

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Pan American Grain Co., Inc.

RESPONDENT

MOTION

DOCKET NUMBER

CWA-02-2011-3451

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2012 JAN 30 P 2:29
REGIONAL HEARING
CLERK

MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

COMES NOW the United States Environmental Protection Agency (Complainant) by and through the undersigned attorney, pursuant to Rule 22.14(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.14(c), and very respectfully avers, prays and requests as follows:

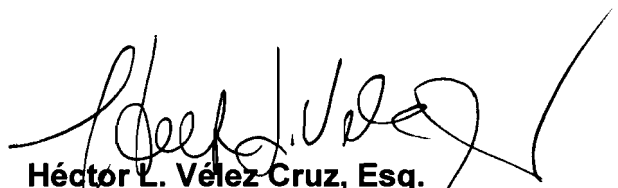
1. On September 27, 2011, Complainant issued the Administrative Complaint, Finding of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (Complaint) in this matter, against the Pan American Grain Co., Inc. (Respondent). On November 21, 2011, Complainant filed its *Motion for Leave to File First Amended Complaint* requesting authorization from this Court to modify paragraph 24 of the Complaint so that it could reflect the correct industrial activity classification of Respondent's operation at its Guaynabo Facility. This Honorable Court granted such request in its November 30, 2011 Prehearing Order (Order).

2. Due to an oversight, Complainant alleged in paragraph 44(a) of the Complaint that the number of days Respondent failed to file for NPDES coverage was 1,033 days, where it should have read 697 days. In paragraph 44(b) of the Complaint, Complainant alleged that “[t]he number of days that Respondent failed to file for NPDES coverage is 1,033 days” where it should have read “[t]he period of time during which Respondent illegally discharged pollutants into waters of the United States without NPDES permit is 697 days.”
3. Enclosed is a copy of the proposed Amended Complaint (*Attachment 1*) amending paragraph 44 of the Complaint to make reference to the modifications stated in paragraph 2, above.
4. This Motion has been filed prior to the deadlines established in the Order for the Parties to file their respective Prehearing Exchanges, there is no undue delay, bad faith or dilatory motive that can affect Respondent’s rights under law, and there is no prejudice or additional burden to Respondent as a result of such amendment.
5. This Motion has been filed today in order to have the Administrative Law Judge, Honorable Barbara A. Gunning, take notice of the above, and, pursuant to 40 C.F.R. § 22.14(c), respectfully move the Court to accept the Amended Complaint in order to properly reflect on paragraph 44 the correct number of days of violations for each violation alleged by Complainant as

stated in paragraph 2, above.

6. The undersigned attorney attempted to contact Counsel for Respondent today to determine whether there was any objection to the granting of the relief sought in the motion prior to its filing, but was unable to.

Respectfully submitted, in San Juan, Puerto Rico, this 26th day of January, 2012.



Héctor L. Vélez Cruz, Esq.
US Environmental Protection Agency, R2
Centro Europa Building, 417
1492 Ponce de Leon
San Juan, PR 00907
Tel. 787-977-5819
Fax. 787-729-7748
Velez.Hector@epamail.epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

In the Matter of:

Pan American Grain Co., Inc.

RESPONDENT

Motion

DOCKET NUMBER CWA-02-2011-3451

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing *Motion for Leave to File Second Amended Complaint*, dated January 26, 2012, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by facsimile, **Overnight Mail** to:

Karen Maples
Regional Hearing Clerk
Region II
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
Fax (212) 637-3202.

Copy by facsimile, **Overnight Mail** to:

Attorney for Respondent:
Gretchen Méndez-Vilella, Esq.
Goldman Antonetti & Córdova, P.S.C.
American International Plaza, 14th Floor
250 Muñoz Rivera Avenue
San Juan, P.R. 00918
Telephone 787-759-8000
Fax 787-474-2407

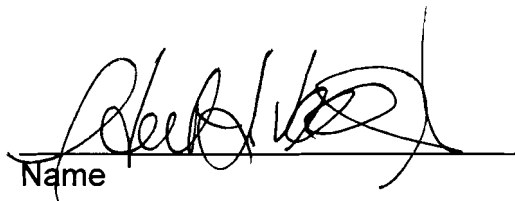
Copy by facsimile, **Overnight Mail** to:

Chief Administrative Law Judge
Honorable Susan L. Biro
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, D.C. 20005
Fax (202) 565-0044.

