

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of:	§	Docket Nos.	CWA-06-2012-2710
	§		CWA-06-2012-2712
Paco Swain Realty, L.L.C.	§		
	§		
Respondent.	§		

STATUS REPORT

COMES NOW COMPLAINANT, the Director of the Water Quality Protection Division, United States Environmental Protection Agency, Region 6, by and through its attorney, provides the following Status Report, as required by the Order Scheduling Hearing issued in each of the above-captioned matters by the Administrative Law Judge (“ALJ”) on October 22, 2014.

1. Complainant and attorney, Robert W. Morgan, representing Paco Swain Realty, L.L.C. (“Respondent”) (collectively, the “Parties”), have participated in ongoing discussions regarding settlement of these matters.
2. The Parties have not, at this time, made substantive progress towards reaching a settlement in this matter. Respondent continues to assert an inability to pay a penalty.
3. Complainant has contracted with Industrial Economics, Inc. (“IEc”) to conduct an ability to pay analysis. The Parties have discussed the financial review process and believe that completion of this ability to pay analysis will substantially advance the litigation.
4. On October 4, 2014, Respondent authorized release of previously provided financial information to IEc. IEc reviewed Respondent’s information (consisting of tax returns from 2005 to 2012) and determined that the 2006 through 2012 tax returns were incomplete and missing important schedules and other forms/attachments. IEc determined that the information provided by Respondent is insufficient to perform a complete analysis.
5. On October 24, 2014, Complainant provided Respondent with a list of missing information and an “Individual Ability to Pay Claim Financial Data Request Form” (“ATP form”) that is utilized by

IEc to gather information that is not reflected in tax returns but is necessary to complete the ability to pay analysis. On October 24, 2014, Respondent provided Complainant with a tax return for 2013.

6. On October 27, 2014, the Parties participated in a settlement call to discuss production of the missing information identified through IEC's analysis and completion of the ATP form. On November 5, 2014, at the request of Respondent, Complainant provided Respondent with an updated list of schedules/forms missing from Respondent's 2006 through 2012 tax returns that included detailed information on why the previously identified missing schedules/forms are required.

7. On November 10, 2014, Complainant provided Respondent with a letter from IEC listing the information that was missing from the 2013 tax return and noting that the information provided was insufficient to perform an ability to pay analysis.

8. On November 13, 2014, Complainant filed a Motion to Compel Production of Financial Ability to Pay Information requesting the ALJ order Respondent to produce complete copies of tax returns and complete the ATP form.

9. On November 19, 2014, Complainant contacted Respondent and again requested the complete tax returns and the ATP form. Respondent indicated that the documents would be provided to Complainant.

10. As of the time of this filing, Respondent has not provided Complainant with the information missing from its tax returns or the completed ATP form.

RESPECTFULLY SUBMITTED,

Tucker Henson
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CERTIFICATE OF SERVICE

I certify that the original of the foregoing STATUS REPORT was filed electronically with the **Headquarters Hearing Clerk** of the Office of the Administrative Law Judges (“OALJ”) via the OALJ E-Filing System, and a true and correct copy was sent to the following on this 21st day of November, 2014, via email to:

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