

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of)	
)	
AgraCo Technologies International, LLC)	
220 S. Second Street, Rear)	
Dillsburg, Pennsylvania 17019)	Docket No.: FIFRA-03-2010-0424
)	
Respondent)	
)	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

This Consent Agreement ("CA") is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant" or "EPA") and AgraCo Technologies International, LLC ("AgraCo" or "Respondent"), pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), *as amended*, 7 U.S.C. §136f, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. This CA and the attached Final Order (collectively "CAFO"), resolve Complainant's civil penalty claims against the Respondent for violations of FIFRA, as alleged herein.

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.
3. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its rights to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this

CAFO.

7. Respondent shall bear its own costs and attorney's fees.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. In accordance with 40 C.F.R. § 22.18(b)(2) of the Consolidated Rules, Complainant adopts the following findings of fact and conclusions of law.
9. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
10. Respondent is a Pennsylvania Corporation, and is and was, at all times relevant hereto, a "person" doing business in the Commonwealth of Pennsylvania within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
11. Respondent's business is currently located at 220 S. Second Street, Rear, Dillsburg, PA 17019. However, at the time of the inspection and at all times relevant to this CA, Respondent's business was located at 151 W. Marshall St., Bldg. 3, Suite 600, Norristown, Pennsylvania 19401 ("Facility"). Respondent advertises its business as a full service provider of food technology solutions, including sale of fly traps.
12. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines "pest" to mean any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), provides that the term "pesticide" means, in part, "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest."
14. 40 C.F.R. § 152.3 provides, in pertinent part, that the term "pesticide product" means "a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold."
15. Pursuant to 40 C.F.R. § 152.15, a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise), that the substance can or should be used as a pesticide, or has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.
16. During a July 28, 2009 inspection of the Facility by representatives of the Pennsylvania Department of Agriculture ("PDA"), the PDA inspectors determined that Respondent had

sold or distributed a product with the label name "AgraCo Non-Toxic FlyTrap" on several occasions according to company invoices.

17. Advertising and marketing materials for the fly trap issued by Respondent state:

"The AgraCo Non-Toxic Flytrap is a simple yet effective way to catch and kill both male and female flies. The Flytraps come with a patented bait that attracts the flies to the trap. The trap is a container with a specifically designed top and lid. When you place water in with the fly bait in the plastic container, within a short period of time the flies will be attracted to the scent and fly into the plastic container. Because of the specially designed top, the flies cannot escape, and they eventually drown in the water. The water is the killing action; there are no toxic materials that are dangerous to children, pets, or livestock."

18. A FAQ Sheet listed on Respondent's website at the time of the inspection claimed:

"Our baits are a scent that attracts both the male and female flies. This is a major advantage because for every female fly that is killed, you are potentially killing another thousand flies that she would have produced in her lifetime."

19. The statements listed above in Paragraphs 17 - 18 are "pesticidal claims" as that term is used in 40 C.F.R. § 152.15(a).

20. The *AgraCo Non-Toxic FlyTrap* is a "pesticide" and "pesticide product" as those terms are defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.

COUNT 1

(PRODUCTION OF A PESTICIDE AT AN UNREGISTERED ESTABLISHMENT)

21. Paragraphs 1 through 20 of this CA are incorporated by reference.

22. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), "[n]o person shall produce any pesticide . . . in any State unless the establishment in which it is produced is registered with [EPA]." Pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

23. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3, define "produce," in pertinent part, to mean to manufacture, prepare, propagate, compound, or process any pesticide, or to package, repackage, label, relabel or otherwise change the container of any pesticide.

24. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3, define "producer," in pertinent part, to mean any person who produces any pesticide (including packaging, repackaging, labeling and relabeling).

25. Respondent repackaged the fly trap pesticide product at the Facility and subsequently sold and distributed such as the *AgraCo Non-Toxic Flytrap*.
26. By repackaging the foreign-produced fly trap as the *AgraCo Non-Toxic FlyTrap*, Respondent “produced,” and was a “producer” of, a pesticide, as those terms are defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3.
27. 40 C.F.R. §167.3 defines “establishment,” in pertinent part, to mean any site where a pesticide product is produced.
28. With respect to the production of the *AgraCo Non-Toxic FlyTrap*, the Facility was an establishment as that term is defined by 40 C.F.R. §167.3.
29. At all times relevant to the violations alleged herein, Respondent’s Facility was not registered with EPA as a pesticide producing establishment.
30. By producing a pesticide at an establishment not registered pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), Respondent violated that section, constituting an unlawful act under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

COUNT 2
(SALE/DISTRIBUTION OF AN UNREGISTERED PESTICIDE)

31. Paragraphs 1 through 30 of this CA are incorporated by reference.
32. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides, with exceptions not relevant to this CAFO, that no person in any State may distribute or sell to any person any pesticide that is not registered under FIFRA.
33. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides, *inter alia*, with exceptions not relevant to this CAFO, that it shall be unlawful for any person in any State to distribute or sell to (including offering to sell or distribute to) any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
34. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), provides, in pertinent part, that the term “distribute or sell” means 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.
35. On February 13, 2009, Respondent sold or distributed, with intent to export, at least two (2) boxes of the *AgraCo Non-Toxic FlyTrap*, which was packaged 75 units per box, to individuals, partnerships, associations, corporations, or organized groups of persons located in the Netherlands Antilles.

