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HEARINGS CLERK  
EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. FIFRA-10-2015-0110
MARCO INDUSTRIES, INC.,	)	
D/B/A AMERICAN AGRICULTURE	)	<b>CONSENT AGREEMENT</b>
	)	
Portland, Oregon,	)	
	)	
Respondent.	)	

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Marco Industries, Inc. d/b/a American Agriculture. ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

3.1. The term “person” is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s), to mean “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.2. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.3. The term “producer” is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), to mean “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.”

3.4. The term “produce” is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), to mean “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”

3.5. The term “establishment” is defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), to mean “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.”

3.6. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for any person “who is a producer to violate any of the provisions of [Section 7 of FIFRA, 7 U.S.C. § 136e].”

3.7. Respondent is a corporation incorporated under the laws of the State of Oregon and is, therefore, a person under Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.8. Respondent is a producer as that term is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

3.9. Section 7(c) of FIFRA, 7 U.S.C. § 136, and 40 C.F.R. § 167.85, require any producer operating an establishment to annually submit to EPA by March 1 a pesticide report which shall include the following: (1) Name and address of the establishment and (2) amount of each pesticidal product produced during the past year, sold or distributed during the past year, and estimated to be produced during the current year.

3.10. According to Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and 40 C.F.R. § 167.85, the producer must submit a report for each pesticide establishment which the producer operates.

3.11. At all times relevant to this CAFO, Respondent owned and operated a facility located at 9220 Southeast Stark Street, Portland, Oregon (“Stark Street Facility”).

3.12. The Stark Street Facility is an establishment as that term is defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

3.13. Respondent failed to submit a pesticide report for calendar year 2014 by March 1, 2015 for the Stark Street Facility.

3.14. Therefore, Respondent violated FIFRA in accordance with Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

3.15. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each violation.

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA has taken into account the appropriateness of such penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$1,360.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check

or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
Smith.candace@epa.gov

Erin Williams  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-084  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
Williams.erin@epa.gov

4.7. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorney's fees in bringing or defending this action.

4.13. Respondent expressly waives any right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

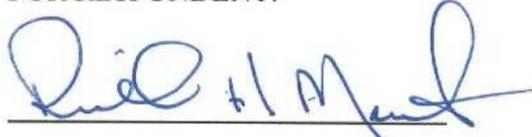
4.15. Respondent consents to the issuance of any specified compliance or corrective action order, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

5-28-15

FOR RESPONDENT:



RICHARD H. MARTIN, President  
Marco Industries, Inc.

DATED:

6/10/2015

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. FIFRA-10-2015-0110
MARCO INDUSTRIES, INC.,	)	
D/B/A AMERICAN AGRICULTURE	)	<b>FINAL ORDER</b>
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Portland, Oregon,	)	
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Respondent.	)	

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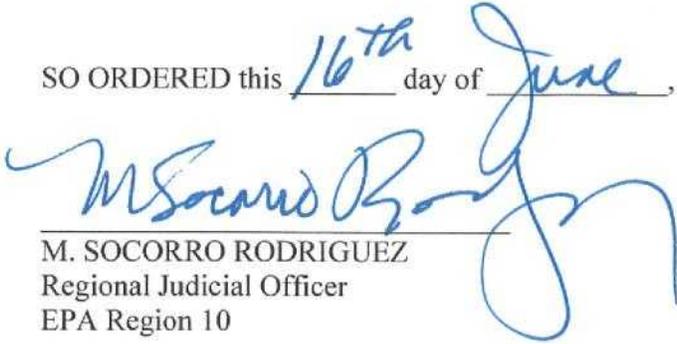
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 16<sup>th</sup> day of June, 2015.



M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Marco Industries, Inc. d/b/a American Agriculture, Docket No.: FIFRA-10-2015-0110**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Brett S. Dugan  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Richard H. Martin  
President  
Marco Industries d/b/a American Agriculture  
9220 Southeast Stark Street  
Portland, Oregon 97213

DATED this 17<sup>th</sup> day of June, 2015.



CANDACE H. SMITH  
Regional Hearing Clerk  
EPA Region 10