

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

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In the Matter of :
Lanco Manufacturing Corporation, :
Respondent. :
Proceeding under The Federal :
Insecticide, Fungicide and :
Rodenticide Act, as amended. :
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CONSENT AGREEMENT AND
FINAL ORDER

Docket No.
FIFRA-02-2009-5302

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 SEP 30 A 8:52
REGIONAL HEARING
CLERK

This administrative proceeding for the assessment of a civil penalty was commenced pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) ("FIFRA" or the "Act"). On September 25, 2009, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA" or "Agency"), Region 2, issued a Complaint and Notice of Opportunity for Hearing, bearing docket number FIFRA-02-2009-5302, to Respondent, Lanco Manufacturing Corporation. The Complaint alleged various instances of Respondent having distributed and/or sold pesticides (two types of latex enamel paint) without having previously registered them with EPA. The Complaint seeks a penalty of \$149,500. On or about January 11, 2010, Respondent served its answer. In it, Respondent admitted some predicate allegations but denied the material ones that go to the question of liability. Respondent also challenged the proposed penalty as "excessive and unwarranted, based on the facts and circumstances alleged in this case[.]" asserted that the claims made on the products' labels met the "treated article exemption" under FIFRA guidelines and requested a hearing on both the issue of liability and the proposed penalty assessment.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims against Respondent without further litigation. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b). No admissions have been made by Respondent, and no formal findings of fact or conclusions of law have been made. For the purposes of this CA/FO and for purposes of implementing the settlement set forth herein, Respondent neither admits nor denies the EPA Findings of Fact or the EPA Conclusions of Law that have been set forth below.

EPA FINDINGS OF FACT

1. Respondent is Lanco Manufacturing Corporation, a for-profit corporation organized, and existing since 1974, under the laws of the Commonwealth of Puerto Rico.

2. Respondent, maintaining its headquarters at Urb. Aponte No. 5, San Lorenzo, Puerto Rico 00754, is engaged in the commercial manufacture, distribution and sale of adhesives and paints, paint additives, lacquers, enamels and allied products, including architectural coatings, wood finishes, industrial adhesives and sealants.

3. On October 9, 2008, an employee of EPA conducted an inspection at the retail establishment Home Depot located at 1-2 Dunoe Road 4000, St. Thomas, United States Virgin Islands 00802 (hereinafter the "October inspection") pursuant to Section 9(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1).

4. On at least 12 separate occasions from January to July 2008, Respondent distributed and/or sold a product commercially identified as Lanco Master Gloss Latex Enamel (hereinafter "LMGLE") to various Home Depot retail establishments in Puerto Rico and St. Thomas, the United States Virgin Islands, and such LMGLE products were subsequently made available for sale to the public.

5. Respondent intended that the LMGLE product be used for preventing, destroying, repelling or mitigating pests, viz. mildew (which is a type of fungus), having claimed, stated or implied (*inter alia*, through the label on the containers holding LMGLE) that LMGLE can or should be used as a pesticide.¹

6. On at least 11 separate occasions from January to October 2008, Respondent distributed and/or sold a product commercially identified as Lanco Eterna Gloss Latex Enamel (hereinafter "LEGLE") to various Home Depot retail establishments in Puerto Rico and St. Thomas, the United States Virgin Islands, and such LEGLE products were subsequently made available for sale to the public.

7. Respondent intended that the LEGLE product be used for preventing, destroying, repelling or mitigating pests, viz. fungus, having claimed, stated or implied (*inter alia*, through the label on the containers holding LEGLE) that LEGLE can or should be used as a pesticide.

8. Each of LMGLE and LEGLE constitutes a pesticide

¹ Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), a pesticide includes, *inter alia*, "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest" (the term "pest" further defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and in 40 C.F.R. § 152.5). Subsequent references to the term "pesticide" are as so defined.

9. At no time from January through July 2008 (or any time prior to that period) had Respondent registered LMGLE with the EPA.

10. At no time from January through October 2008 (or any time prior to that period) had Respondent registered LEGLE with the EPA.

EPA CONCLUSIONS OF LAW

1. Since its formation in 1974, Respondent has been, and continues to be, a "person" (as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s)).

2. Respondent's facility constitutes an "establishment" (as defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd)).

3. Puerto Rico is a "state" within the meaning of Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa).

4. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, Respondent was required to register each of LMGLE and LEGLE with the EPA prior to having any such distribution or sale.

5. Respondent's having distributed and/or sold each of LMGLE and LEGLE without having previously registered either with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes a separate and distinct:

a. unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and

b. prohibited act pursuant to and under 40 C.F.R. § 152.15.

AGREEMENT ON CONSENT

Based upon the foregoing, and pursuant to Section 14(a) FIFRA, as amended, 7 U.S.C. § 136l(a), and 40 C.F.R. § 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. Part 22," it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, 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, Respondent: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the non-jurisdictional allegations of the Complaint; (c) neither admits nor denies the "EPA Findings of Fact" or "EPA Conclusions of Law" as set forth in this document; (d) consents to the assessment of the civil penalty as set forth below; (e) consents to the issuance of the Final Order accompanying this Consent Agreement; and (f) waives its right to seek and obtain judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed CA/FO shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2.

