

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 2  
2010 JUL 20 PM 3:55  
REGIONAL HEARING  
CLERK

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In the Matter of :  
: Hon. Barbara A. Gunning,  
Lanco Manufacturing Corporation, : Presiding Officer  
: :  
Respondent. :  
: Docket No.  
Proceeding under The Federal : FIFRA-02-2009-5302  
Insecticide, Fungicide and :  
Rodenticide Act, as amended. :  
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MOTION TO EXTEND THE TIME TO COMPLY WITH LITIGATION DEADLINES

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA), through her attorney, requests this Court to extend by two months the time for the previously scheduled litigation deadlines to take effect. Respondent's counsel has orally informed the undersigned that he supports this request for such relief. For the reasons set forth below, EPA submits that good cause exists for granting this motion.

This is a case administratively prosecuted under 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 allegedly committed acts made unlawful under the provisions of Section 12(a)(1) of FIFRA, 7 U.S.C. § 136j(a)(1); more specifically the complaint alleges two counts of the distribution or sale of unregistered pesticides. The total proposed penalty is \$149,500. Respondent has denied the material allegations, disputes the proposed penalty and has requested a hearing. The January 27, 2010 prehearing order of the Court, as

amended by the order of March 29, 2010, directed the parties to serve their prehearing exchanges by April 7, 2010. Complainant submitted hers on April 6<sup>th</sup>, Respondent served its submission shortly thereafter.

The parties have already met for a settlement conference and settlement discussions have been ongoing. After protracted negotiations, the parties have recently reached a settlement for a sum certain and with regard to the core operative conditions. A settlement agreement should be drafted next week (the following week at the latest), and, after the initial round of internal Regional concurrence, the draft consent agreement is expected then to be submitted to Respondent's counsel for his review and comments. As the settlement is one for cash only (no Supplemental Environmental Project is involved), and thus appears relatively straightforward, no obstacles to effecting settlement are presently foreseen.

On May 26<sup>th</sup>, this Court issued an "Order Scheduling Hearing." This order provides that, "on or before July 30, 2010, the parties shall file a joint set of stipulated facts, exhibits, and testimony" (emphasis omitted). The order further directs that "[t]he hearing in this matter will be held at 9:30 a.m. on Tuesday, August 31, 2010, in San Juan, Puerto Rico, continuing if necessary through September 3, 2010" (emphases omitted)<sup>1</sup> (henceforth these scheduling requirements referred to as "the litigation deadlines").

In light of the recently agreed-upon settlement in principle, Complainant requests that this Court extend the time of each of the litigation deadlines for two months. Given that the parties have reached a settlement and are in agreement as to the core terms (disagreement over which precipitated the parties earlier inability to reach a settlement), Complainant seeks to have the end

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<sup>1</sup> Page 2 of the May 26<sup>th</sup> order.

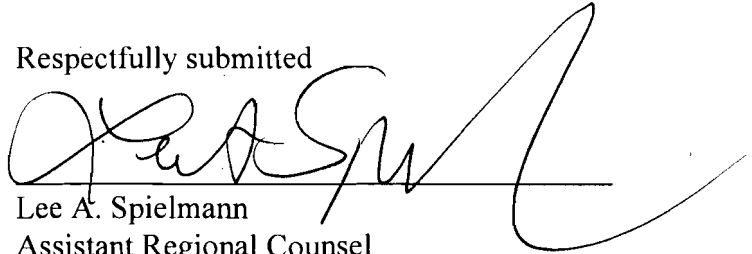
stages of the settlement process, *i.e.* the drafting of the settlement documents, the parties' review and comments thereto and the concluding executions, proceed without the parties having to concern themselves with, or devote resources and time to, the imminence of the litigation deadlines; Complainant thus seeks a two-month window for the parties to conclude their settlement in principle, during which time the parties' efforts can focus exclusively on bringing the settlement in principle to concrete fruition. Complainant submits that the circumstances demonstrate that the good cause requirement of 40 C.F.R. § 22.7(b) exists for the granting of this motion for a two-month extension. Further, that this good cause threshold condition has been satisfied (and also that Respondent will not be prejudiced by this request for additional time) is underscored because, as noted earlier, Respondent's counsel has stated he does not oppose the relief this motion seeks (and indeed affirmatively supports it). The undersigned therefore requests that this Court, in the exercise of its supervisory authority under Part 22 over this proceeding, grant the parties an additional two months of time to complete the settlement.

Therefore, EPA respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.1(c), 22.4(c)(2), 22.7(b), 22.16(a) and 22.21(c), for an order: **a)** vacating so much of the May 26<sup>th</sup> order as directed the parties to file stipulations by July 30<sup>th</sup> and to commence the hearing in the matter on August 31<sup>st</sup>; **b)** extending the deadline for the submission of the stipulations to September 30, 2010; and **c)** extending the time for the commencement of the hearing to November 1, 2010.

Dated: July 20, 2010

New York, New York

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Lee A. Spielmann', written over a horizontal line.

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***In re Lanco Manufacturing Corporation***  
**Docket No. FIFRA-02-2009-5302**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "MOTION TO EXTEND THE TIME TO COMPLY WITH LITIGATION DEADLINES," dated July 20, 2010, in the following manner to the respective addressees listed below:

Original and One Copy  
By Inter-Office Mail:

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

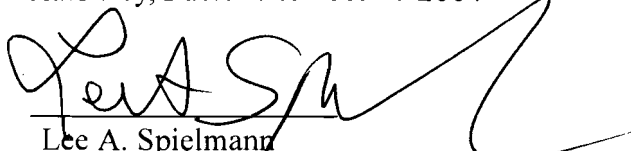
Copy by Fax Transmission,  
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Dated: July 20, 2010  
New York, New York

  
Lee A. Spielmann