



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837

SEP 24 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGIONAL
2009 SEP 25 PM 3:40
REGIONAL HEARINGS
CLERK

Enrique Blanco, President
Lanco Manufacturing Corporation
Urb. Aponte No. 5
San Lorenzo, PR 00754

Re: In the Matter of Lanco Manufacturing Corporation
Docket No. FIFRA-02-2009-5302

Dear Mr. Blanco:

Enclosed please find an administrative complaint alleging violations of the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (FIFRA).

The United States Environmental Protection Agency (EPA) has records which indicate that your company distributed unregistered pesticides in violation of Section 12(a)(1) of FIFRA, 7 U.S.C. § 136j(a)(1). Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides, in part, that "it shall be unlawful for any person in any State to distribute or sell to any person" a "pesticide" (as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3) that has not been previously registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

The Complaint alleges that on twenty-three (23) separate occasions Lanco Manufacturing Corporation sold or distributed to various retail outlets in Puerto Rico and/or the U.S. Virgin Islands two unregistered pesticides that it manufactured, Lanco Master Gloss Latex Enamel and Lanco Eterna Gloss Latex Enamel. The Complaint seeks a civil penalty of **one hundred forty nine thousand five hundred (\$149,500) dollars**.

EPA would like to resolve this matter in an equitable and mutually agreeable manner. As outlined in the Complaint, the Agency encourages the use of an informal conference to provide an opportunity for settlement discussions. If you wish to request an informal settlement or if you have any questions regarding this Complaint, please contact the EPA Assistant Regional Counsel listed below:

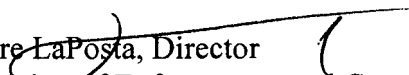
Lee A. Spielmann
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3222

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within *thirty (30)* days of your receipt of the Complaint to the Regional Hearing Clerk of EPA, Region 2, whose address is:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and a judgment granting the entire proposed penalty may then be entered.

Sincerely yours,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

-----X	:	
In the Matter of	:	<u>COMPLAINT AND NOTICE OF</u>
	:	<u>OPPORTUNITY FOR HEARING</u>
Lanco Manufacturing Corporation,	:	
	:	
Respondent.	:	
	:	Docket No.
Proceeding under The Federal	:	<u>FIFRA-02-2009-5302</u>
Insecticide, Fungicide and	:	
Rodenticide Act, as amended.	:	
-----X	:	

COMPLAINT

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 SEP 25 PM 3:40
REGIONAL HEARING
CLERK

Complainant, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), by and through her attorneys, hereby alleges as and for her Complaint against Respondent:

Jurisdiction

1. This is an administrative proceeding pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a)(1), to assess a civil penalty against Respondent for having committed acts made unlawful under the provisions of Section 12(a)(1) of FIFRA, 7 U.S.C. § 136j(a)(1) .

2. This tribunal has been vested with jurisdiction over this proceeding pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. § 22.1(a)(1).

Statutory and Regulatory Definitions

3. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), "to distribute or sell" is defined to mean "to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver."¹

¹ Unless specifically stated otherwise, terms or phrases defined by reference to specified statutory and/or regulatory definitions are subsequently used in this Complaint as so defined.

4. Pursuant to 40 C.F.R. § 152.3, to “[d]istribute or sell” is defined to “mean[] the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

5. 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).

6. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and 40 C.F.R. § 152.5, the term “pest” includes, *inter alia*:

- a) a rodent, an insect, other arthropod, nematode or mollusk (excluding any internal parasite of living humans or other living animals); and
- b) bacteria, viruses or fungus (except for those bacteria, virus or other micro-organisms on or in living humans and other living animals).

7. Under 40 C.F.R. § 152.15, a substance is considered to be intended for a pesticidal purpose, and thus is deemed to be a pesticide requiring registration under Section 3 of FIFRA, 7 U.S.C. § 136a, if the person who sells or distributes said substance, *inter alia*:

- a) claims, states or implies (whether through the use of a label used in connection with such substance or otherwise) that it (either by itself or in combination with any other substance) can or should be used as a pesticide, or
- b) has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

Unlawful and Prohibited Acts

8. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides, in part, that “it shall be unlawful for any person in any State to distribute or sell to any person” a “pesticide” (as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3) that has not been previously registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

9. Pursuant to 40 C.F.R. § 152.15, “[n]o person may distribute or sell any pesticide product [defined in 40 C.F.R. § 152.3] that is not registered under [FIFRA]....”

