

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. RCRA-10-2021-0203
)
ECOLAB, INC.) **CONSENT AGREEMENT**
)
Tacoma, Washington)
)
Respondent.)
)

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 3008 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928.

1.2. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Washington final authorization to administer and enforce a hazardous waste program and to carry out such program in lieu of the federal program.

1.3. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce the authorized provisions of the Washington state’s hazardous waste program codified at WAC 173-303-010 *et seq.*

1.4. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notification of this action has been given to State of Washington.

1.5. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928 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 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA 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 RCRA together with the specific provisions of RCRA 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 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.

3.4 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.

3.5 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. 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.

3.6 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.

3.7 Respondent’s Facility also received, on other occasions, flasks (containers) that held Weevil-Cide prior to application and contained pesticidal residue for the purpose of “deactivation” and disposal.

B. RCRA Statutory and Regulatory Background

3.8 The regulations at Section 173-300 of the Washington Administrative Code (WAC) implement chapter 70.105 RCW, the Hazardous Waste Management Act as amended, and implements, in part, chapters 70.95E, 70.105D, and 15.54 RCW, and Subtitle C of Public Law 94-580, the Resource Conservation and Recovery Act of 1976, which the legislature of Washington state has empowered the Washington Department of Ecology to implement.

3.9 Pursuant to WAC 173-303-0145, the WAC incorporates by reference certain provisions of the EPA's hazardous waste regulations promulgated pursuant to RCRA found at 40 C.F.R. Parts 260 through 280 and Part 124, as those rules existed on July 1, 2019, with certain exceptions specified at WAC 173-303-045(2) and (3).

3.10 The regulation at WAC 173-303-016(3)(a) defines "solid waste" as "any discarded material that is not excluded by WAC 173-303-017(2) or that is not excluded by variance granted under WAC 173-303-017(5)." In accordance with WAC 173-303-016(4), "materials are solid waste if they are abandoned by being (a) disposed of; (b) burned or incinerated; or (c) accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated"

3.11 The regulation at WAC 173-303-040 defines "dangerous waste" to mean "those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste." In accordance with WAC 173-303-070(3), a solid waste is a "dangerous waste" if, inter alia, the waste is a listed dangerous waste source under WAC 173-303-082 or the waste exhibits any dangerous waste characteristics identified in WAC 173-303-090.

3.12 WAC 173-303-090(7) provides that a solid waste is a dangerous waste if it exhibits the characteristic of reactivity. The characteristic of reactivity is defined at WAC 173-303-090(7)(a) to include a solid waste, a representative sample of which, has any of the following properties: (i) It is normally unstable and readily undergoes violent change without detonating; (ii) It reacts violently with water; (iii) It forms potentially explosive mixtures with water; (iv) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment; (v) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5 can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment; (vi) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement; (vii) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure; or (viii) It is a forbidden explosive as defined in 49 C.F.R. 173.54, or a Class 1 explosive, Division 1.1, Division 1.2, Division 1.3, and Division 1.5, as defined in 49 C.F.R. 173.50 and 173.53.

3.13 WAC 173-303-080 provides that a solid waste is a dangerous waste if it is listed at WAC 173-303-081.

3.14 WAC 173-303-081(1) provides that a waste will be designated as a dangerous waste and assigned a "P" or "U" code if it is handled in any of the manners described in WAC 173-303-081(1)(e) and if it is a residue from the management of: (a) A commercial chemical product or manufacturing chemical intermediate (see definition in WAC 173-303-040) which has the generic name listed in the discarded chemical products list, WAC 173-303-9903; (b) An off-specification commercial chemical product or manufacturing chemical intermediate which if it

had met specifications would have the generic name listed in the discarded chemical products list, WAC 173-303-9903; (c) Any containers, inner liners, or residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate that has, or any off-specification commercial chemical product or manufacturing chemical intermediate which if it had met specifications would have, the generic name listed on the "P" or "U" discarded chemical products list of WAC 173-303-9903, unless the containers or inner liners are empty as described in WAC 173-303-160(2) or 173-303-555(8).

3.15 WAC 173-303-081(1)(e) provides that materials are dangerous wastes when they meet the criteria specified at WAC 173-303-081(1) and are handled in any of the following manners: (i) Discarded or intended to be discarded as described in WAC 173-303-016(3)(b)(i); (ii) Burned for purposes of energy recovery in lieu of their original intended use; (iii) Used to produce fuels in lieu of their original intended use; (iv) Applied to the land in lieu of their original intended use; or (v) Contained in products that are applied to the land in lieu of their original intended use.

3.16 Partially spent Weevil-Cide is a solid waste that exhibited the characteristic of reactivity because it reacted violently with water and, therefore, was a reactive dangerous waste pursuant to WAC-173-303-090(7) with the dangerous waste number of D003.

3.17 The regulation at WAC 173-303-040 defines "acute hazardous waste" as dangerous waste sources (listed in WAC 173-303-9904) F020, F021, F022, F023, F026, or F027, and discarded chemical products (listed in WAC 173-303-9903) that are identified with a dangerous waste number beginning with a "P."

3.18 Discarded Weevil-Cide product is a listed dangerous waste carrying the assigned “P006” dangerous waste code pursuant to WAC 173-303-9903 and an acute hazardous waste.

3.19 WAC 173-303-160(2)(b) provides that a container holding an acute hazardous waste... or pesticides bearing the danger or warning label, will be considered “empty” when the container or inner liner has been rinsed at least three times with an appropriate cleaner or solvent. ... A container or inner liner is also considered "empty" if the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal.

