

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. FIFRA-10-2024-0025
	)	
DECCO U.S. POST-HARVEST, INC.,	)	<b>CONSENT AGREEMENT</b>
	)	
Yakima, Washington,	)	
	)	
Respondent.	)	
	)	

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**I. 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 Decco U.S. Post-Harvest, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

**II. 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**

3.1. The term “person” is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s), to mean “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.2. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.3. The term “label” is defined at Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), to mean “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

3.4. The term “labeling” is defined at Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), to mean “all labels and all other written, printed, or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device.”

3.5. The term “to distribute or sell” is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to mean “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.”

3.6. The regulation at 40 C.F.R. § 152.3 further defines “distribute or sell” as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

3.7. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person, “any pesticide which is adulterated or misbranded.”

3.8. Under Section 2(q)(1)(E), 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if “any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.”

3.9. Under Section 2(q)(1)(F), 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded if “the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under [FIFRA Section 3(d)], are adequate to protect health and the environment.”

3.10. Under Section 2(q)(1)(G), 7 U.S.C. § 136(q)(1)(G), a pesticide is misbranded if “the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under [FIFRA Section 3(d)], is adequate to protect health and the environment.”

3.11. Under 40 C.F.R. § 152.130(a), a registrant is permitted to distribute or sell a registered product with the labeling that is currently approved by EPA.

3.12. Under 40 C.F.R. § 152.130(c), where a product's label is amended on the initiative of the registrant, the registrant may distribute or sell under the previously approved labeling for no more than 18 months, unless an exception applies.

3.13. Respondent is a corporation organized under the laws of Delaware and classified in the state of Washington as a foreign profit corporation and is therefore a "person" under Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.14. The product, Nexy is an EPA Registered Pesticide under the Registration Numbers 91810-4 and 84863-1, and is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.15. At all times relevant to this Consent Agreement, Respondent distributed and sold Nexy under a repackaging agreement with the base registrant Lesaffre Yeast Corporation. Pursuant to the agreement with Lesaffre Yeast Corporation, Respondent produces Nexy under Lesaffre Yeast Corporation's registration (EPA Reg. No. 91810-4).

3.16. On February 24, 2021, EPA approved an amended label for Nexy.

3.17. On or about September 12, 2022, Respondent shipped five pallets, each containing approximately 120 containers of Nexy, into the United States under Entry Number EJ4-00423763 ("Shipment").

3.18. None of the containers in the Shipment had the February 24, 2021, EPA accepted label for Nexy affixed to the product. Instead, each bore the previous EPA accepted label for Nexy, issued on June 1, 2009.

3.19. Each container in the Shipment was missing the following statement from its label: “Mixers/loaders and applicators of the product, as well as individuals entering storage areas after the reentry interval of 24 hours has elapsed and working on the fruit packing line while applications are being applied, must wear a minimum of a NIOSH-approved particulate filtering facepiece respirator with any N, R, or P filter; OR a NIOSH-approved elastomeric particulate respirator with any N, R, or P filter; OR a NIOSH-approved powered air purifying respirator with an HE filter.”

3.20. Each container in the Shipment was missing the following statement from its label: “Follow the manufacturer’s instructions for cleaning/maintaining PPE. If no such instructions for washables exist, use detergent and hot water. Keep and wash PPE separately from other laundry.”

3.21. Each container in the Shipment was missing the following statement from its label: “Users should: Remove clothing/PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.” The labels were also missing the statement that users should “Remove clothing/PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.”

3.22. Each container’s label in the Shipment misstated the maximum temperature that Nexy may be stored at, unopened. The labels stated that Nexy may be stored unopened at 84 degrees, but the current EPA approved label states that Nexy may only be stored unopened at a maximum temperature of 70 degrees.

