance Branch  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency, Region 2  
City View Plaza II - Suite 7000  
#48 Road 165, Km. 1.2,  
Guaynabo, Puerto Rico 00968-8069

44. In all documents or reports, including, without limitation, any SEP Status Reports, submitted to EPA pursuant to this CA/FO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:

"I hereby certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

45. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this CA/FO for a term of three (3) years after the implementation of the SEP and shall provide the documentation of any such underlying research and data to EPA not more than ten (10) working days after a request for such information.

**46. EPA's Acceptance of SEP Completion Report:**

- a. After receipt of the SEP Completion Report described in Paragraph 39 above, EPA will notify Respondent, in writing, regarding: (i) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) calendar days for Respondent to correct any deficiencies; or, (ii) indicate that EPA concludes that the SEP has been completed satisfactorily; or, (iii) determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 47 below.
- b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this Paragraph within ten (10) calendar days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) calendar days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be reasonable and final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent in accordance with Paragraph 47 below.

**47. Stipulated Penalties:**

A. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in paragraphs 33 through 36, above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 39 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$67,500.

(ii) If the SEP is not completed in accordance with paragraphs 33-36, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(iii) If the SEP is completed in accordance with paragraphs 33-36 but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$ 16,875.

(iv) For failure to submit the SEP Completion Report required by paragraph 39 above, Respondent shall pay a stipulated penalty in the amount of \$200 for each day after its due date until the report is submitted.

(v) For failure to submit any other report required by paragraph 41 above, Respondent shall pay a stipulated penalty in the amount of \$200 for each day after the report was originally due until the report is submitted.

B. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

C. Stipulated penalties for subparagraphs (iv) and (v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

D. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

48. **Payment Provisions:** Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with paragraph 28 above. Interest and late charges shall be paid as stated in paragraph 30 herein. The checks shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

A copy of the check and any transmittal letter shall be sent to each of the following:

Multimedia Permits and Compliance Branch  
Caribbean Environmental Protection Division  
United States Environmental Protection Agency, Region 2

City View Plaza II - Suite 7000  
#48 Road 165, Km. 1.2,  
Guaynabo, Puerto Rico 00968-8069  
and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007.

Interest and late charges on stipulated penalties shall be paid as stated in Section VI above.

49. **Public Statements:** Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language:  
"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act."  
"Este proyecto fue realizado como parte de un acuerdo legal con relación a una acción de cumplimiento por violaciones a la Ley Federal de Agua Limpia presentada por la Agencia Federal de Protección Ambiental de los Estados Unidos."

**50. Force Majeure**

- a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify Complainant in writing not more than 10 days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this Agreement based on such incident.
- b. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
- c. In the event that the EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement and Order has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

## **VII. General Provisions**

51. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
52. The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
53. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.
54. Respondent hereby agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for purposes of Federal taxes. In addition, Respondent hereby agrees that, within thirty (30) days of the date it submits its Federal tax reports for the calendar year in which the above-identified SEP is completed, it will submit to EPA certification that any funds expended in the performance of the SEP have not been deducted from Federal taxes.
55. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the NPDES violations alleged herein relative to the Respondent and/or the Bayamon, Sabana, Vega Alta and Amelia Facilities.. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

56. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
57. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.



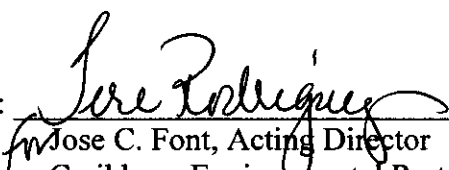
RESPONDENTS: PAN AMERICAN GRAIN CO.

BY:   
\_\_\_\_\_

DATE: 13 - September - 2012

Eduardo Fernandez-Gonzalez  
Vice President

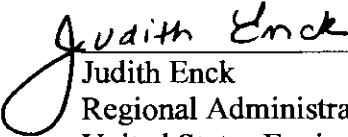
COMPLAINANT: United States Environmental Protection Agency, Region 2

BY:   
for Jose C. Font, Acting Director  
Caribbean Environmental Protection Division  
U.S. EPA  
City View Plaza II, Suite 7000  
#48 RD. 165 km 1.2  
Guaynabo, PR 00968-8069

DATE: 9/14/12

**IV. FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.

  
\_\_\_\_\_  
Judith Enck  
Regional Administrator  
United States Environmental  
Protection Agency-Region 2  
290 Broadway  
New York, NY 10007-1866

9-21-12  
Date

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

<b>IN THE MATTER OF:</b>  <b>PAN AMERICAN GRAIN CO.</b>  Central St., Sabana Ward, Guaynabo, Puerto Rico ("Sabana") Facility;  Corujo Industrial Park, Bayamon, Puerto Rico ("Bayamon") Facility;  Ponderosa Sector, Vega Alta, Puerto Rico ("Vega Alta") Facility;  Amelia Industrial Park, Guaynabo, Puerto Rico ("Amelia") Facility;  Respondent	<b>CONSENT AGREEMENT AND FINAL ORDER</b>  Docket numbers:  CWA-02-2011-3451;  CWA-02-2012-3454;  CWA-02-2012-3455;  CWA-02-2012-3456.  Proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the Clean Water Act 33 U.S.C. § 1319(g)
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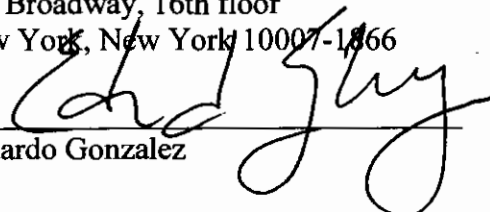
**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail: Gretchen Méndez-Vilella  
Post Office Box 70364  
San Juan, Puerto Rico 00936-8364

Original and One Copy By Internal Mail (pouch): Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16th floor  
New York, New York 10007-1866

Date: 9/21/12

  
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Eduardo Gonzalez