



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JAN 18 2007

REPLY TO THE ATTENTION OF:  
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0198 4517

A.H.J. Rajamannan, President  
Agro-K Corporation  
8030 Main St. NE  
Minneapolis, MN 55432

Consent Agreement and Final Order, Docket No. *FIFRA-05-2007-0015*

Dear Mr. Rajamannan:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on January 18, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$39,680 is to be paid in the manner prescribed in paragraphs 52, 53 and 54. Please be certain that the number **BD** 2750745P017 and the docket number are written on both the transmittal letter and on the check. Payment is due by February 20, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Terry Bonace  
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Nidhi K. O'Meara, ORC/C-14J (w/Encl.)  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**Agro-K Corporation  
8030 Main Street, NE  
Minneapolis, MN 55432**

**Respondent.**

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) **Docket No.** *FIFRA-05-2007-0075*  
)  
) **Proceeding to Assess a Civil Penalty**  
) **Under Section 14(a) of the Federal**  
) **Insecticide, Fungicide, and Rodenticide**  
) **Act, 7 U.S.C. § 136l(a)**

2007 JUN 10 PM 3:19  
REGIONAL CLERK  
*[Signature]*

**Consent Agreement and Final Order Commencing and Concluding a Proceeding**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2005).

2. Complainant, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (EPA), Region 5, brings this administrative action seeking a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

3. Respondent is Agro-K Corporation (Agro-K), a corporation organized under the laws of the State of Minnesota with a place of business located at 8030 Main Street, NE, Minneapolis, Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b) (2005).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty and agrees to comply with the terms of the CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Agro-K admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Agro-K waives any right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. §152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act, except in certain circumstances which are not relevant to this case.

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3.

11. 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.

40 C.F.R. § 152.15(a)(1)

12. 40 C.F.R. § 168.22(a) states: “FIFRA Sections 12(a)(1)(A) and (B) make it unlawful for any person to ‘offer for sale’ any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA Section 3. EPA interprets these provisions as extending to advertisements on any advertising medium to which pesticide users or the general public have access.”

13. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s) “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

14. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

15. The term “pests” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and further defined in 40 C.F.R. § 152.5(c) as “any insect, rodent, nematode, fungus, weed,…”

16. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

17. Section 14(a) of FIFRA, 7 U.S.C. §136l(a), authorizes the Administrator to assess a civil penalty of up to \$5,500 for each violation of FIFRA that occurred from January 31, 1997 to March 15, 2004, and a civil penalty of up to \$6,500 for each violation of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

### **Factual Allegations**

18. Respondent is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

19. On May 18, 2006, inspectors employed by the Minnesota Department of Agriculture conducted an inspection under FIFRA at Respondent's establishment to inspect and collect samples of any pesticides packaged, labeled, and released for shipment by Respondent and collect samples of any containers or labeling for such pesticides as authorized under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g.

20. During the May 18, 2006 inspection, the inspectors collected samples of labels, literature and bills of lading for shipment of **Vigor-Cal<sup>TM</sup>** and **Vigor-Cal-Phos<sup>TM</sup>** (also referred to as **VCP<sup>TM</sup>** in Respondent's literature and website), which were offered for sale by Respondent.

### **Vigor-Cal<sup>TM</sup>**

21. Respondent's literature that was obtained by the inspector on May 18, 2006, for **Vigor-Cal<sup>TM</sup>** made claims, stated, or implied that the **Vigor-Cal<sup>TM</sup>** can or should be used as a pesticide.

22. At or around the time of the inspection, Respondent's Internet site at [www.agro-k.com](http://www.agro-k.com) also made claims, stated, or implied that **Vigor-Cal<sup>TM</sup>** can or should be used as a pesticide.

23. Respondent's literature obtained at the May 18, 2006 inspection claims, states or implies that **Vigor-Cal<sup>TM</sup>** is a pesticide.

24. Respondent's Internet site at [www.agro-k.com](http://www.agro-k.com) claimed, stated or implied that **Vigor-Cal<sup>TM</sup>** is a pesticide.

25. **Vigor-Cal<sup>TM</sup>** is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. **Vigor-Cal<sup>TM</sup>** is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

27. On or about April 28, 2006, Respondent distributed or sold **Vigor-Cal<sup>TM</sup>** to a company located in Napa, California.

28. On or about May 1, 2006, Respondent distributed or sold **Vigor-Cal<sup>TM</sup>** to a company located in Pasco, Washington.

**Vigor-Cal-Phos<sup>TM</sup>**

29. Respondent's literature, that was obtained by the inspector on May 18, 2006 for **Vigor-Cal-Phos<sup>TM</sup>** (also referred to as **VCP<sup>TM</sup>**), made claims, stated, or implied that the **Vigor-Cal-Phos<sup>TM</sup>** can or should be used as a pesticide.

30. At or around the time of the inspection, Respondent's Internet site at [www.agro-k.com](http://www.agro-k.com) also made claims, stated, or implied that **Vigor-Cal-Phos™** can or should be used as a pesticide.

31. Respondent's literature obtained at the May 18, 2006 inspection claims, states or implies that **Vigor-Cal-Phos™** is a pesticide.

32. Respondent's Internet site at [www.agro-k.com](http://www.agro-k.com) claimed, stated or implied that **Vigor-Cal-Phos™** is a pesticide.

33. **Vigor-Cal-Phos™** is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

34. **Vigor-Cal-Phos™** is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

35. On or about April 13, 2006, Respondent distributed or sold **Vigor-Cal-Phos™** to a company located in Sparta, Michigan.