3.23. Each container in the Shipment was missing the following statement from its label: “If burned, stay out of smoke.”

3.24. Each container in the Shipment was missing the following statement from its label: “For indoor spray application, fill the cold room with filled apple/pear bins, seal the room and make sure all personnel are outside the room at the time of application. At the end of treatment, detach the application tank set up outside the room from the spray line and seal the room. Do not allow reentry into the sealed room for 24 hours after the treatment is applied.”

3.25. Each container in the Shipment was missing the following statement from its label: “a treatment after cold storage protects the fruit during the packing and distribution period. Apply NEXY soon after harvest when fruit is placed in the storage rooms. One treatment using dipping/drenching in room spraying system must be done immediately after harvest following the Application Rate Table. If required, a second application in storage could be done using the indoor spray system. For the second application, use the same application rate.”

3.26. Each container in the Shipment was missing the following statement from its label: “After the storage period, NEXY can be applied as an aqueous line spray in the apple and pear packing line. Follow the Application Rate Table below and mixing instructions above the properly apply the treatment mix. Ensure constant homogenization during on line aqueous spray application.”

3.27. Each container’s label in the Shipment failed to list “Peracetic acid (PPA)” as a possible post-treatment yeast neutralizer for use as a disinfectant.

3.28. Each container in the Shipment was missing the following statement from its label: “This neutralization is to help to reduce the BOD (Biological Oxygen Demand) of the wastewater.”

3.29. Because of the deficiencies referenced in Paragraphs 3.19-3.28, and because the Shipment took place beyond the 18-month period prescribed by 40 C.F.R. § 152.130, all of the

containers in the Shipment were misbranded in accordance with Section 2(q)(1)(E), (F), and (G) of FIFRA, 7 U.S.C. § 136(q)(1)(E), (F), and (G).

3.30. Therefore, on or about September 12, 2022, Respondent distributed or sold a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

3.31. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$24,255 for each offense occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023.

#### **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 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 all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$3,071 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

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: [www.epa.gov/financial/makepayment](http://www.epa.gov/financial/makepayment). Payments made by check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

*Address format for standard delivery  
(no delivery confirmation requested):*

U.S. Environmental Protection Agency  
P.O. Box 979078  
St. Louis, MO 63197-9000

*Address format for signed receipt confirmation  
(FedEx, DHL, UPS, USPS certified, registered,  
etc):*

U.S. Environmental Protection Agency  
Government Lockbox 979078  
3180 Rider Trail S.  
Earth City, MO 63045

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  
R10\_RHC@epa.gov

Martin Lovato  
U.S. Environmental Protection Agency  
Region 10  
Lovato.Martin@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 under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty 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 contained herein, 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 contained herein.

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 Paragraph 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 Paragraph 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 the 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 in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

02/05/2024

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FOR RESPONDENT:

**Travis Seymore**

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Date: 2024.02.05 11:20:24 -08'00'

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TRAVIS SEYMORE  
General Manager  
Decco U.S. Post-Harvest, Inc.

FOR COMPLAINANT:

**EDWARD KOWALSKI**

Digitally signed by EDWARD KOWALSKI  
Date: 2024.02.07 13:46:27 -08'00'

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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-10-2024-0025
	)	
DECCO U.S. POST-HARVEST, INC.,	)	<b>FINAL ORDER</b>
	)	
Yakima, 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.

IT IS SO ORDERED.

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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: Decco U.S. Post-Harvest, Inc., Docket No.: FIFRA-10-2024-0025**, was filed with the Regional Hearing Clerk and that a true and correct copy was served on the date specified below to the following addressees via electronic mail:

Emma Yip  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101

[Yip.Emma@epa.gov](mailto:Yip.Emma@epa.gov)

Travis Seymore  
General Manager  
Decco U.S. Post-Harvest, Inc.  
1713 South California  
Monrovia, California 91016

[Travis.Seymore@upl-ltd.com](mailto:Travis.Seymore@upl-ltd.com)

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Regional Hearing Clerk  
EPA Region 10