Date

1/26/2012

Name



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Pan American Grain Co, Inc.
9 Claudia St.,
Amelia Industrial Park
Guaynabo, Puerto Rico 00968

NPDES MSGP Number PRR05BT41

RESPONDENT

DOCKET NUMBER CWA-02-2011-3451

PROCEEDING PURSUANT TO SECTION
309(G) OF THE CLEAN WATER ACT,
33 U.S.C. § 1319(G), TO ASSESS CLASS
II CIVIL PENALTY

**ADMINISTRATIVE COMPLAINT, FINDINGS OF VIOLATION,
NOTICE OF PROPOSED ASSESSMENT OF AN ADMINISTRATIVE PENALTY,
AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. Statutory and Regulatory Authorities

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing (Complaint) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(B) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Caribbean Environmental Protection Division (CEPD) of EPA, Region 2 (Complainant).
2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (CROP), 40 Code of Federal Regulations (C.F.R.) Part 22, a copy of which is attached, Complainant hereby requests that Regional Administrator assess a civil penalty against Pan American Grain, Inc. (Respondent), as a result of Complainant's determination that the Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, for failure to comply with certain requirements of the NPDES Multi-sector General Permit for storm water discharges associated with industrial activities at its facility located in Guaynabo, Puerto Rico (Facility).

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that "[e]xcept as in compliance with this Section and Sections ...402, and 404 of the Act, the discharge of any pollutant by any person shall be unlawful."
4. Section 308(a)(A) of the Act, 33 U.S.C. § 1318(a)(A), establishes that whenever required to carry out the objective of the Act, the Administrator shall require the owner or operator of any point source to:
 - a. establish and maintain such records;
 - b. make such reports;
 - c. install, use and maintain such monitoring equipment or methods;
 - d. sample such effluents; and
 - e. provide such other information as may be required.
5. Section 402 of the Act, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System (NPDES) as the national program for, among other things, issuing and enforcing permits.
6. Section 402 of the Act, 33 U.S.C. § 1342, authorizes the Administrator to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and such conditions as the Administrator determines are necessary.
7. Section 402 (p) of the Act, 33 U.S.C. § 1342(p), requires a permit with respect to a discharge associated with industrial activity.
8. Section 402 of the Act authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
9. Pursuant to the Act, on April 1, 1983, EPA promulgated regulations to implement the NPDES program, under EPA Administered Permit Programs: the NPDES, at 40 C.F.R. Part 122, as amended.
10. Pursuant to the NPDES regulations at 40 C.F.R. § 122.5(b), the NPDES program requires permits for the discharge of any pollutant from any point source into waters of the United States.
11. Pursuant to the NPDES regulations at 40 C.F.R. § 122.26(a)(1)(ii) and § 122.26(b)(14), operators are required to obtain a NPDES permit for storm water discharges associated with industrial activity.

12. The Act and its implementing regulations and applicable NPDES permit contain the following definitions:
- a. "Person" as an individual, corporation, partnership or association. Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2;
 - b. "Pollutant" as including, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water. Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2;
 - c. "Navigable waters" as the waters of the United States, including the territorial seas. Section 502(7) of the Act, 33 U.S.C. § 1362(7); "Waters of the United States" means all waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, among others, and their tributaries. 40 C.F.R. § 122.2;
 - d. "Discharge of a pollutant" as any addition of any pollutant to navigable waters and/or waters of the United States from any point source. Section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2;
 - e. "Point source" as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2;
 - f. "Facility," as any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program. 40 C.F.R. § 122.2;
 - g. The term "NPDES" means National Pollutant Discharge Elimination System.
 - h. The term "owner" or "operator" means the owner or operator of any "facility" or "activity" subject to regulation under the NPDES program. 40 C.F.R. § 122.2.
 - i. The term "facility" or "activity" means any NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program. 40 C.F.R. § 122.2.
 - j. The term "storm water associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing,

processing or raw materials storage areas at an industrial plant. 40 C.F.R. §§ 122.2 and 122.26(b)(14).