36. On or about April 20, 2006, Respondent distributed or sold **Vigor-Cal-Phos™** to a company located in Heron Lake, Minnesota.

37. On or about April 20, 2006, Respondent distributed or sold **Vigor-Cal-Phos™** to a company located in Manto, Michigan.

38. On or about April 26, 2006, Respondent distributed or sold **Vigor-Cal-Phos™** to a company located in Hartford, Michigan.

39. On or about May 1, 2006, Respondent distributed or sold **Vigor-Cal-Phos™** to a company located in Manto, Michigan.

40. On or about May 2, 2006, Respondent distributed or sold **Vigor-Cal-Phos™** to a company located in Pasco, Michigan.

41. On or about May 3, 2006, Respondent distributed or sold **Vigor-Cal-Phos™** to a company located in Meriden, Connecticut.

42. On or about May 3, 2006, Respondent distributed or sold **Vigor-Cal-Phos™** to a company located in Joliet, Massachusetts.

43. On or about May 12, 2006, Respondent distributed or sold **Vigor-Cal-Phos™** to a company located in Zeeland, Michigan.

44. On or about May 17, 2006, Respondent distributed or sold **Vigor-Cal-Phos™** to a company located in Zeeland, Michigan.

### **Alleged Violations**

#### **Counts 1-2**

45. Complainant incorporates by reference the allegations contained in paragraphs 1 through 44 of this Complaint.

46. Respondent distributed, offered for sale, or sold **Vigor-Cal™** on April 28, 2006 and May 1, 2006, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

47. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) on two separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a) for each separate occasion.

**Counts 3-12**

48. Complainant incorporates by reference the allegations contained in paragraphs 1 through 47 of this Complaint.

49. Respondent distributed, offered for sale, or sold **Vigor-Cal-Phos<sup>TM</sup>** on April 13, 2006, twice on April 20, 2006, on April 26, 2006, on May 1, 2006, on May 2, 2006, twice on May 3, 2006, on May 12, 2006 and on May 17, 2006, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

50. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) on ten separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a) for each separate occasion.

**Civil Penalty**

51. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriateness of the size of the penalty to the size of the business, the effect on Agro-K's ability to continue in business, and the gravity of the violation, EPA has determined that an appropriate civil penalty to settle this action is \$39,680.

52. Respondent must pay the \$39,680 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

53. Respondent must send the check to:

U.S. EPA, Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

54. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Terrence Bonace (DT-8J)  
Pesticides and Toxics Enforcement Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Nidhi K. O'Meara (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

55. This civil penalty is not deductible for federal tax purposes.

56. If Respondent does not timely pay the civil penalty, EPA may refer the matter to the Attorney General, who will recover such amount by action in the appropriate United States district court, under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5).

57. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury.

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a six percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).

#### **Final Statement**

58. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Factual Allegations and Alleged Violations sections of this CAFO.

59. This CAFO does not 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.

60. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws, and regulations.

61. Respondent certifies that it is complying fully with Section 12 (a) of FIFRA, 7 U.S.C. § 136j(a) and has removed pesticidal claims from advertising literature and its web site for **Vigor-Cal™** and **Vigor-Cal-Phos™**.

62. The terms of this CAFO bind Agro-K, and its successors, and assigns.

63. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

64. Each party agrees to bear its own costs and attorneys' fees in this action.

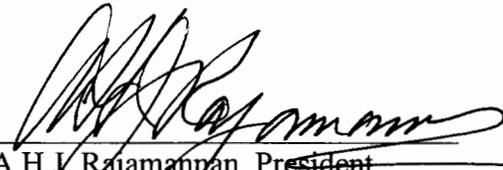
65. This CAFO constitutes the entire agreement between the parties.

**Consent Agreement and Final Order Commencing and Concluding a Proceeding  
In the Matter of: Agro-K Corporation**

Docket No. FIFRA-05-2007-0015  
*BBW*

**Agro-K Corporation, Respondent**

Dec 27<sup>th</sup> 2006  
Date

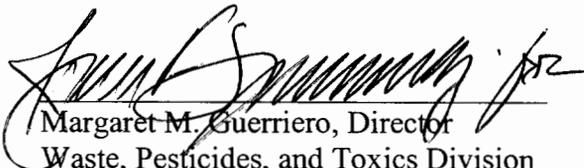
  
A.H.J. Rajamannan, President  
Agro-K Corporation

**United States Environmental Protection Agency, Complainant**

1/4/07  
Date

Tony Marty, acting for m. kleve  
Mardi Kleve, Chief  
Pesticides and Toxics Branch  
Waste, Pesticides, and Toxics Division

1/11/07  
Date

  
Margaret M. Guerriero, Director  
Waste, Pesticides, and Toxics Division

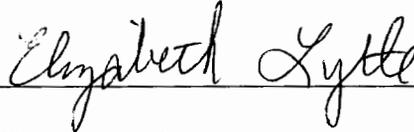
**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Agro-K Corporation, was filed on January 18, 2007 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 , and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0198 4517 , a copy of the original to the Respondents:

A.H.J. Rajamannan, President  
Agro-K Corporation  
8030 Main St. NE  
Minneapolis, MN 55432

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Nidhi K. O'Meara, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)



Elizabeth Lytle  
Pesticides and Toxics Branch  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. *FIFRA-05-2007-0015*  
*BLW*

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