

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2011 NOV -1 A 8 48
REGIONAL HEARING
CLERK

In the matter of:

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

NODES MSGP Number PRR05BT41

Respondent

Docket No. CWA-02-2011-3451

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
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ANSWER TO ADMINISTRATIVE COMPLAINT, FINDING OF VIOLATION, NOTICE OF PROPOSED ASSESSMENT OF AN ADMINISTRATIVE PENALTY AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING

TO THE HONORABLE PRESIDING OFFICER:

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

STATUTORY AND REGULATORY AUTHORITIES

1. The allegations of paragraph one (1) and two (2) on the "Statutory and Regulatory Authorities" section of the Administrative Complaint ("Complaint") (Section I) 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 insofar as the allegation is used as a basis to state the claims of violations alleged in the Complaint in reference to the grain processing facility located at Central Street Esquina San Pablo, Sabana Ward, Guaynabo, Puerto Rico ("the Facility"). It is affirmatively alleged that the name of the Company is Pan American Grain Manufacturing, Inc. and not Pan American Grain Co, Inc.

2. The allegations of paragraphs three (3) through seventeen (17) on the "Applicable Statutes and Regulations" section of the Complaint (Section I) include 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 insofar as the allegation is used as a basis to state the claims of violations alleged in the Complaint.

JURISDICTIONAL FINDINGS

3. The allegation included in paragraph number eighteen (18) of the Complaint is admitted.

4. The allegations included in paragraph number nineteen (19) of the Complaint are include statements and/or issues 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 insofar as the allegation is used as a basis to state the claims of violations alleged in the Complaint.

5. The allegation included in paragraph number twenty (20) of the Complaint is admitted.

6. The allegation included in paragraph number twenty one (21) of the Complaint is admitted.

7. The allegations included in paragraph number twenty two (22) of the Complaint are denied, as drafted.

8. The allegation included in paragraph number twenty three (23) of the Complaint is admitted.

9. The allegations included in paragraph number twenty four (24) of the Complaint are hereby denied.

10. The allegations included in paragraph number twenty five (25) of the Complaint are hereby denied, as drafted.

11. The allegations included in paragraph number twenty six (26) of the Complaint include statements and/or issues 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 insofar as the allegation is used as a basis to state the claims of violations alleged in the Complaint.

12. The allegation included in paragraph number twenty seven (27) of the Complaint include 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, as drafted, insofar as a responsive pleading may be warranted insofar as the allegation is used as a basis to state the claims of violations alleged in the Complaint. PAGM expressly denies that the Facility operations include milling of other grains.

13. The allegation included in paragraph number twenty eight (28) of the Complaint include 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, as drafted, insofar as a responsive pleading may be warranted insofar as the allegation is used as a basis to state the claims of violations alleged in the Complaint. PAGM expressly denies that the Facility operations include milling of other grains.

14. The allegations included in paragraph number twenty nine (29) of the Complaint are include statements and/or issues 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 as drafted insofar as a responsive pleading may be warranted

insofar as the allegation is used as a basis to state the claims of violations alleged in the Complaint.

15. The allegations included in paragraph number thirty (30) of the Complaint are include statements and/or issues 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 as drafted insofar as a responsive pleading may be warranted insofar as the allegation is used as a basis to state the claims of violations alleged in the Complaint.

16. The allegations included in paragraph number thirty one (31) of the Complaint are include statements and/or issues 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 as drafted insofar as a responsive pleading may be warranted insofar as the allegation is used as a basis to state the claims of violations alleged in the Complaint.

17. The allegations included in paragraph number thirty two (32) of the Complaint it are denied, as drafted.

18. The allegations included in paragraph number thirty three (33) of the Complaint are denied, as drafted.

FINDINGS OF VIOLATIONS

19. PAGM re-alleges its responsive pleadings included in paragraph one (1) through thirty three (33) of this document, accordingly, as an answer to the allegation included in paragraph number thirty four (34) of the Complaint.

20. The allegations included in paragraph number thirty five (35) of the Complaint are admitted.

21. The allegations included in paragraph number thirty six (36) of the Complaint are admitted insofar as to the generation of the NPDES Water Compliance Inspection Report on December 14, 2010. The rest of the allegations are denied.

22. The allegations included in paragraph number thirty seven (37) of the Complaint are denied.

23. The allegations included in paragraph number thirty eight (38) of the Complaint are denied, as drafted.

24. The allegations included in paragraph number thirty nine (39) of the Complaint are denied for lack of knowledge or information as to the veracity or mendacity of the allegations.

25. The allegations included in paragraph number forty (40) of the Complaint are denied for lack of knowledge or information as to the veracity or mendacity of the allegations.

26. The allegations included in paragraph number forty one (41) of the Complaint are admitted.

27. The allegations included in paragraph number forty two (42) of the Complaint are admitted insofar as to EPA's issuance of the Administrative Compliance Order CWA-02-2011-3107 dated December 20, 2010. The rest of the allegations are denied, as drafted.

28. The allegation included in paragraph number forty three (43) of the Complaint is denied, as drafted.

29. The allegations included in paragraph number forty four (44) of the Complaint are denied.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

30. Section IV 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 hereby expressly denied.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

31. 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.

INFORMAL SETTLEMENT CONFERENCE

32. 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.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

33. The allegations included in Section VII 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.

FILING OF DOCUMENTS

34. The allegations included in Section VIII 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.

GENERAL PROVISIONS

35. The allegations included in Section IX 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.

36. Unless otherwise specified, any and all allegations not expressly admitted in connection to the Complaint should be deemed denied for all practical and legal matters.

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. PAGM is not engaged in the mineral industry as alleged by the U.S. Environmental Protection Agency (“EPA”) in Paragraph 24 of Section II (Jurisdictional Findings) of the Complaint as grounds to have subject matter and/or personal jurisdiction.

3. PAGM is not classified as Standard Industrial Classification 10 through 14.

4. PAGM does not meet the definition of “industrial activity” contained in 40 C.F.R. § 122.26(b)(14)(iii).

5. PAGM is not required by the Clean Water Act, as amended, 33 U.S.C. §§ 1251 *et seq.*, to obtain coverage under the 2008 Multi Sector General Permit for storm water discharges associated to mineral industry activities.

6. EPA lacks subject matter and/or personal jurisdiction to file the Complaint in view that PAGM is not engaged in the “industrial activity” claimed in the Complaint.

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

8. The Environmental Appeals Board lacks jurisdiction to entertain the Complaint given that EPA lacks subject matter and/or personal jurisdiction to seek the relief claimed in the Complaint.

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

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

11. 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.

12. 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, PAGM respectfully requests this Honorable Presiding Officer to take notice of the aforementioned, deny and dismiss the Complaint in all its parts. In the alternative, PAGM hereby respectfully requests a hearing.

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 Héctor L. Vélez-Cruz, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 2, 1492 Ponce de León Ave., Suite 417, San Juan, Puerto Rico 00907-4127.

In San Juan, Puerto Rico, this 28th day of October, 2011.

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