10. Any distribution or sale of a pesticide that has not previously been registered under Section 3 of FIFRA, 7 U.S.C. § 136a, is made unlawful by (*i.e.* constitutes a prohibited act

under) Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and thus constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

11. Any distribution or sale of a pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes a prohibited act under 40 C.F.R. § 152.15 and thus constitutes a violation of 40 C.F.R. § 152.15.

12. A violation of 40 C.F.R. § 152.15 constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

13. A violation of each of the following constitutes a violation of a provision of subchapter II of FIFRA, 7 U.S.C. §§ 136 -136y:

a. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and/or

b. 40 C.F.R. § 152.15.

Authority to Assess Penalty

14. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides, in part, that “[a]ny... wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter [subchapter II of FIFRA, 7 U.S.C. §§ 136 - 136y] may be assessed a civil penalty by the Administrator [of EPA] of not more than \$5,000 for each offense.”

15. Complainant, the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2, has been duly delegated the authority to institute this proceeding on behalf of the Administrator of the EPA.

16. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), to \$6,500 for any violation occurring after March 15, 2004 and before January 12, 2009.

17. Section 14(a)(3) of FIFRA, 7 U.S.C. 136l(a)(3), provides that “[n]o civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged.”

18. This “COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING” (“Complaint”) constitutes the aforementioned (§ 17, above) notice.

Respondent's Identity and Operations

19. Respondent is Lanco Manufacturing Corporation.

20. Respondent is a corporation organized, and existing since 1974, under the laws of the Commonwealth of Puerto Rico.

21. 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)).

22. Respondent maintains its headquarters at Urb. Aponte No. 5, San Lorenzo, Puerto Rico 00754.

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

24. Respondent is engaged in the commercial manufacture of adhesives and paints, lacquers, enamels and allied products, specializing in paints or paint additives, and its product line encompasses a wide array of applications, including architectural coatings, wood finishes, industrial adhesives and sealants.

25. Respondent commercially distributes or sells the aforementioned (¶ 24, above) paints and other products.

26. 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").

27. The October inspection was conducted for the purposes of enforcing the provisions of Subchapter II of FIFRA, 7 U.S.C. §§ 136-136y.

COUNT 1: Lanco Master Gloss Latex Enamel

28. Complainant repeats and realleges each of paragraphs 1 through 27, above, as if fully set forth below.

29. Respondent has manufactured (and continues to do so) a product commercially identified as Lanco Master Gloss Latex Enamel (hereinafter "LMGLE").

30. On or about each of the following dates, Respondent distributed and/or sold LMGLE to various Home Depot retail establishments either in Puerto Rico or in St. Thomas, the United

States Virgin Islands:

- a) January 15, 2008;
- b) January 22, 2008;
- c) February 5, 2008;
- d) February 6, 2008;
- e) March 18, 2008;
- f) April 8, 2008;
- g) April 15, 2008;
- h) April 29, 2008;
- i) May 14, 2008;
- j) May 27, 2008;
- k) June 17, 2008; and
- l) July 16, 2008.

31. Subsequent to each of the dates of the aforementioned (¶ 30, above) sales, the LMGLE product was made available for sale to the public.

32. Respondent intended that the LMGLE product be used for preventing, destroying, repelling or mitigating pests, *viz.* mildew (which is a type of fungus).

33. Respondent claimed, stated or implied (*inter alia*, through the label on the containers holding LMGLE) that LMGLE can or should be used as a pesticide.

34. The aforementioned (¶ 33, above) claims, express statements or implied assertions included that LMGLE:

- a) was "MILDEW RESISTANT"; and
- b) "CONTAINS AGENTS WHICH INHIBIT THE GROWTH OF MILDEW ON THE SURFACE OF THIS PAINT FILM."

35. LMGLE constitutes a pesticide.

36. Pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, Respondent was required to register LMGLE with the EPA.

37. Respondent had not registered LMGLE with the EPA at any time prior to any of the aforementioned (¶ 30, above) dates.

38. Each aforementioned (¶ 30, above) distribution or sale of LMGLE constituted a distribution or sale of an unregistered pesticide.

39. Each (¶ 30, above) distribution or sale of LMGLE without having registered LMGLE with the EPA pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes:

- a. an unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and
- b. a prohibited act pursuant to and under 40 C.F.R. § 152.15.

COUNT 2: Lanco Eterna Gloss Latex Enamel

40. Complainant repeats and realleges each of paragraphs 1 through 27, above, as if fully set forth below.

41. Respondent has manufactured (and continues to do so) a product commercially identified as Lanco Eterna Gloss Latex Enamel (hereinafter “LEGLE”).

