

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

In the Matter of:

Pan American Grain Co., Inc.

RESPONDENT

PREHEARING EXCHANGE

DOCKET NUMBER

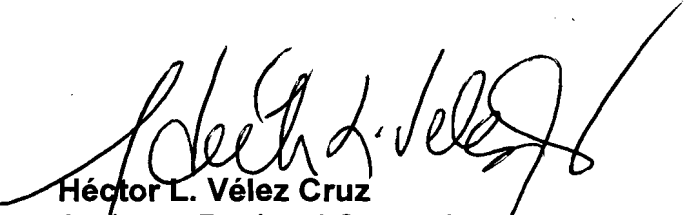
CWA-02-2011-3451

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2012 FEB -3 P 12: 22
REGIONAL HEARING
CLERK

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

Pursuant to the request made by Hon. Barbara A. Gunning, Administrative Law Judge, on the Prehearing Order dated November 30, 2011, the Complainant hereby files its Initial Prehearing Exchange for the above captioned matter.

Respectfully Submitted, in San Juan, Puerto Rico this 1st day of February 2012.



Héctor L. Vélez Cruz
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1. Pursuant to Section 22.19(a) of the Rules, each party shall file with the Regional hearing Clerk and shall serve on the opposing party and on the Presiding Judge:

a. The names of any expert and other witnesses intended to be called at hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called;

Complainant expects to call the following persons as witnesses at the hearing:

- i. **Jaime López**
Multimedia Permit and Compliance Branch
U.S. Environmental Protection Agency
Caribbean Environmental Protection Division
Storm Water Program Specialist

Mr. Jaime López has been working with EPA, Region 2, CEPD since August 2, 1998, as an Environmental Scientist handling NPDES inspections in the Multimedia Permit and Compliance Branch. Mr. López has a Bachelor in Science Degree from Kansas State University where he graduated in 1990. Mr. López has worked in the Puerto Rico Environmental Quality Board as an Environmental Science Specialist under the Superfund and Emergency Response Program.

Mr. López will testify about the NPDES storm water permit application regulations, the 2000 and 2008 NPDES Storm Water Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) requirements and how they apply to Respondent's facility. He will also testify about: the Compliance Evaluation Inspection (CEI) performed on August 24, 2010 and the November 1, 2010 review of the EPA National Storm Water Processing Center database and the EPA files, which addressed compliance by Respondent's facility with the NPDES storm water permit regulations; factual and legal aspects of this case, among other things, the violations of the Clean Water Act (the "Act" or "CWA") and the pertinent regulations; and the calculation of the assessed penalty included in the complaint (which he performed), the reasoning behind the calculation of said assessed penalty and the appropriateness of the penalty.

Mr. López will also testify about the: Administrative Compliance Order (ACO), Docket No. CWA-02-2011-3107, issued by EPA on December 20, 2010, to Respondent, ordering Respondent to comply with the storm water discharge permit regulations; visits he performed at the facility and communications held with Respondent's representatives regarding its compliance/non-compliance with the AOC, the CWA and the NPDES storm water permit regulations.

- ii. **Sergio Bosques**
Environmental Engineer
Regional Storm Water Coordinator
Multi-Media Permit and Compliance Branch
U.S. Environmental Protection Agency, Region 2
Caribbean Environmental Protection Division

Mr. Sergio Bosques has been working with the EPA since July 14, 1991, where he started as an Environmental Engineer in the Water Permits and Compliance Branch, Water Management Division, New York, Region 2. Mr. Bosques is currently an Environmental Engineer in the EPA, Region 2, Caribbean Environmental Protection Division, Multi-Media Permits and Compliance Branch, where he started on May 10, 1998. Mr. Bosques holds a degree in B.S. in Chemical Engineering from the University of Puerto Rico where he graduated in 1991.

Mr. Bosques may testify as to the numerous NPDES Storm water seminars he has conducted in Puerto Rico over the years, and will discuss the NPDES storm water requirements and the 2000 and 2008 MSGP requirements and how they apply to Respondent's facility.

