



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
May 6, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7649 4861

Mr. Peter Tester
Ecolab, Inc.
370 Wabash St. North
St. Paul, Minnesota 55102-1390

Consent Agreement and Final Order In the Matter of
Ecolab, Inc. Docket No. FIFRA-05-2014-0013

Dear Mr. Tester:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on May 6, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$457,830 is to be paid in the manner described in paragraph 30. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by June 5, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink that reads "Terence Bonace".

for Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2014-0013
)	
Ecolab, Inc.)	Proceeding to Assess a Civil Penalty
St. Paul, Minnesota,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
<hr/>)	

Consent Agreement and Final Order

Preliminary Statement



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 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.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Ecolab, Inc., a corporation doing business in the State of 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).
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 the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

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

8. Respondent 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.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is misbranded.

11. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

12. 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.” 7 U.S.C. § 136(gg).

13. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

14. A “pest” is 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 which the Administrator of U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

15. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15,

2004, and up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

17. Respondent is a “registrant” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

18. Respondent owned or operated a place of business located at 383 North High Street, Hebron, Ohio during the calendar year 2008.

19. On June 9, 2008, an inspector employed by the Ohio Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Hebron, Ohio.

20. During the June 9, 2008 inspection, the inspector collected physical samples and shipping records for the product Oasis Pro 66 Heavy Duty Alkaline Bathroom Cleaner and Disinfectant (Oasis 66), EPA Reg. No. 1677-202, which Respondent was holding for distribution or sale.

21. Oasis 66 is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

22. The label of Respondent’s pesticide, Oasis 66, states, among other things:

DISINFECTION:

For hospital disinfection and cleaning of hard non-porous surfaces in 400 ppm hard water (as CaCO₃) in the presence of 5% blood serum and soap scum. Apply 66 Heavy Duty Alkaline Bathroom Cleaner and Disinfectant with a coarse sprayer, wet cloth, mop, sponge, brush, scrubber, or by soaking.

PREPARATION OF USE-SOLUTION:

Daily Cleaning and Disinfection: Add 4 to 8 oz of product per 1 gallon of solution.

Apply to hard, nonporous surfaces. Allow a 10-minute contact with the surface.

BACTERICIDAL:

Effective against the following pathogenic bacteria in 400 ppm hard water (as CaCO₃) in the presence of 5% blood serum and soap scum:

Pseudomonas aeruginosa - ATCC #15442

Staphylococcus aureus ATCC # 6538

23. A sample of Oasis 66, collected during the June 9, 2008 inspection, was analyzed by the Michigan Department of Agriculture Microbiology Laboratory in East Lansing, Michigan, for efficacy against the microorganisms *Pseudomonas aeruginosa* and *Staphylococcus aureus*.

24. Efficacy data results from this analysis revealed that Oasis 66 was ineffective against *Staphylococcus aureus* when tested according to the A.O.A.C. Use Dilution Test Method at a 1:32 dilution in 400 ppm hard water in the presence of 5 percent horse serum and .005% sodium stearate, for a contact time of 10 minutes at 20 degrees C.

25. Respondent completed an efficacy test on November 9, 2009 for three lots of Oasis 66 and found each lot was ineffective against *Pseudomonas aeruginosa* and *Staphylococcus aureus*, when tested according to the A.O.A.C. Use Dilution Test Method at a 1:32 dilution in 400 ppm hard water in the presence of 5 percent horse serum and .005% sodium stearate, for a contact time of 10 minutes at 20 degrees C.

26. Respondent's label is false and misleading in its claim of antimicrobial efficacy against *Pseudomonas aeruginosa* and *Staphylococcus aureus*.

27. Ecolab sold and distributed Oasis 66 on at least 259 occasions from June 9, 2008 through July 15, 2009.

28. The sale and distribution of the misbranded pesticide Oasis 66 on 259 occasions constitutes unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

29. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$457,830. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009, and Respondent's voluntary stop sale and recall.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$457,830 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

For checks sent by express mail, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

[The check must note Ecolab, Inc. and the docket number of this CAFO.]

For electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

[In the comment or description field of the electronic funds transfer, state Ecolab, Inc. and the docket number of this CAFO].

For Automated Clearinghouse (ACH) funds transfer (also known as REX or remittance express, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

[In the comment area of the electronic funds transfer, state Ecolab, Inc. and the docket number of this CAFO.]

To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields. Respondent must send a notice of payment that states Respondent’s name, complete address, and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

Joanna Glowacki (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

31. This civil penalty is not deductible for federal tax purposes.
32. If Respondent does not pay timely 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). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
33. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

34. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.
35. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
36. This CAFO does not affect Respondent's responsibility to comply with FIFRA and

other applicable federal, state and local laws.

37. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

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

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

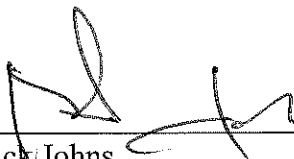
40. Each party agrees to bear its own costs and attorneys fees, in this action.

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

Ecolab, Inc., Respondent

Date

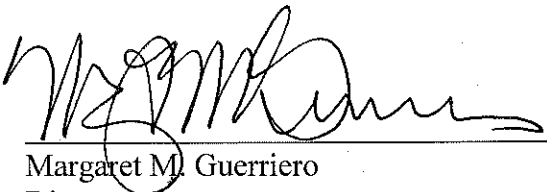
4-15-14


Rick Johns
EVP & GM Institution NA
Ecolab, Inc.

United States Environmental Protection Agency, Complainant

Date

4/28/2014


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:

Ecolab, Inc.

Docket No.

FIFRA-05-2014-0013

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. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5-2-2014

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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 Ecolab, Inc., was filed on May 6, 2014 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7649 4861, a copy of the original to the Respondent:

Mr. Peter Tester
Ecolab, Inc.
370 Wabash St. North
St. Paul, Minnesota 55102-1390

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Joanna Glowacki, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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