- k. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. A bypass may be allowed which does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation; otherwise, a bypass is prohibited. If the permittee knows in advance of the need for a bypass, it shall submit prior notice. The permittee shall submit notice of an unanticipated bypass within 24-hours. See 40 C.F.R. § 122.41(m).
 - l. "Owner" or "operator" as the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 C.F.R. § 122.2; and
 - m. Industrial Activity – the 10 categories of industrial activities included in the definition of "stormwater discharges associated with industrial activity" as defined in 40 C.F.R. §§ 122.26(b)(14)(i)-(ix) and (xi).
13. Operator – any entity with a stormwater discharge associated with industrial activity that meets either of the following two criteria:
- a. the entity has operational control over industrial activities, including the ability to modify those activities; or
 - b. the entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit).
14. On October 30, 2000, EPA issued the NPDES Storm Water Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2000 MSGP) pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The 2000 MSGP became effective on October 30, 2000 and expired on October 30, 2005 but was administratively continued in accordance with the Administrative Procedures Act and remained in force until September 2008.
15. On September 29, 2008, EPA re-issued the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2008 MSGP). The 2008 MSGP became effective on September 29, 2008, and expires on September 29, 2013.
16. The 2000 and 2008 MSGPs establish among others, Notice of Intent (NOI) requirements, Storm Water Pollution Prevention Plans (SWPPP), monitoring, reporting and other conditions.

17. The 2000 and 2008 MSGPs require facilities who seek coverage under this permit to submit a complete NOI form in order to obtain authorization to discharge storm water associated with industrial activity.

II. Jurisdictional Findings

18. Respondent is a corporation organized and authorized to do business under the laws of the Commonwealth of Puerto Rico.
19. Respondent is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
20. At all relevant times to this Complaint, Respondent was the owner and operator of the Facility.
21. The Facility is located at Calle Central Esquina San Pablo, Sabana Ward, Guaynabo, Puerto Rico.
22. The industrial activities conducted by Respondent at the Facility consist of the cleaning and polishing of rice, and in the milling of other grains except rice.
23. The Facility is best described by the Primary Standard Industrial Classification (SIC) code 2044 and the Secondary SIC code 2041.
24. Respondent's operations at the Facility are classified as an "industrial activity" as defined in 40 C.F.R. § 122.26(b)(14)(xi).
25. Respondent discharges storm water containing "pollutants" from the Facility into the Atlantic Ocean.
26. The Atlantic Ocean is a water of the United States, pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
27. The Administrator of EPA promulgated regulations which require operators of facilities engaged in the cleaning and polishing of rice, and in the milling of other grains except rice to apply for and obtain NPDES permit coverage for the discharges of storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations. These regulations are codified in 40 C.F.R. § 122.26(b)(14)(xi).
28. The EPA regulations at 40 C.F.R. § 122.26(e)(1)(i) require that operators of plants engaged in the cleaning and polishing of rice, and in the milling of other grains except rice to obtain an NPDES permit under 40 C.F.R. § 122.26(a)(1), shall submit an individual NPDES permit application no later than October 1, 1992, if the facility is not part of a group application, as described in 40 C.F.R.

§ 122.26(c)(2), or is not authorized by an NPDES storm water general permit for industrial activities.

29. On October 30, 2000, EPA issued the 2000 MSGP.
30. The 2000 MSGP became effective on October 30, 2000, and was administratively extended until 2008.
31. On September 29, 2008, EPA issued the 2008 MSGP. The 2008 MSGP became effective on September 29, 2008, and expires on September 29, 2013.
32. At all times relevant to this Complaint, Respondent's activities at the Facility have been covered by the above NPDES permit application regulations for industrial activities (2000 MSGP and 2008 MSGP).
33. Respondent is the owner/operator of the Facility, as defined in 40 C.F.R. § 122.2. Respondent is subject to the provisions of the Act, 33 U.S.C. § 1251, *et seq.*, and the applicable NPDES permit application regulations found at 40 C.F.R. Part 122. Respondent was required to apply for and obtain NPDES permit coverage for the Facility's storm water discharges associated with industrial activities pursuant to 40 C.F.R. § 122.26(b)(14)(xi).