36. On February 24, 2009, Respondent sold or distributed, with intent to export, at least one (1) box of the *AgraCo Non-Toxic FlyTrap*, which was packaged 75 units per box, to persons in Canada.
37. On March 24, 2009, Respondent sold or distributed at least one (1) box of the *AgraCo Non-Toxic FlyTrap*, which was packaged in 75 units per box, to persons located in Michigan.
38. On June 25, 2009, Respondent sold or distributed at least one (1) box of the *AgraCo Non-Toxic FlyTrap*, which was packaged in 75 units per box, to persons located in Michigan.
39. On July 1, 2009, Respondent sold or distributed, with intent to export, at least thirty (30) boxes of the *AgraCo Non-Toxic FlyTrap*, which was packaged 75 units per box, to persons in Spain.
40. On July 14, 2009, Respondent sold or distributed, with intent to export, at least thirty (30) boxes of the *AgraCo Non-Toxic FlyTrap*, which was packaged 75 units per box, to persons in Malaysia.
41. On July 28, 2009, the PDA inspector took a sample of the *AgraCo Non-Toxic FlyTrap* that Respondent offered for sale, held for distribution, held for sale, held for shipment, to individuals, partnerships, associations, corporations, or organized groups of persons.
42. At no time has the *AgraCo Non-Toxic FlyTrap* been a registered pesticide under Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
43. Respondent's sales and/or distributions of the *AgraCo Non-Toxic FlyTrap* pesticidal product identified above in Paragraphs 35 - 42 on seven different occasions from February 13, 2009 to July 28, 2009 at its Facility to a person or persons were sales or distributions of an unregistered pesticide in violation of Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and therefore were unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNT 3
(SALE/DISTRIBUTION OF A MISBRANDED PESTICIDE)

44. Paragraphs 1 through 43 of this CA are incorporated by reference.
45. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is adulterated or misbranded.
46. Pursuant to Section 2(q)(2) of FIFRA, 7 U.S.C. § 136(q)(2), a pesticide is "misbranded" if

(A) *inter alia*, the label, with certain exceptions not relevant here, does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot clearly be read) which is presented or displayed under customary conditions of purchase;

* * * *

(C) there is not affixed to the pesticide container, and to the outside container or wrapper of the retail package, if there be one, through which the required information of the immediate container cannot be clearly read, a label bearing, *inter alia*, the net weight or measure of the content.

47. Labeling for the *AgraCo Non-Toxic FlyTrap* sold and/or distributed as described above did not include an ingredient statement.

48. Labeling for the *AgraCo Non-Toxic FlyTrap* sold and/or distributed as described above did not include the net weight of each inert ingredient.

49. Respondent's sales and/or distributions of the *AgraCo Non-Toxic FlyTrap* pesticidal product identified above in Paragraphs 37, 38, and 41, on three different occasions, were sales or distributions of a misbranded pesticide, and therefore were unlawful acts under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNT 4

SALE/DISTRIBUTION (EXPORT) OF A MISBRANDED PESTICIDE

50. Paragraphs 1 through 49 of this CA are incorporated by reference.

51. Pursuant to Section 2(q)(1)(H) of FIFRA, 7 U.S.C. § 136(q)(1)(H), a pesticide is "misbranded" if

in the case of a pesticide not registered in accordance with section 136a of this title and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the following: "Not Registered for Use in the United States of America."

52. Labeling for the *AgraCo Non-Toxic FlyTrap* that was exported to the Netherlands Antilles as described in Paragraph 35, above, did not include the words, "Not Registered for Use in the United States of America."

53. Labeling for the *AgraCo Non-Toxic FlyTrap* that was exported to Canada as described in

Paragraph 36, above, did not include the words, "Not Registered for Use in the United States of America."

54. Labeling for the *AgraCo Non-Toxic FlyTrap* that was exported to Spain as described in Paragraph 39, above, did not include the words, "Not Registered for Use in the United States of America."

55. Labeling for the *AgraCo Non-Toxic FlyTrap* that was exported to Malaysia as described in Paragraph 40, above, did not include the words, "Not Registered for Use in the United States of America."