3.20 In accordance with WAC 173-303-800(2), the owner or operator of a dangerous waste facility that transfers, treats, stores, or disposes dangerous waste must obtain a permit in accordance with WAC 173-303-800 through 840.

3.21 “Treatment” is defined at WAC 173-303-040 as “the physical, chemical, or biological processing of dangerous waste to make such wastes nondangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume, with the exception of compacting, repackaging, and sorting as allowed under WAC 173-303-400(2) and 173-303-600(3).”

3.22 “Storage” is defined at WAC 173-303-040 as “the holding of dangerous waste for a temporary period.”

Violation 1: Failure to obtain an EPA transporter ID number

3.23 On or about March 19, 2019, Ecolab Inc. transported partially spent Weevil-Cide, a D003 dangerous waste, from the vessel M/V Vigorous in Longview, Washington by highway to its Facility.

3.24 The regulation at WAC 173-303-060 provides that any person who transports dangerous waste must have a current EPA/state identification number (EPA/State ID#) for that activity.

3.25 WAC 173-303-040 defines "transportation" as "the movement of dangerous waste by air, rail, highway, or water."

3.26 WAC 173-303-040 defines "transporter" as "a person engaged in the off-site transportation of dangerous waste."

3.27 At no time relevant to this Consent Agreement did Respondent have an EPA/State identification number authorizing it to engage in the transportation of dangerous waste.

3.28 Respondent violated WAC 173-303-060.

Violation 2: Receiving dangerous waste from offsite generators without a permit

3.29 The regulation at WAC 173-303-600(2) provides that only permitted facilities which treat, store, or dispose of dangerous waste, and/or owners or operators of a facility which recycles dangerous waste in compliance with subsection (5) of that section, can receive dangerous waste from off-site sources, unless exempted by subsection (3) of that section.

3.30 On March 19, 2019, Respondent's Facility received partially spent Weevil-Cide, a D003 dangerous waste, generated aboard the vessel M/V Vigorous in Longview, Washington, for treatment and/or storage.

3.31 On other occasions, Respondent's Facility has received flasks that contained residue of the discarded chemical product, Weevil-Cide, that is a P006 and D003 dangerous waste and an acutely hazardous waste, for treatment and/or storage.

3.32 The Facility is not a permitted treatment, storage or disposal facility, nor does it recycle dangerous waste in compliance with WAC 173-303-600(5), nor was it otherwise exempted by WAC 173-303-600(3).

3.33 Respondent's receipt of D003 and P006 dangerous wastes from off-site sources at its Facility for storage and/or treatment, therefore, violated the requirements of WAC 173-303-600(2).

Violation 3: Storing and/or treating dangerous waste without a permit

3.34 The regulation at WAC 173-303-800 requires the owner/operator of a dangerous waste facility that stores and/or treats dangerous waste to obtain a permit. "Storage" means the holding of dangerous waste for a temporary period. "Treatment" means the physical, chemical, or biological processing of dangerous waste to make such wastes nondangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume, with the exception of compacting, repackaging, and sorting as allowed under WAC 173-303-400(2) and 173-303-600(3).

3.35 On March 19, 2019, Respondent treated approximately 177.5 lbs of partially spent Weevil-Cide, a dangerous waste, by placing the waste in two 55-gallon containers at the Facility. The partially spent Weevil-Cide was placed in the dry deactivation containers to react the material with ambient air to carry out a chemical change in the material that would make it less dangerous prior to disposal, which constituted both storage and treatment of a dangerous waste.

3.36 On April 23, 2019, the Washington Department of Ecology conducted an inspection of the Facility and observed three poly International Bulk Containers (IBC) 275-gallon containers with the tops removed. The three IBC containers held punctured aluminum

phosphide flasks. The three IBC containers each contained approximately 75 flasks. The flasks are emptied when Weevil-Cide pellets are deployed at a fumigation serviced location. At the Facility, Respondent would remove the lids from the flasks, and puncture the flasks to prevent their reuse. The punctured flasks were then placed in the open-top IBC containers and aluminum phosphide residue was allowed to react and off-gas. A single-gas meter was then used to determine if the flasks are finished off-gassing before transporting the flasks offsite for scrap metal recycling. However, the empty flasks are not rinsed or otherwise cleaned upon being emptied of Weevil-Cide product in accordance with WAC 173-303-160(2)(b).

3.37 Flasks which originally contained Weevil-Cide, but have not been triple rinsed after being emptied, are a P006 dangerous waste pursuant to WAC-173-303-081(c) and an acutely hazardous waste. Management of dangerous waste in open-top IBC containers in the manner observed by Ecology constitutes both storage and treatment of dangerous waste.

3.38 Respondent's Facility does not have a permit authorizing it to store or treat dangerous waste.

3.39 Ecolab therefore violated WAC 173-303-800 by storing and treating dangerous waste without a permit.

3.40 Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19, for violations that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020, EPA may assess a civil penalty of not more than \$102,638 per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance, or both.

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 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$180,000 (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

Xiangyu Chu
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
chu.xiangyu@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. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

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

4.13. 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.

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

4.15. 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.

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

DATED:

FOR RESPONDENT:

Katherine Roek Digitally signed by Katherine Roek
Date: 2021.08.31 13:00:00 -05'00'

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

DATED:

FOR COMPLAINANT:

EDWARD KOWALSKI Digitally signed by EDWARD
KOWALSKI
Date: 2021.09.01 08:39:33 -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. RCRA-10-2021-0203
)	
ECOLAB, INC.)	FINAL ORDER
)	
Tacoma, Washington,)	
)	
Respondent.)	
)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated 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 RCRA 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 RCRA 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 13:14:36
-07'00'

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.: RCRA-10-2021-0203**, 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
Office of 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 14:20:15
-07'00'

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10