

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

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In the Matter of	§ Docket No. CWA-06-2012-2712
	§
Paco Swain Realty, L.L.C.	§
a Louisiana Corporation,	§
	§ COMPLAINANT'S REBUTTAL
Respondent	§ PREHEARING EXCHANGE

**COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE**

The Complainant, the Director of the Water Quality Protection Division, United States Environmental Protection Agency, Region 6 ("EPA"), through its attorney, hereby files this Rebuttal Prehearing Exchange pursuant to the Prehearing Order ("Order") dated April 19, 2013 and amended by Order on Motion for Extension of Dates Under Prehearing Order dated May 29, 2013, issued by the Administrative Law Judge and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. Part 22. In the Order, the Presiding Officer instructed the Parties to file a Prehearing Exchange containing specific information and instructed Complainant to file a Rebuttal Prehearing Exchange. This document contains Complainant's response to the Order.

**A. RESPONDENT'S PREHEARING EXCHANGE DOES NOT PROVIDE A SUFFICIENT SUMMARY OF THE EXPECTED TESTIMONY OF EACH WITNESS TO PERMIT COMPLAINANT TO ADEQUATELY PREPARE REBUTTAL WITNESSES.**

Respondent's Prehearing Exchange lacks specificity sufficient to permit Complainant to make a determination as to whether rebuttal witnesses will be required or whether Complainant will challenge any witness prior to the hearing. Section 22.19(a) of the Rules of Practice provide

witnesses, conflicts with the Rules of Practice and the Prehearing Order while placing Complainant at a disadvantage due to Respondent's failure to meet its obligations.

**B. RESPONDENT DOES NOT PROVIDE SUFFICIENT INFORMATION REGARDING ITS INABILITY TO PAY THE PROPOSED PENALTY TO PERMIT COMPLAINANT ADEQUATELY PREPARE A REBUTTAL TO THE CLAIM.**

Respondent likewise indicates an inability to pay yet provides none of the typical evidence such as tax returns, certified copies of financial statements, records of other assets, bank statements, etc. In the absence of such documentation, Complainant cannot determine whether a rebuttal witness is required to assess Respondent's documentation and provide an opinion on whether Respondent is able to pay the proposed penalty or even whether Respondent has provided sufficient documentation to prove an inability to pay the proposed penalty. Complainant may seek full resolution of this matter, including assessment of the proposed penalty, through accelerated judgment, and it is imperative that Respondent put forward some evidence to substantiate its defense of inability to pay.

**C. AMENDED WITNESS LIST**

In light of Respondent's assertions in its Prehearing Exchange, Complainant amends its witness list, specifically designation number 5, to include:

5. Any rebuttal witness, as required, including, but not limited to, any witness to rebut Respondent's claim of inability and/or to speak as to the sufficiency or insufficiency of such documents provided by Respondent to reach a conclusion as to Respondent's ability to pay.

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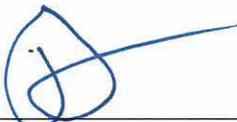
**CERTIFICATE OF SERVICE**

I certify that the original of the foregoing COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE was filed with the **Headquarters Hearing Clerk**, U.S. Environmental Protection Agency, Office of Administrative Law Judges, 1200 Pennsylvania Avenue, NW, Mail Code 1900R, Washington, DC 20460, and a true and correct copy was sent to the following on this 8th day of August, 2013, in the following manner:

VIA FIRST CLASS U.S. MAIL:

M. Lisa Buschmann, Administrative Law Judge  
U.S. EPA, Office of Administrative Law Judges  
1300 Pennsylvania Avenue, NW  
Mail Code 1900R  
Washington, DC 20460

Robert W. Morgan  
Attorney at Law  
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Tucker Henson