- iii. **José A. Rivera, EIT**
Environmental Engineer
Regional Storm Water Program Specialist
Multi-Media Permit and Compliance Branch
U.S. Environmental Protection Agency, Region 2
Caribbean Environmental Protection Division

Mr. José Rivera has been working with the U.S. Environmental Protection Agency since September 9, 1990, where he started as an Environmental Engineer in the Water Permit and Compliance Branch, Water Management Division, Region 2. Mr. Rivera currently is the NPDES Regional Storm Water Program Specialist with office located at the Caribbean Environmental Protection Division, EPA, Region 2, in San Juan, Puerto Rico. Mr. Rivera holds a B.S. in Civil Engineering from the University of Puerto Rico where he graduated in 1990.

Mr. Rivera will testify about the NPDES storm water permit application regulations, the 2000 and 2008 MSGP requirements and how such apply to Respondent's facility.

Mr. Rivera will testify about the factual and legal aspects of this case, among other things, the violations of the CWA and the pertinent regulations, and development and implementation of Storm Water Pollution Prevention Plans at industrial facilities of this kind. Mr. Rivera will also testify as to his experience as enforcement officer under the CWA and his experience handling administrative penalty orders and the different

outreach efforts conducted by EPA, in order to keep the regulated community informed of the NPDES regulations and changes.

Complainant reserves the right, and nothing herein is intended or is to be construed to prejudice or waive any such right, to call or not to call any of the aforementioned potential witnesses, and to expand or otherwise modify the scope, extent and/or areas of the testimony of any of the above-named potential witnesses, where appropriate. In addition, Complainant reserves the right to list and to call additional potential hearing witnesses, including expert witnesses, to answer and/or rebut evidence (testimonial or documentary) listed by Respondent in its prehearing exchange or on matters arising as a consequence of such evidence.

b. Copies of all documents and exhibits intended to be introduced into evidence. Included among the documents produced shall be a curriculum vitae or resume for each identified expert witness. If photographs are to be submitted, the photographs must be unretouched and unaltered photographs. The documents and exhibits shall be identified as Complainant's or Respondent's exhibit, as appropriate, and numbered with Arabic numerals:

i. ***Complainant's Exhibit 1 - Administrative Complaint***, Docket No. CWA-02-2011-3451, dated September 27, 2011, with letters addressed to Mr. José E. González Freyre, President of Pan American Grain Co., Inc., dated September 28, 2011, ***Complainant's Exhibit 1a.***

ii. ***Complainant's Exhibit 2 - Letter addressed to Roberto Ayala***, Director of the Water Quality Bureau, PR Environmental Quality Board (EQB), dated September 28, 2011.

iii. ***Complainant's Exhibit 3 - Respondent Pan American Grain Co., Inc.'s Answer to the Administrative Complaint and Request for Hearing***, dated October 28, 2011.

iv. ***Complainant's Exhibit 4 - Penalty Memorandum, dated September 26, 2011***, prepared by Mr. Jaime López.

v. ***Complainant's Exhibit 5 - EPA Water Compliance Inspection Reports***, dated December 14, 2010, regarding the August 24, 2010 EPA Site Inspection, including photos of the facility taken during the inspections.

vi. ***Complainant's Exhibit 6 - EPA December 20, 2010 letter addressed to Mr. José E. González Freyre, President of Pan American Grain Co., Inc., notifying violations of the CWA, with***

Certified Mail Receipt, and with the Administrative Compliance Order, Docket Number CWA-02-2011-3107, **Complainant's Exhibit 6a**.

vii. **Complainant's Exhibit 7** - EPA Final Reissuance of NPDES Stormwater Multi-Sector General Permit for Industrial Activities, issued on October 30, 2000 (2000 MSGP).

viii. **Complainant's Exhibit 8** - EPA NPDES Multi-Sector General Perrnit for Stormwater Discharges Associated with Industrial Activity, effective September 29, 2008 (2008 MSGP).

ix. **Complainant's Exhibit 9** - Copy of Pan American Grain Co., Inc., corporate registry information generated by the online system of the Commonwealth of Puerto Rico Department of State Corporate Division.

x. **Complainant's Exhibit 10** - Copy of Pan American Grain Co., Inc.'s Notice of Intent (NOI) form seeking coverage for Stormwater Discharges Associated with Industrial Activities from the Facility under the 2008 MSGP, dated November 2, 2010.

xi. **Complainant's Exhibit 11** - EPA NPDES NOI Processing Center letter, dated November 2, 2010, acknowledging that Pan American Gran Co., Inc. submitted a complete NOI form for coverage under the 2008 MSGP, and informing that coverage will start on December 3, 2010.