42. On or about each of the following dates, Respondent distributed and/or sold LEGLE to various Home Depot retail establishments either in Puerto Rico or in St. Thomas, the United States Virgin Islands:

- a) January 15, 2008;
- b) March 18, 2008;
- c) May 20, 2008;
- d) June 4, 2008;
- e) June 17, 2008;
- f) June 18, 2008;
- g) July 15, 2008;
- h) July 16, 2008;
- i) August 6, 2008;
- j) September 23, 2008; and
- k) October 14, 2008.

43. Subsequent to each of the dates of the aforementioned (¶ 42, above) sales, the LEGLE product was made available for sale to the public.

44. Respondent intended that the LEGLE product be used for preventing, destroying, repelling or mitigating pests, *viz.* fungus.

45. Respondent claimed, stated or implied (*inter alia*, through the label on the containers holding LEGLE) that LMGLE can or should be used as a pesticide.

46. The aforementioned (¶ 45, above) claims, express statements or implied assertions included that LMGLE was “FUNGUS RESISTANT.”

47. LEGLE constitutes a pesticide.

48. Pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, Respondent was required to register LEGLE with the EPA.

49. Respondent had not registered LEGLE with the EPA at any time prior to any of the aforementioned (¶ 42, above) dates.

50. Each aforementioned (¶ 42, above) distribution or sale of LEGLE constituted a distribution or sale of an unregistered pesticide.

51. Each (¶ 42, above) distribution or sale of LEGLE without having registered LEGLE with the EPA pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes:

- a. an unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and
- b. a prohibited act pursuant to and under 40 C.F.R. § 152.15.

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), as amended, which authorizes the assessment of a civil penalty of up to \$6,500 for each violation of “any provision of” subchapter II of FIFRA, 7 U.S.C. §§ 136 - 136y.

For purposes of determining the amount of any penalty to be assessed, Section 14 of FIFRA requires that EPA “shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person’s ability to continue in business, and the gravity of the violation.” Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time of its filing, with specific reference to EPA’s “Enforcement Response Policy for The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA),” dated July 2, 1990 (hereinafter referred to as the “ERP”). A copy of the ERP is available upon request or may be obtained from the Internet at this address: <http://cfpub.epa.gov/compliance/resources/policies/civil/fifra/>. This guidance policy provides rational, consistent and equitable calculation methodologies for applying the

statutory penalty criteria enumerated above to particular cases.

Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalties for the violations alleged in this Complaint:

COUNT 1: ILLEGAL DISTRIBUTION OR SALE OF LMGLE:

Twelve (12) separate instances of illegal distribution or sale of an unregistered pesticide after March 15, 2004 but prior to January 12, 2009, @ \$6,500 per transaction = **\$78,000**

COUNT 2: ILLEGAL DISTRIBUTION OR SALE OF LEGLE:

Eleven (11) separate instances of illegal distribution or sale of an unregistered pesticide after March 15, 2004 but prior to January 12, 2009, @ \$6,500 per transaction = **\$71,500**

Total Proposed Gravity-Based Penalty for both counts: $\$78,000 + 71,500 = \$149,500$

Total Proposed Penalty: \$149,500

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), codified at 40 C.F.R. Part 22, entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS." A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with Section 14(a)(3) of FIFRA, 7 U.S.C. § 136l(a)(3), and 40 C.F.R. § 22.35(b). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the EPA's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)] pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the EAB, Respondent must do so "within 30 days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by "first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the FIFRA and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA Assistant Regional Counsel listed below:

Lee A. Spielmann
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3222

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable FIFRA statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

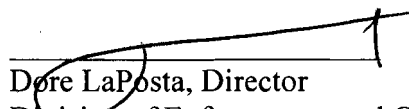
Instead of filing an Answer, Respondent may resolve this proceeding by paying the specific penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk, Region 2 (at the New York address noted above). 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "**Treasurer, United States of America,**" in the full amount of the penalty assessed in this Complaint to the following addressee:

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

The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified previously.

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable FIFRA statutory and regulatory requirements, and to maintain such compliance.

Dated: September 24, 2009
New York, New York



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

TO: Enrique Blanco, President
Lanco Manufacturing Corporation
Urb. Aponte No. 5
San Lorenzo, Puerto Rico 00754

CERTIFICATE OF SERVICE

This is to certify that on this day set forth below, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING," captioned *In the Matter of Lanco Manufacturing Corporation*, and bearing Docket Number **FIFRA-02-2009-5302** (hereinafter referred to as the "Complaint"), together with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to the addressee listed below. I also on said date hand carried the original and a copy of the Complaint to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Enrique Blanco, President
Lanco Manufacturing Corporation
Urb. Aponte No. 5
San Lorenzo, Puerto Rico 00754

Dated: SEP 25 2009
New York, New York

Smuel H. Bay