



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 22 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0189 4786

Mr. Peter Tester
Ecolab, Inc.
370 N. Wabasha St. EUC -9
St. Paul, Minnesota 55102

Consent Agreement and Final Order, Docket No. FIFRA-05-2009-0017

Dear Mr. Tester:

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 SS U.S.C.136 et seq., in resolution of the above case. This document was filed on June 22, 2009 with the Regional Hearing Clerk.

The civil penalty in the amount of \$19,500 is to be paid in the manner described in paragraphs 39 and 40. Please be certain that the number **BD 2750945P013** and the docket number are written on both the transmittal letter and on the check. Payment is due by July 22, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Joanna Glowacki, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
JUN 22 2009

REGIONAL HEARING CLERK
USEPA
REGION 5

In the Matter of:)	Docket No.
)	FIFRA-05-2009-0017
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)
_____)	

Consent Agreement and Final Order Commencing and Concluding the Proceeding

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, United States 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 to 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 U.S. 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 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

16. 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).

Factual Allegations and Alleged Violations

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

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

19. Respondent owned or operated a place of business located at 3001 Channahan Road, Joliet, Illinois, during the calendar year 2006.

20. On May 2, 2006, an inspector employed by the Illinois Department of Agriculture and authorized to conduct inspections under FIFRA, conducted an inspection at Respondent’s place of business in Joliet, Illinois.

21. During the May 2, 2006 inspection, the inspector collected physical samples and shipping records for the products **A-33**, EPA Reg. No. 42964-5; **A-33 Dry**, EPA Reg. No. 42964-25; and **Omega**, EPA Reg. No. 42964-14, which Respondent was holding for distribution or sale.

22. **A-33**, EPA Reg. No. 42964-5, **A-33 Dry**, EPA Reg. No. 42964-25, and **Omega**, EPA Reg. No. 42964-14 are “pesticides” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. The label of **A-33** states, among other things, that “As a disinfectant (2 ozs. per gal. or 1:64) A-33 provides approximately 469 ppm active quaternary. On hard, nonporous, inanimate environmental surfaces, A-33 eliminates a broad spectrum of gram positive and gram

negative organisms such as those listed below. A-33 was tested according to A.O.A.C. Use Dilution procedure at 1:64 against the following organisms in the presence of protein (5% blood serum) and soap scum: *Staphylococcus aureus* ATCC # 6538, *Pseudomonas aeruginosa* ATCC #15442.”

24. A sample of **A-33**, collected during the May 2, 2006 inspection, was analyzed by the North Carolina Department of Agriculture Microbiology Laboratory in Raleigh, North Carolina, for efficacy against the microorganisms *Pseudomonas aeruginosa* and *Staphylococcus aureus*.

25. Efficacy data results from this analysis revealed that **A-33** was ineffective against *Pseudomonas aeruginosa* and *Staphylococcus aureus*, when tested according to the A.O.A.C. Use Dilution Test Method at a 1:64 dilution in with 0.005% sodium stearate, in the presence of 5 percent horse serum, 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. The sale and distribution of the misbranded pesticide **A-33** constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

28. The label of **Omega** states, among other things, that “As a disinfectant: when used as directed (1/2 oz. to 1 gallon), this product provides approximately 469 ppm active quaternary. On hard, nonporous, inanimate environmental surfaces, Omega destroys a broad range of gram positive and gram negative organisms such as those listed below. Germicidal vs. the following organisms when tested according to A.O.A.C. Use Dilution Procedure at 20° C, in 5% blood serum and soap scum.” *Staphylococcus aureus* ATCC # 6538, and *Pseudomonas aeruginosa* ATCC # 15442 are listed as some of the organisms against which Omega is germicidal.

29. A sample of **Omega**, collected during the May 2, 2006 inspection, was analyzed by the North Carolina Department of Agriculture Microbiology Laboratory in Raleigh, North Carolina, for efficacy against the microorganisms *Pseudomonas aeruginosa* and *Staphylococcus aureus*.

30. Efficacy data results from this analysis revealed that **Omega** was ineffective against *Pseudomonas aeruginosa* and *Staphylococcus aureus*, when tested according to the A.O.A.C. Use Dilution Test Method at a 1:256 dilution in with 0.005% sodium stearate, in the presence of 5 percent horse serum, for a contact time of 10 minutes at 20 degrees C.

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

32. The sale and distribution of the misbranded pesticide **Omega** constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

33. The label of **A-33 Dry** states, among other things, that "A-33 Dry provides 600 ppm of one of the more potent combinations of germicidals commercially available to provide effectiveness in up to 500 ppm hard water, and in the presence of protein (5% blood serum) and dried soap film residues." and "A-33 Dry has been found to be an effective disinfectant against a broad spectrum of bacteria, both gram positive and gram negative organisms under the same severe test conditions listed". *Staphylococcus aureus* ATCC # 6538 and *Pseudomonas aeruginosa* ATCC #15442 are listed as some of the organisms against which **A-33 Dry** is germicidal.

34. A sample of **A-33 Dry**, collected during the May 2, 2006 inspection, was analyzed by the North Carolina Department of Agriculture Microbiology Laboratory in Raleigh, North

Carolina, for efficacy against the microorganisms *Pseudomonas aeruginosa* and *Staphylococcus aureus*.

35. Efficacy data results from this analysis revealed that **A-33 Dry** was ineffective against *Pseudomonas aeruginosa* and *Staphylococcus aureus*, when tested according to the A.O.A.C. Use Dilution Test Method at a 1:256 dilution in with 0.005% sodium stearate, in the presence of 5 percent horse serum, for a contact time of 10 minutes at 20 degrees C.

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

37. The sale and distribution of the misbranded pesticide **A-33 Dry** constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

38. 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 \$19,500. 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 *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990. Respondent has agreed to pay the proposed penalty.

39. Within 30 days after the effective date of this CAFO, Respondent must pay the \$19,500 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

for checks sent by regular U.S. Postal Service mail

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

for checks sent by express mail

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
Contact: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

The check must note "In the Matter of Ecolab Inc.", the docket number of this CAFO and the billing document number.

40. When paying by check, a transmittal letter, stating, Respondent's name, 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 check and transmittal letter to:

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]

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

42. 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). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

43. 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

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

45. 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.

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

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

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

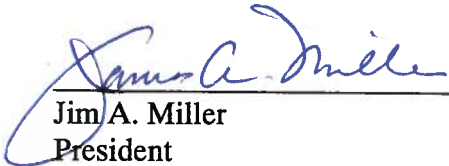
49. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

50. Each party agrees to bear its own costs and attorney's fees, in this action.

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

Ecolab Inc., Respondent


6/2/09
Date



Jim A. Miller
President
Institutional North America
Ecolab Inc.

United States Environmental Protection Agency, Complainant

6/17/09
Date



for Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Ecolab Inc.
Docket No. FIFRA-05-2009-0017

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.

6/18/09
Date

Walter W. Kovalich
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
JUN 22 2009
REGIONAL HEARING CLERK
USEPA
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 June 22, 2009, 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. 7001 0320 0006 0189 4786, a copy of the original to the Respondents:

Mr. Peter Tester
Ecolab, Inc.
370 N. Wabasha St. EUC -9
St. Paul, Minnesota 55102

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Joanna Glowacki, Counsel for Complainant/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 60604-3590

Docket No. **FIFRA-05-2009-0017**

RECEIVED
JUN 22 2009

**REGIONAL HEARING CLERK
USEPA
REGION 5**