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty to EPA in the amount of **SIXTY THOUSAND (\$60,000.00) DOLLARS**, to be paid in three (3) installments as follows:

a) The first installment of TWENTY THOUSAND (\$ 20,000.00) DOLLARS is to be received within sixty (60) days² of the date the Regional Administrator of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (such date when this first installment payment is due henceforth referred to as the "due date");

b) The second installment of TWENTY THOUSAND (\$ 20,000.00) DOLLARS is to be received within one hundred fifty (150) days after the due date; and

c) The third installment of TWENTY THOUSAND (\$ 20,000.00) DOLLARS is to be received three hundred (300) days after the due date.

Payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier's check, certified check or by electronic fund transfer (EFT). If payment is made by cashier's check or by certified check, each such check shall be made payable to the "**Treasurer, United States of America,**" and shall be identified with a notation thereon listing the following: ***In re Lanco Manufacturing Corporation, Docket Number FIFRA-02-2009-5302.*** If payment is made by either form of check, each such payment shall be mailed to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Alternatively, if Respondent chooses to make payment by EFT, Respondent shall then provide the following information to its remitter bank each time payment in accordance with subparagraphs "a," "b" and "c" of this paragraph, above, is made:

a. Amount of Payment

b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York**

² For purposes of this CA/FO, days shall mean calendar days.

10045

c. Account Code for Federal Reserve Bank of New York receiving payment:
68010727

d. Federal Reserve Bank of New York ABA routing number: **021030004**

e. Field Tag 4200 of the Fedwire message should read: **D 68010727**
Environmental Protection Agency

f. Name of Respondent: **Lanco Manufacturing Corporation**

g. Case docket number: **FIFRA-02-2009-5302**

2. Payment instructions:

a. Payment shall be in accordance with the instructions set forth in paragraph 1 of this section, above. If Respondent makes the payments by cashier's check or certified check, then each such check shall be *received* at the above-listed address on or before the date specified. If Respondent makes the payments by the EFT method, then each EFT shall be *received* on or before the date specified.

b. Whether Respondent makes a payment by cashier's check, certified check or by the EFT method, Respondent shall promptly after each installment payment has been made furnish reasonable proof that each required payment has been made, and each such proof shall be furnished to both:

Lee A. Spielmann
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

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

c. Failure to pay the specified amounts in full within the time periods set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

d. Furthermore, if each required payment is not received on or before the date when it is made due under the terms of this document, interest therefor 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 payment was to have been made through the date payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date (each) payment was to have been received, in which payment of the amount remains in arrears. 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) days of the date for which (each) payment was required hereto to have been made.

3. The civil penalty provided for in this section constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

4. By entering this Consent Agreement, Respondent hereby certifies to the best of the knowledge of the responsible official of Respondent that is in compliance with applicable FIFRA statutory and regulatory requirements with respect to any pesticide that it distributes and sells, offers for sale, holds for sale, holds for distribution and/or holds for shipment, and shall maintain such compliance.

5. Complainant shall mail to Respondent (to the representative designated 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 of EPA, Region 2:

Jose A. Cepeda-Rodriguez, Esq.
Law Offices of Jose A. Cepeda-Rodriguez
Suite 906, The Hato Rey Center
268 Ponce de Leon Avenue
Hato Rey, Puerto Rico 00918-2004

6. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement and consents to making full payment of the civil penalty in accordance with the terms and schedule set forth above.

7. 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 federal, state and local law and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit.

8. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty in accordance with the terms and conditions set forth herein) the administrative claims alleged in the Complaint bearing docket number FIFRA-02-2009-5302. Notwithstanding the above, nothing herein shall affect the right of the EPA or the United States to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation of law arising from or otherwise resulting from

Respondent distributing, selling, offering for sale, holding for sale, distribution or shipment of any pesticide.

9. Respondent hereby waives its right to seek or to obtain any hearing on the allegations made in the Complaint, and on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or on the EPA Findings of Fact or EPA Conclusions of Law, above.

10. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

11. Respondent voluntarily waives any right or remedy it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

12. Each party shall bear its own costs and fees in connection with this proceeding.

13. The undersigned signatory for Respondent hereto certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind Respondent (including any successors) to comply with and abide by all the terms and conditions of this Consent Agreement.

In re Lanco Manufacturing Corporation
Docket Number FIFRA-02-2009-5302

RESPONDENT:

BY: _____



NAME: _____

SERGIO BLANCO

[PRINT]

TITLE: _____

Vice President

DATE: _____

9/20/10

COMPLAINANT:

Dofe LaPosta, Director
Division of Enforcement and Compliance
Assistance
U.S. Environmental Protection Agency -
Region 2

DATE: _____

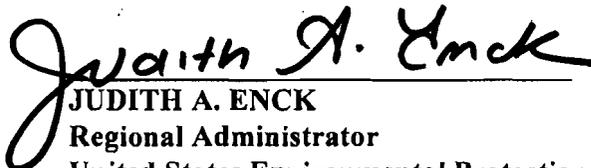
SEPTEMBER 22, 2010

In re Lanco Manufacturing Corporation
Docket Number FIFRA-02-2009-5302

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Lanco Manufacturing Corporation*, bearing Docket Number FIFRA-02-2009-5302. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b) (3).

DATED: Sept. 24, 2010
New York, New York


JUDITH A. ENCK
Regional Administrator
United States Environmental Protection Agency –
Region 2