III. Findings of Violations

34. Complainant re-alleges Paragraphs 18-33 above.
35. On August 24, 2010, a duly authorized EPA enforcement officer performed an inspection at the Facility to determine Respondent's compliance with the Act and the applicable NPDES regulations.
36. The findings of the inspection were included in the NPDES Water Compliance Inspection Reports, dated December 14, 2010.
37. The findings of the inspection revealed that Respondent failed to comply with the 2000 and 2008 MSGPs for the following:
 - a. Best Management Practices (BMPs) had not been selected, installed, and maintained.
 - b. Exposed areas of the Facility were not kept in a clean, orderly manner where such exposed areas could contribute pollutants to storm water discharges especially around trash containers, storage areas and loading docks where lack of good housekeeping was observed.
 - c. Respondent had not developed nor implemented an adequate Storm Water Pollution Prevention Plan (SWPPP).

- d. Industrial materials and industrial activities were exposed to sun, wind and rain.
 - e. Timely inspections and maintenance of storm water management devices as well as inspecting, testing, maintaining and repairing facility equipment and systems were not being implemented.
 - f. Sediments in the storm sewer collection system, drains and catch basins were observed due to lack of erosion and sediment controls implementation at the Facility.
 - g. Respondent's Facility discharges its storm water into the San Juan Bay and the Atlantic Ocean.
38. On October 28, 2010, Respondent delivered an NOI form seeking coverage under the 2008 MSGP.
39. On November 1, 2010, an EPA official conducted a review of the EPA National Storm Water Processing Center database¹ and the EPA files (Review) in order to verify if Respondent had filed an NOI form seeking NPDES coverage under the 2008 MSGP (Review).
40. The Review revealed that Respondent had failed to submit the NOI form by the January 5, 2009 deadline as required by the 2008 MSGP.
41. On November 2, 2010, EPA's NPDES NOI Processing Center acknowledged that Respondent submitted a complete NOI form seeking coverage under the 2008 MSGP and informed Respondent that coverage under such permit would begin at the conclusion of its 30-day waiting period, on December 2, 2010.
42. Based on the observations made by EPA during the inspection and findings of the Review, EPA issued the Administrative Compliance Order CWA-02-2011-3107 ("Compliance Order" or "Order"), dated December 20, 2010, against Respondent to address the violations mentioned above. The Compliance Order incorporated findings of violations, and ordered Respondent to:
- a. identify and eliminate unauthorized storm water discharges or develop and implement Best Management Practices (BMPs);
 - b. prepare and submit to EPA a complete SWPPP; and

¹ <http://www.epa.gov/npdes/stormwater>

- c. prepare and submit a Compliance Plan to bring the Facility into compliance with the Act, the NPDES regulations and the 2008 MSGP; among other.
43. On December 22, 2010, Respondent received the Compliance Order.
 44. Based on the findings on paragraphs 34-43 above, Respondent is liable for the violations of Sections 301(a) and 402(a) of the Act, 33 U.S.C. §§ 1311(a) and 1342(a), as specified below:
 - a. **Claim 1 - Failure to apply for and obtain NPDES permit coverage.** Respondent did not submit an individual NPDES permit application as required by 40 C.F.R. § 122.21, nor did it file a complete and accurate NOI form seeking coverage under the 2008 MSGP from January 5, 2009 (deadline to submit an NOI form seeking 2008 MSGP coverage) to November 2, 2010 (date when Respondent filed and EPA acknowledged that Respondent submitted a complete NOI form seeking coverage under the 2008 MSGP). The number of days that Respondent failed to file for NPDES coverage is **697 days**.
 - b. **Claim 2 - Illegal discharges of pollutant (storm water associated with its industrial activities) into waters of the United States without NPDES permit coverage.** Respondent discharged pollutants from the Facility into waters of the United States without NPDES permit coverage from January 5, 2009 (deadline to submit an NOI form seeking 2008 MSGP coverage) to November 2, 2010 (date when Respondent filed and EPA acknowledged that Respondent submitted a complete NOI form seeking coverage under the 2008 MSGP). The period of time during which Respondent illegally discharged pollutants into waters of the United States without NPDES permit is **697 days**.

