

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2012 MAY -3 A 6:57  
REGIONAL HEARING  
CLERK

In the Matter of )  
)  
Pan American Grain Co., Inc. ) Docket No. CWA-02-1011-3451  
)  
Respondent )

**Order Denying Joint Motion Requesting Stay in Proceedings  
and Granting Motion to File Second Amended Complaint**

This proceeding was initiated on September 29, 2011, by the filing of the Complaint in this matter, and thereafter, Respondent filed an Answer to the Complaint. On January 26, 2012, the Complainant filed a Motion for Leave to File Second Amended Complaint. On February 9, February 22, and March 21, 2012, Respondent requested extensions of time to file its response to the motion, and in the latter two requests also sought additional time to file its prehearing exchange. The motions were unopposed and were granted. The most recent order, dated March 26, 2012, granted Respondent until April 26, 2012 to file the response and prehearing exchange, but cautioned that “no further extensions to file these documents will be granted absent extraordinary circumstances.”

On April 26, 2012, the parties submitted a “Joint Motion Requesting Stay in Proceedings,” for a stay of 45 days, until June 10, 2012. Grounds stated in the Motion are that the parties “continue to discuss settlement for the case at bar as well as for other allegations made by EPA in connection to three (3) other [of Respondent’s] facilities for a global settlement,” with associated complexity as to the four facilities and the allegations.

The Rules provide that the presiding officer may grant an extension of time for filing any document “upon timely motion . . . , for good cause shown, and after consideration of prejudice to other parties.” 40 C.F.R. § 22.7(b). Under the Rules, the Administrative Law Judge is required to “avoid delay” and is authorized to “[d]o all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings . . . .” 40 C.F.R. § 22.4(c).

The Motion for Leave to File Second Amended Complaint was filed three months ago. It merely requests an amendment to *reduce* the number of days Respondent is alleged to have failed to file for NPDES coverage, from 1,033 days to 697 days. Enclosed with the Motion for Leave to File was a proposed Amended Complaint. The nature of the proposed amendment is such that it would not prejudice the Respondent, so there is no basis for granting Respondent additional time to respond. Moreover, if a stay is granted and the parties do not achieve a settlement of this matter, then after the stay expires, a response and then a ruling on the request to


amend the complaint would be filed, the Amended Complaint would be served, and Respondent would then have time to file an Answer to the Amended Complaint, all of which would further delay this proceeding that already has been pending for seven months. The parties have not shown good cause to stay a response or a ruling on the Motion for Leave to File Second Amended Complaint. The extensions of time have expired for Respondent to file such a response. Under the Rules, “[a]ny party who fails to respond within the designated period waives any objection to the granting of the motion.” 40 C.F.R. § 22.16(b). Accordingly, the Joint Motion Requesting Stay in Proceedings is denied and the Motion for Leave to File Second Amended Complaint is granted.

As to the Respondent’s prehearing exchange, it is in the interest of the parties and judicial economy for the parties to amicably and efficiently resolve this matter through settlement, and it is recognized that time and resources must be expended to prepare a prehearing exchange. For good cause, therefore, Respondent is granted additional time to file its prehearing exchange. However, when an extension of time is granted for purposes of allowing parties to pursue settlement negotiations, the parties must make diligent efforts to do so. Accordingly, the parties will be required to file a joint status report as to the progress of settlement discussions as set forth below.

#### **ORDER**

1. The Joint Motion Requesting Stay in Proceedings is **DENIED**.
2. Complainant’s Motion for Leave to File Second Amended Complaint is **GRANTED**. Complainant shall serve the Amended Complaint on Respondent on or before **May 11, 2012**. Respondent shall have 20 days from service of the Amended Complaint to file either an Answer to the Amended Complaint, or a statement that Respondent requests that its original Answer, filed November 1, 2011, be deemed to serve as the answer to the Amended Complaint.
3. Respondent is granted an extension of time to file its prehearing exchange. In the event the parties have not filed a full executed Consent Agreement and Final Order settling this matter beforehand, Respondent shall file its Prehearing Exchange **on or before June 10, 2012**.
4. The parties shall file a joint status report stating the progress of settlement discussions on **May 25, 2012**.

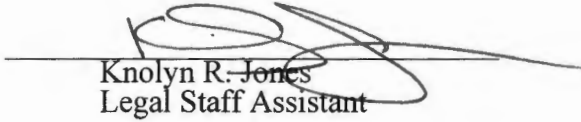
Dated: April 27, 2012

  
M. Lisa Buschmann  
Administrative Law Judge

**In the Matter of Pan American Grain Co., Inc., Respondent.  
Docket No. CWA-02-2011-3451**

CERTIFICATE OF SERVICE

I hereby certify that true copies of this **Order Denying Joint Motion Requesting Stay in Proceedings and Granting Motion to File Second Amended Complaint**, issued by M. Lisa Buschmann, Administrative Law Judge, in Docket No. CWA-02-2011-3451, were sent to the following parties on this 27<sup>th</sup> day of April 2012, in the manner indicated:

  
Knolyn R. Jones  
Legal Staff Assistant

Original and One Copy by Regular Mail to:

Karen Maples  
Regional Hearing Clerk  
US EPA, Region II  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866  
Fx: 212.637.3115

Copy by Regular Mail to:

Hector L. Velez-Cruz, Esq.  
Office of Regional Counsel  
U.S. EPA, Region II, Caribbean Field Div.  
City View Plaza- Suite 7000  
#48 Rd. 165 KM 1.2 Guaynabo  
Puerto Rico, 00968-8069  
Fx: 787.729.7748

Copy by Regular Mail to:

Gretchen Mendez-Vilella, Esq.  
Goldman, Antonetti & Cordova, P.S.C.  
P.O. Box 70364  
San Juan, PR 00936-8364  
Fx: 787.474.2407

**Dated: April 27, 2012  
Washington, DC**