56. Respondent's sales and/or distributions of the *AgraCo Non-Toxic FlyTrap* pesticidal product identified above in Paragraphs 35, 36, 39, and 40 on four different occasions were sales or distributions of a misbranded pesticide intended for export, and therefore were unlawful acts under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

CIVIL PENALTY

57. In settlement of the above-captioned action, Respondent consents to the assessment of a civil penalty of **Two Hundred Fifty Dollars (\$250.00)**, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of the CAFO is mailed or hand-delivered to Respondent.

58. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including but not limited to, the statutory factors set forth in Section 14(a)(4) of FIFRA, 42 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on the Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *FIFRA Enforcement Response Policy*, dated December 2009 ("*ERP*").

59. Respondent shall remit payment of the civil penalty, pursuant to Paragraph 57, above, by either cashier's check, or certified check, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **FIFRA-03-2010-0424** ;
- b. All checks shall be made payable to "**United States Treasury**";
- c. All payments made by check and sent by regular mail shall be addressed and

mailed to:

U.S. EPA - Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Eric Volck, 513-487-2105

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. EPA - Fines and Penalties
U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

60. Respondent may also pay the amount described in Paragraph 57, above, electronically or on-line as follows:

- a. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
Tax id. No. = 52-0852695
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Environmental Protection Agency, Account No. 310006
Tax Id. No. 52-0852695
CTX Format Transaction Code 22 - checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: John Schmid 202-874-7126 or
REX 1-866-234-5681

c. On-Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

d. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029, and

Donzetta Thomas (3RC30)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

61 Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified in this CA and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

62 Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

63. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

64. A late payment penalty charge of 6 percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

CERTIFICATION

65. Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. § 136 et seq.

OTHER APPLICABLE LAWS

66. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

RESERVATION OF RIGHTS

67. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA alleged in this CA. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated there under, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

FULL AND FINAL SATISFACTION

68. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 136(a), for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws

and regulations administered by EPA.

PARTIES BOUND

69. This CAFO shall apply to and be binding upon EPA, Respondent, and the successors and assigns of Respondent. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CA and bind Respondent hereto.

EFFECTIVE DATE

70. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

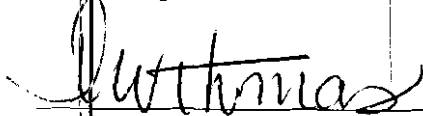
71. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

For Respondent:



by: Ken Potter, Managing Director
AgraCo Technologies International, LLC

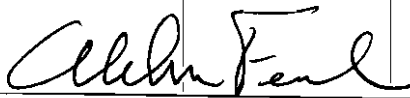
For Complainant:



by: Donzetta Thomas, Sr. Ass't Regional Counsel
U.S. Environmental Protection Agency, Region III

After reviewing the foregoing CA and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

9/30/10
Date

By: 
Abraham Ferdas, Director
Land and Chemicals Division,
U.S. EPA, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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FINAL ORDER

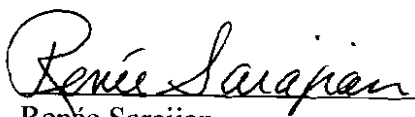
The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and AgraCo Technologies International, LLC ("AgraCo") have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C. § 136(a), and based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136(a)(4), AgraCo is hereby ordered to pay a civil penalty of Two Hundred Fifty Dollars (\$250.00) as set forth in the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date

9/30/10



Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of)
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220 S. Second Street, Rear)
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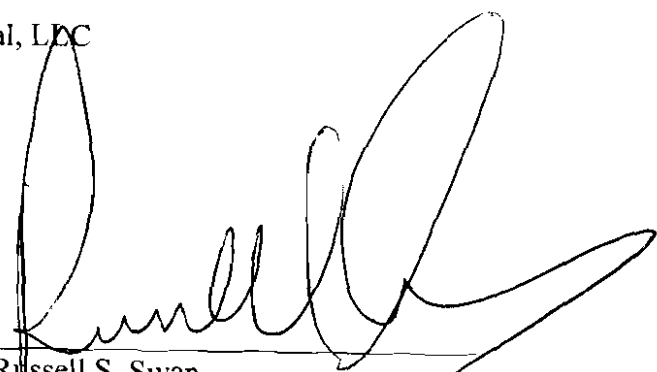
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the date provided below, the original and one true and correct copy of the foregoing Consent Agreement and Final Order were hand-delivered to and filed with the Regional Hearing Clerk (3RC30), U.S. EPA - Region III, 1650 Arch Street, Philadelphia, PA, and that a true and correct copy was served via regular U.S. mail to:

Mr. Ken Potter
c/o AgraCo Technologies International, LLC
220 South Second Street, Rear
Dillsburg, PA 17019

Date:

9/30/10



Russell S. Swan
Assistant Regional Counsel
U.S. EPA - Region III