The EPA will notify the Commonwealth of Puerto Rico regarding this proposed action by mailing a copy of this Complaint and Notice and offering an opportunity for the Commonwealth to confer with EPA on the proposed penalty assessment.

IV. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (Final Order) to Respondent assessing a penalty of **\$50,000.00**. The proposed penalty has been determined in accordance with the applicable factors under Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA is required to take in consideration the nature, circumstances, extent and gravity of the violation (or violations), and Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. EPA has also taken in

consideration the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires EPA to adjust penalties for inflation on a periodic basis.

Based on the Findings set forth above, Respondent has been found to have violated in numerous occasions the NPDES regulations and the Act. Respondent failed to apply for NPDES permit coverage by January 5, 2009, and also failed to prepare an adequate and complete SWPPP and implement it, as required by the 2008 MSGP. Respondent is culpable for the violations. EPA took into account Respondent's knowledge of the NPDES regulations, the 2008 MSGP, and the risks to human health and the environment posed by the uncontrolled discharges of storm water runoff from the Facility into the Atlantic Ocean, a water of the United States.

The violations discussed in this Complaint are serious since Respondent's failure to develop and implement storm water pollution prevention at the Project caused a potential amount of pollutants to reach surface water that could cause direct and indirect negative effects on human health and the environment. Respondent knew of their obligations under the NPDES regulations, Construction Permit, and the Act. Respondent do not have a prior history of violations under the NPDES program. EPA may issue a final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent, within that time files an answer to the Complaint and, requests a hearing on this Notice pursuant to the following section.

V. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, which have been codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intend to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866.**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent dispute (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in the Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure to Answer

If Respondent fails in the Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e., in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

VI. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA attorney named in Section VIII, Paragraph 2, below.

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing do not prevent them from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives their right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. Resolution of this Proceeding Without Hearing or Conference

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on Section VIII, paragraph 2. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "**Treasurer, United States of America**", in the full amount of the penalty assessed in this complaint to the following addressee:

**Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
PO Box 360188
Pittsburgh, Pennsylvania 15251.**

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA=s receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. Filing of Documents

1. The original and one copy of the Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

**Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866.**

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

**Héctor L. Vélez Cruz, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de León Ave., Suite 417
San Juan, Puerto Rico 00907-4127
Telephone: (787) 977-5850
Fax: (787) 729-7748.**

IX. General Provisions

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS _____ DAY OF _____, 2011.

CARL-AXEL P. SODERBERG, P.E.
Director,
Caribbean Environmental Protection Division
United States Environmental Protection Agency - Region 2

To: **Mr. José González Freyre**
President
Pan American Grain Co, Inc.
9 Claudia St.,
Amelia Industrial Park
Guaynabo, Puerto Rico 00968

cc: **Mr. Roberto Ayala**
Director
Water Quality Area
PR Environmental Quality Board
P. O. Box 11488
San Juan, PR 00910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Pan American Grain Co, Inc.
9 Claudia St.,
Amelia Industrial Park
Guaynabo, Puerto Rico 00968

NPDES MSGP Number PRR05BT41

RESPONDENT

DOCKET NUMBER CWA-02-2011-3451

PROCEEDING PURSUANT TO SECTION
309(G) OF THE CLEAN WATER ACT,
33 U.S.C. § 1319(G), TO ASSESS CLASS
I CIVIL PENALTY

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits", 40 C.F.R. Part 22, to the following person at the address listed below:

Mr. José González Freyre
President
Pan American Grain Co, Inc.
9 Claudia St.,
Amelia Industrial Park
Guaynabo, Puerto Rico 00968.

I sent the original and a copy of the foregoing Complaint for filing, to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, R 2
290 Broadway, 16th Floor
New York, NY 10007-1866.

Date: _____
San Juan, Puerto Rico

Aileen Sánchez