



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

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Daniel P. McInerny
Bose McKinney & Evans LLP
2700 First Indiana Place
135 North Pennsylvania Street
Indianapolis, Indiana 46204

Re: AgroKey LLC, Rensselaer, Indiana - Consent Agreement and Final Order
Docket Nos. **CERCLA-05-2007-0010** **MM-05-2007-0006** **EPCRA-05-2007-0019**

Dear Mr. McInerny:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on May 4, 2007.

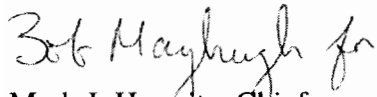
Please pay the CERCLA civil penalty in the amount of \$9,406 in the manner prescribed in paragraphs 55 and 57, and reference you check with the billing document number 2750730B012 and the docket number(s) **CERCLA-05-2007-0010** and **MM-05-2007-0006**.

Please pay the EPCRA civil penalty in the amount of \$28,217 in the manner prescribed in paragraphs 56 and 57, and reference you check with the billing document number 2750744E016 and the docket number(s) **EPCRA-05-2007-0019** and **MM-05-2007-0006**.

Your payments are due on June 4, 2007.

Please feel free to contact Ruth McNamara at (312) 353-3197 if you have any questions regarding the enclosed documents. Please direct any legal questions to Deborah Carlson, Associate Regional Counsel, at (312) 353-6121. Thank you for your assistance in resolving this matter.

Sincerely yours,



Mark J. Horwitz, Chief
Chemical Emergency Preparedness
And Prevention Section

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Deb Carlson (w/enclosure)
ORC

Ian Ewusi-Wilson (w/enclosure)
Indiana SERC

Marcy Toney
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

CERCLA-05-2007-0010

MM-05-2007-0006

EPCRA-05-2007-0019

IN THE MATTER OF:

AgroKey LLC
Rensselaer, Indiana,

Respondent.

) Docket No(s).
)
) Proceeding to Assess a Civil Penalty
) under Section 109(b) of the
) Comprehensive Environmental Response,
) Compensation, and Liability Act, and
) Section 325(b)(2) of the Emergency
) Planning and Community Right-to-Know
) Act of 1986.

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), and Sections 22.13(b) and 22.18(b)(2) and (3) of 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 (2006).

2. The Complainant is, by lawful delegation, the Branch Chief, Emergency Response Branch 1, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. Respondent is AgroKey LLC (AgroKey), a corporation doing business in Indiana.

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) (2006).

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. AgroKey admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. AgroKey waives its 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

10. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

11. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency

planning committee (LEPC) for any area likely to be affected by the release and to the state emergency planning commission (SERC) of any state likely to be affected by a release.

12. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

13. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. § 1910, subpart Z are hazardous.

14. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), the U.S. EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$32,500 per day for violations that occurred after March 15, 2004.

Factual Allegations and Violations

15. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

16. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 832 N 900 W, Rensselaer, Indiana (facility).

18. At all times relevant to this CAFO, Respondent was in charge of the facility.

19. Respondent's facility consists of a building, structure, installation, equipment, pipe, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

20. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

22. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

23. Anhydrous ammonia CAS# 7664-41-7 is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. Anhydrous ammonia CAS# 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

25. Anhydrous ammonia CAS# 7664-41-7 is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. §§ 1910, subpart Z and 1910.1000, Table Z-1.

26. Anhydrous ammonia CAS# 7664-41-7 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e).

27. At all times relevant to this CAFO, anhydrous ammonia was produced, used or stored at Respondent's facility.

28. Anhydrous ammonia CAS# 7664-41-7 is an "extremely hazardous substance" according to Section 302 of EPCRA, 42 U.S.C. § 11002(a)(2).

29. Anhydrous ammonia CAS# 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

30. On May 9, 2005, at or about 4:45 a.m. Central Time (CT) a release occurred from Respondent's facility of approximately 4,220 pounds of anhydrous ammonia (the release).

31. In a 24 hour time period, the release of 4,220 pounds exceeded the 100 pound reportable quantity for this chemical.

32. During the release, approximately 4,220 pounds of anhydrous ammonia leaked, was emitted, discharged, or escaped into the ambient air.