xii. **Complainant's Exhibit 12** - Public Notice Number 2012-07, dated October 28, 2011, for the Proposed Administrative Penalty Assessment and Opportunity to Comment during period 10/28/2011 through 11/28/2011.

xiii. **Complainant's Exhibit 13** - Copy of EPA's NOI Region 2 Table Records, printed from EPA's NOI Application Database on November 1, 2010, reflecting that as of such date Pan American Gran Co., Inc., had not filed a NOI form seeking coverage under the 2008 MSGP.

xiv. **Complainant's Exhibit 14** - Pan American Grain Co., Inc.'s January 20, 2011 letter requesting EPA thirty additional days from the January 24, 2011 deadline to submit its answer to the Administrative Compliance Order, Docket Number CWA-02-2011-3107.

xv. ***Complainant's Exhibit 15 - Pan American Grain Co., Inc.'s August 25, 2010 letter providing EPA with photographs and information regarding the corrective actions it had taken pursuant to EPA's observations noted during the August 24, 2010 inspection of the Facility.***

xvi. ***Complainant's Exhibit 16 - Pan American Grain Co., Inc.'s April 5, 2011 submittal of the Quarterly Progress Report required by the Administrative Compliance Order, Docket Number CWA-02-2011-3107, including all deliverables as required by the ordered provisions and status of implementation of ordered activities.***

Complainant reserves the right, and nothing herein is intended or should be construed to prejudice such right, to supplement or add, subject to notice to the Court and Respondent, documentary evidence to Complainant's prehearing exchange submission in order to respond to and/or rebut, or otherwise to address an issue arising as a consequence of, evidence Respondent submits in its prehearing exchange or otherwise to update this prehearing exchange.

c. Statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case.

Pursuant to 40 C.F.R. §§ 22.21(d) and 22.19(d), the hearing should be held in the county where the Respondents conduct business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional office is located, or in Washington, D.C. Complainant requests that the hearing be held in San Juan, where the relevant Environmental Protection Agency Regional office is located. This location is convenient for both parties and witnesses and the Municipality of San Juan is next to the Municipality of Guaynabo, where the events that gave rise to this action occurred. The Complainant can assist by providing the Regional Hearing Clerk with information on facilities which may be available for purposes of holding the hearing. Complainant estimates it will need one day to present its direct case.

2. Complainant shall submit a statement explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty;

The calculation of the proposed penalty was performed using each of the statutory factors listed in Section 309 (g) of the CWA, 33 U.S.C. § 1319(g). Factors such as the nature, circumstances, extent and gravity of the violation, prior history of such violations, degree of culpability, Respondent's Economic

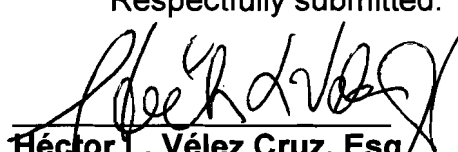
Benefit or savings accrued by virtue of the violations and their ability to pay were considered by EPA when calculating the proposed penalty. EPA has also taken into account the particular facts and circumstances of this case. The particular facts and circumstances of this case are based on a series of compliance evaluations performed on EPA records and communications between EPA and Respondent.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent is assessed a civil penalty in the amount of \$50,000.00 for the violations alleged in the Complaint. A penalty memorandum and narrative explanation supporting the penalty figure for the violations cited in the Complaint is included in ***Complainant's Exhibit 4***.

3. Complainant shall submit a statement regarding whether the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. § 3501, et seq., applies to this proceeding; whether there is a current Office of Management and Budget Control number involved and whether the provisions of Section 3512 of the PRA are applicable in this case.

Complainant believes that the PRA does not apply to the alleged violations in this proceeding. The requirements of Sections 301 and 308(a) of the Act, 33 U.S.C. §§ 1311 and 1318(a), are statutorily imposed and independently enforceable regardless of the PRA. Section 3512, the public protection provision of the PRA, does not preclude the Agency from seeking enforcement directed at statutory mandates. See 5 C.F.R. § 1320.6(e)(1997).

Respectfully submitted. In San Juan, Puerto Rico, February 1, 2012.



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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Complainant's Prehearing Exchange, dated February 1, 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:

Administrative Law Judge
Honorable Barbara A. Gunning
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

2/01/2012

Name

Gretchen Méndez-Vilella