

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

U.S. Environmental  
Protection Agency  
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REGIONAL HEADQUARTERS  
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In the Matter of :  
 :  
Fabco Industries Inc., :  
 :  
Respondent. :  
 :  
Proceeding Under the Federal :  
Insecticide, Fungicide and :  
Rodenticide Act, as amended :  
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**CONSENT AGREEMENT/FINAL ORDER**  
Docket No. FIFRA-02-2016-5202

**PRELIMINARY STATEMENT**

This is a civil administrative proceeding instituted pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA” or “the Act”), 7 U.S.C. § 136l(a)(1). On September 29, 2016, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (“EPA”), issued a Complaint and Notice of Opportunity for Hearing (the “Complaint”) to Respondent, Fabco Industries Inc., located at 66 Central Avenue, Farmingdale, NY 11735 (“Respondent’s facility”). The Complaint alleged that Respondent committed sixteen violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), involving the distribution or sale of unregistered pesticides and one violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), involving pesticide production in an unregistered establishment. Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order

("CA/FO"), pursuant to Title 40 of the Code of Federal Regulations ("C.F.R.") Sections 22.13(b), 22.18(b)(2) and (3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation. No findings of fact or conclusions of law have been judicially or administratively adjudicated.

### **EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is a corporation organized and doing business under and by virtue of the laws of the State of New York, located at 66 Central Avenue, Farmingdale, NY 11735 ("Respondent's facility").
2. On September 10, 2014, duly authorized representatives of the EPA conducted an inspection of Respondent's facility (the "Inspection") for the purposes of enforcing the provisions of FIFRA, 7 U.S.C. §§ 136-136y, and the regulations promulgated pursuant thereto.
3. Based upon a review of documentary samples collected during the Inspection and submitted to the EPA by Respondent subsequent to the Inspection, the EPA found that Respondent distributed or sold unregistered pesticides on sixteen separate occasions between June 2012 and March 2015. Specifically, Respondent distributed or sold storm water systems or components of such systems, under the brand names FabGuard™, Helix™, StormBasin and Pathogens Cartridge, without registering them as pesticides with EPA and with antimicrobial claims on the products' labeling and in associated advertising.
4. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j (a)(1)(A), by distributing or selling unregistered pesticides.
5. Respondent's facility was first registered as a pesticide-producing establishment, and assigned establishment number 90270-NY-1, pursuant to Section 7(b) of FIFRA, 7 U.S.C. § 136e(b), on July 18, 2013.

6. On or about April 8, 2013, Respondent produced a batch of antimicrobial filters at its facility.
7. Respondent's April 8, 2013 production of a pesticide in an unregistered facility is a violation of Section 7 of FIFRA, 7 U.S.C. § 136e.
8. Respondent registered its establishment on July 18, 2013 and registered its pesticide product on November 04, 2015
9. On November 23, 2016, Respondent submitted financial information and documentation regarding its financial condition and demonstrating an inability to pay the proposed penalty.
10. On December 1, 2016, the parties met to discuss settlement and agreed to resolve the matter as set forth below and without Respondent having filed and Answer to the Complaint.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, knowingly and voluntarily:

(a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the facts contained in the Complaint; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to FIFRA Section 14(a), 7 U.S.C. § 136l(a), and 40 C.F.R. § 22.18(b), Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter maintain compliance with all applicable provisions and statutory requirements of FIFRA Section 12(a)(1)(A) and Section 7.
2. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is now in full compliance with the provisions and statutory requirements of FIFRA that are applicable to Respondent's activities relating to the production, distribution and sale of pesticides.
3. Respondent further certifies that the information and documentation it submitted to EPA on [DATE] regarding Respondent's financial condition is accurate, complete, and not misleading. EPA has relied on the accuracy of the financial information and documentation submitted by Respondent during the negotiation of the settlement. Respondent is aware that the submission of false or misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information or documentation provided and/or representations made to Complainant regarding Respondent's claim of inability to pay is false or, in any material aspect, inaccurate.
4. Respondent shall pay a civil penalty to EPA in the total amount of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer ("EFT"). If payment is made by check, then the check shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

**U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077**

**St. Louis, MO 63197-9000**

The check shall be identified with a notation thereon listing the following: *In the Matter of Fabco Industries Inc.*, and shall bear thereon the **Docket No. FIFRA-02-2016-5202**.