33. The release is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

34. The release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

35. Respondent had knowledge of the release on May 9, 2005 at approximately 4:45 a.m. CT.

36. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

37. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

38. The release was likely to affect Indiana.

39. At all times relevant to this CAFO, the Indiana State Emergency Response Commission was the state emergency response commission (SERC) for Indiana, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

40. The release was likely to affect Jasper County, Indiana.

41. At all times relevant to this CAFO, the Jasper County Local Emergency Planning Committee was the local emergency planning committee (LEPC) for Jasper County, Indiana, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

42. Respondent notified the NRC of the release on May 9, 2005 at 7:55 a.m. CT.

43. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

44. Each day Respondent failed to notify immediately the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

45. Respondent notified the Indiana SERC of the release on May 9, 2005 at 8:05 a.m. CT.

46. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

47. Each day Respondent failed to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

48. Respondent provided a written follow-up emergency notice of the release to the SERC on May 17, 2005.

49. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

50. Each day Respondent failed to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

51. Respondent provided written follow-up emergency notice to the LEPC on May 17, 2005.

52. Respondent did not provide the LEPC with written follow-up emergency notice of the release as soon as practicable after the release occurred.

53. Each day Respondent failed to provide written follow-up emergency notice to the LEPC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Civil Penalty

54. In consideration of Respondents good faith negotiations, willingness to quickly settle this matter and other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$37,623.

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$9,406 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. EPA – Region 5
ATTN: Superfund Receivables
P.O. Box 371531
Pittsburgh, PA 15251-7531

The check must note the case title of this matter: In the Matter of AgroKey, the docket numbers of the CAFO and the billing document number 2750730B012 25.

56. Within 30 days after the effective date of this CAFO, Respondent must pay a \$28,217 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note the case title of this matter: In the Matter of AgroKey, the docket numbers of the CAFO and the billing document number 2750744E016²².

57. A transmittal letter, stating the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the checks and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Ruth McNamara, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 50504-3511

Deborah Carlson, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

59. If Respondent does not timely pay the civil penalty U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

60. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will

assess a six percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO had been entered by the Regional Hearing Clerk.

General Provisions

61. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

62. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

64. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA and EPCRA Section 304.

65. The terms of this CAFO bind Respondent and its successors, and assigns.

66. 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.

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

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

**Consent Agreement and Final Order
IN THE MATTER OF:**

**AgroKey LLC, Rensselaer, Indiana
Docket Nos. CERCLA-05-2007-0010**


MM-05-2007-0006

EPCRA-05-2007-0019

SIGNATORIES

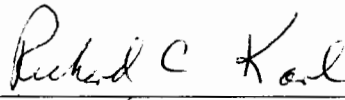
**U.S. Environmental Protection Agency
Complainant**

Date: 4/30/07

By: 

William J. Bolen, Chief
Emergency Response Branch 1
Superfund Division
U.S. EPA Region 5

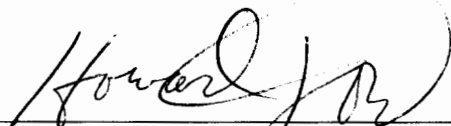
Date: 4-30-07

By: 

Richard C. Karl, Director
Superfund Division
U.S. EPA Region 5

AgroKey LLC, Respondent

Date: 4-5-07

By: 

Howard Jones, General Manager

**Consent Agreement and Final Order
IN THE MATTER OF:**

AgroKey LLC, Rensselaer, Indiana

Docket Nos. CERCLA-05-2007-0010 MM-05-2007-0006 EPCRA-05-2007-0019

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 5-8-07

By:  _____

Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency, Region 5

RECEIVED
MAY 10 2007
REGIONAL HEARING CLERK
INDIANAPOLIS, INDIANA

Certificate of Service

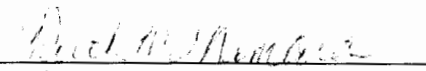
I, Ruth McNamara, certify that I hand delivered one original and one copy of the Consent Agreement and Final Order, docket numbers to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and mailed one original by first-class, postage prepaid, certified mail, return receipt requested, to Respondent and mailed a copy to Respondent's Counsel, Daniel P. McNerny, by placing them in the custody of the United States Postal Service addressed as follows:

Howard Jones
AgroKey LLC.
832 N 900 W
Rensselaer, Indiana 47978

and

Daniel P. McNerny
Bose McKinney & Evans LLP
2700 First Indiana Place
135 North Pennsylvania Street
Indianapolis, Indiana 46204

on the 9th day of May, 2007.



Ruth McNamara
U.S. Environmental Protection Agency
Region 5

**Consent Agreement and Final Order
IN THE MATTER OF:
AgroKey LLC, Rensselaer, Indiana
Docket Nos. CERCLA-05-2007-0010 MM-05-2007-0006 EPCRA-05-2007-0019**