

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

|                    |   |                               |
|--------------------|---|-------------------------------|
| In the Matter of:  | ) | DOCKET NO. FIFRA-10-2021-0204 |
|                    | ) |                               |
| ECOLAB, INC.       | ) | <b>CONSENT AGREEMENT</b>      |
|                    | ) |                               |
| Tacoma, Washington | ) |                               |
|                    | ) |                               |
| Respondent.        | ) |                               |
|                    | ) |                               |

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**STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and EcoLab, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

**PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA,

7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

### **III. ALLEGATIONS**

#### **A. Factual Background**

3.1 Respondent is a Delaware corporation that engages, among other things, in the business of commercial pesticide applications, and operated, at all times relevant to this Consent Agreement, a facility located at 401 East Alexander Ave., Lot #1, Tacoma, Washington (the “Facility”).

3.2 On December 6, 2018, Respondent applied the restricted use pesticide Weevil-Cide, EPA registration number (“Reg. No.”) 70506-14, to 24,328,873 pounds of No. 2 Better Soft White Wheat within the hold of the vessel, M/V Vigorous.

3.3 Weevil-Cide is a registered restricted use pesticide whose active ingredient is aluminum phosphide 60%. Weevil-Cide is authorized for use as a fumigant for use on stored raw agricultural commodities, processed foods, animal feed and feed ingredients by only certified applicators or persons under their direct supervision.

3.4 On March 19, 2019, two employees of Respondent removed approximately 177.5 pounds of partially spent aluminum phosphide dust from the vessel and transported it by highway to Respondent’s Facility.

3.5 The partially spent Weevil-Cide/ aluminum phosphide dust from the M/V Vigorous was placed in two 55-gallon “dry deactivation” containers at the Facility.

3.6 On March 19, 2019, Respondent piled 10 cloth bags/socks each containing approximately 9 pounds of partially spent aluminum phosphide dust. This resulted in two separate piles of nearly 89 pounds of dust in each of two 55-gallon containers.

3.7 Respondent's two 55-gallon "dry deactivation" containers resulted in the confinement of gas vapors.

3.8 At approximately 17:09 on March 19, 2019, the Tacoma Fire Department responded to a fire incident associated with the two "dry deactivation" containers at Respondent's Facility. According to the relevant incident report, the partially spent Weevil-Cide reacted with water in the air to produce hydrogen phosphide (phosphine) gas, which ignited spontaneously when confined in the "dry deactivation" containers. The reaction of the aluminum phosphide continued to produce phosphine gas after the fire was extinguished. The materials were placed into containers for off-site disposal on March 21, 2019.

3.9 The fire and release of phosphine gas from Respondent's Facility resulted in the need to evacuate the Respondent's Facility and for workers in a nearby facility to shelter-in-place to avoid exposure to the toxic gas. An employee of a neighboring facility sought medical attention due to apparent inhalation of phosphine generated by Respondent.

#### **B. FIFRA Allegations**

3.10 Under Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

3.11 Under Section 2(s) of FIFRA, 7 U.S.C. § 136(s), "person" means "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not."

3.12 Under Section 2(u) of FIFRA, 7 U.S.C. § 136(u), “pesticide” includes, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.13 Under Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), “to use any registered pesticide in a manner inconsistent with its labeling” means “to use any registered pesticide in a manner not permitted by the labeling,” subject to limited exceptions.

3.14 Under Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), “labeling” includes, *inter alia*, “all labels and all other written printed, or graphic matter [] accompanying the pesticide or device at any time.”

3.15 Under Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), “label” means “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

#### **Violation 1: Use of a Pesticide Inconsistently with its Label**

3.16 On March 19, 2019, Respondent’s employee removed approximately 177.5 pounds of partially spent aluminum phosphide dust from the vessel M/V Vigorous and transported it to Respondent’s Facility for deactivation. The removed aluminum phosphide dust was placed in two 55-gallon drums at the Facility.

3.17 Respondent piled 10 cloth bags/socks each containing approximately 9 pounds of partially spent aluminum phosphide dust. This resulted in two separate piles of nearly 89 pounds of dust in each of two 55-gallon containers.