If Respondent chooses to make payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045.**
- 3) Account Code for Federal Reserve Bank of New York receiving payment: **68010727.**
- 4) Federal Reserve Bank of New York ABA routing number: **021030004.**
- 5) Field Tag 4200 of the Fedwire message should read **D 68010727** Environmental Protection Agency.
- 6) Name of Respondent: **Fabco Industries Inc.**
- 7) Case Number: **FIFRA-02-2016-5202.**

5. The payment must be received at the above address (or account of EPA) on or before thirty (30) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO. (The date by which the payment must be received shall hereinafter be referred to as the “due date”.)
  - a. Failure to pay the requisite civil penalty amounts in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
  - b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a

late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

- c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.
6. The civil penalty herein or any stipulated penalty due hereunder constitutes a “penalty” within the meaning of 26 U.S.C. § 162(f), and is not a deductible expenditure for purposes of federal or state law.
7. Respondent shall utilize the same procedures as set forth above to pay any stipulated penalty(ies) that becomes due pursuant to the provisions set forth above. EPA in its sole discretion may reduce or eliminate any stipulated penalty(ies) otherwise due.
8. Complainant shall mail to Respondent (to the representatives designated in Paragraph 9, below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk.
9. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

John Gorman, Chief  
Pesticides and Toxic Substances Branch  
US Environmental Protection Agency 2  
2890 Woodbridge Avenue (MS-105) or

Edison, New Jersey 08837

and

Karen L. Taylor, Assistant Regional Counsel  
Office of Regional Counsel  
US Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:

Steven Chang, Chief Executive Officer  
Fabco Industries Inc.  
66 Central Ave.  
Farmingdale, NY 11735

10. Full payment of the penalty described in paragraph 4, above, shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the complaint issued in this matter. Full payment of this penalty shall not preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
11. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder or with any applicable federal, state, or local rules, regulations, and laws. Nothing in this document is intended nor shall be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.
12. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.

13. This Consent Agreement and any provision herein shall not be construed as an admission of any fact or of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.
14. Respondent waives its right to request a hearing on this Consent Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within these documents.
15. The signatory for the Respondent certifies that: (a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and (b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.
16. Each party hereto shall bear its own costs and fees in this matter.
17. Pursuant to 40 C.F.R. § 22.31(b), the Effective Date of the Consent Agreement and Final Order herein shall be the date when the Final Order is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.



**In the Matter of Fabco Industries Inc.,**  
**Docket No. FIFRA-02-2016-5202**

RESPONDENT: **FABCO INDUSTRIES INC.**

BY: John E Markoe  
Authorizing Signature

NAME: John E Markoe  
(PLEASE PRINT)

TITLE: Secretary / VP sales

DATE: 3/16/17

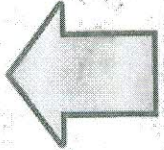
COMPLAINANT: **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

Kathleen Anderson

Kathleen Anderson, Acting Director  
Environmental Protection Agency - Region 2  
Division of Enforcement and Compliance Assistance U.S.  
290 Broadway  
New York, New York 10007-1866

**MAR 29 2017**

DATE: \_\_\_\_\_



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**In the Matter of Fabco Industries Inc.,**  
**Docket No. FIFRA-02-2016-5202**

**FINAL ORDER**

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated by reference herein, and issued pursuant to FIFRA Section 14(a)(1), as an Order, effective immediately upon filing with the Regional Hearing Clerk of EPA, Region 2.

*Helen S. Ferrara*

Helen S. Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: March 29, 2017

**In the Matter of Fabco Industries Inc.,**  
**Docket No. FIFRA-02-2016-5202**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy  
By Hand:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Cristen S. Rose, Esq.  
Attorney at Law  
4800 Hampden Lane, 6th Floor  
Bethesda, MD 20814

Dated: March 30, 2017

March 30, 2017