3.18 The label and Applicator’s Manual for Weevil-Cide states in relevant part: “Small amounts of partially spent dust, from 2 to 3 kg (4 to 7 lbs.) may be further deactivated by storage

in a 1-gallon bucket. Larger amounts of dust (about 11 kg or 25 lbs.) may be held for deactivation in porous cloth bags (burlap, cotton, etc.). Caution: Transport these bags in open vehicles. Do not pile up the bags. Do not store "green dust" in bags.”

3.19 Respondent used the Weevil-Cide pesticide in a manner inconsistent with the label when it piled up large amounts of partially spent dust in bags within each 55-gallon drum at the Facility.

3.20 Respondent violated FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G).

**Violation 2: Use of a Pesticide Inconsistently with its Label**

3.21 On two separate occasions (each 55-gallon drum), Ecolab collected nearly 89 pounds of partially spent aluminum phosphide dust in large drums where confinement of gas vapors occurred.

3.22 The label and Applicator’s Manual for Weevil-Cide state: “Do not collect dust in large drums, dumpsters, plastic bags or other containers where confinement may occur.”

3.23 Respondent violated FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G).

**Violation 3: Use of a Pesticide Inconsistently with its Label**

3.24 Respondent’s two 55-gallon “dry deactivation” containers resulted in the confinement of gas vapors that resulted in an explosive reaction and fire.

3.25 The label and Applicator’s Manual for Weevil-Cide state: “Never allow the buildup of phosphine to exceed explosive concentrations.”

3.26 On two separate occasions (each 55-gallon drum), Ecolab allowed the buildup of phosphine to exceed explosive concentrations when deactivating the 177.5 pounds of partially spent aluminum phosphide dust.

3.27 Respondent violated FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G).

3.28 Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, any commercial applicator who violates any provision of FIFRA may be assessed a civil penalty of not more than \$20,528 for each offense.

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations and legal conclusions contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$34,407 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order, and to undertake the actions specified in this Consent Agreement.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
young.teresa@epa.gov

Chad Schulze  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
schulze.chad@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

- a) Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order attached hereto, provided, however,

that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order attached hereto.

b) Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

c) Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraphs 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraphs 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.



4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

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FOR RESPONDENT:

**Katherine Roek** Digitally signed by Katherine Roek  
Date: 2021.08.31 12:59:34 -05'00'

KATHERINE A. ROEK, Senior Corporate Counsel  
Environment and Regulatory  
EcoLab, Inc.

DATED:

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FOR COMPLAINANT:

**EDWARD KOWALSKI** Digitally signed by EDWARD  
KOWALSKI  
Date: 2021.09.01 08:40:38 -07'00'

EDWARD J. KOWALSKI, Director  
Enforcement & Compliance Assurance Division  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

|                     |   |                               |
|---------------------|---|-------------------------------|
| In the Matter of:   | ) | DOCKET NO. FIFRA-10-2021-0204 |
|                     | ) |                               |
| ECOLAB, INC.        | ) | <b>FINAL ORDER</b>            |
|                     | ) |                               |
| Tacoma, Washington, | ) |                               |
|                     | ) |                               |
| Respondent.         | ) |                               |
|                     | ) |                               |

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1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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. This Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

RICHARD  
MEDNICK

 Digitally signed by RICHARD  
MEDNICK  
Date: 2021.09.01 13:18:29  
-07'00'

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RICHARD MEDNICK  
Regional Judicial Officer  
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: EcoLab, Inc., Docket No.: FIFRA-10-2021-0204**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:


Shirin V. Gallagher  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Katherine A. Roek  
Senior Corporate Counsel - Environmental & Regulatory  
Ecolab Inc.  
1 Ecolab Place, EGH/14  
St. Paul, MN 55102  
Katie.Roek@ecolab.com

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

TERESA  
YOUNG

 Digitally signed by TERESA  
YOUNG  
Date: 2021.09.01 14:36:40  
-07'00'

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TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10