



REGION 5

CHICAGO, IL 60604

December 17, 2024

**ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED**

Ms. Lisa Caraway
SHE Manager
Ecolab, Inc.
3001 Channahon Rd.
Joliet, Illinois 60436
lisa.caraway@ecolab.com

Re: **Notice of Potential Violation and Opportunity to Confer**
Notice of Intent to File Civil Administrative Complaint Against Ecolab, Inc.
Facility ID: ILD 064 385 701
Joliet, Illinois

Dear Ms. Caraway:

The U.S. Environmental Protection Agency has evidence to support an administrative complaint for civil penalties against Ecolab, Inc. ("Ecolab or you"). If necessary, EPA will allege that Ecolab violated RCRA, 42 U.S.C. §§ 6901 - 6992k, as amended, as described below. RCRA is a cradle-to-grave framework to ensure proper management of hazardous wastes which, if handled in an unsafe manner, could present risks to humans and the environment.

Based on information provided by Ecolab, EPA's review of records pertaining to Ecolab, and observations made during an inspection of Ecolab's facility, EPA believes that Ecolab unlawfully stored hazardous waste without a permit or interim status as a result of Ecolab's failure to comply with conditions for a permit exemption under Illinois Administrative Code (IAC) Title 35 §§ 722.134(a)-(c). When a hazardous waste generator fails to comply with the conditions for permit exemption, the generator becomes an operator of a hazardous waste storage facility without a permit in violation of IAC Title 35 §§ 703.121(a) and (b). Accordingly, if Ecolab unlawfully stored hazardous waste without a permit, EPA would deem Ecolab to be in significant noncompliance with RCRA.

Many of the RCRA permit exemption conditions are also independent requirements that apply to permitted and interim status hazardous waste management facilities that treat, store, or dispose of hazardous waste (TSD requirements). When a hazardous waste generator loses its permit exemption due to a failure to comply with an exemption condition incorporated from 35 IAC Part 725, the

generator becomes an operator of a hazardous waste storage facility and simultaneously violates the corresponding TSD requirement. Ecolab's failure to comply with certain of these conditions are violations of the corresponding requirements in 35 IAC Part 724.

Ecolab also violated RCRA requirements related to hazardous waste determinations, recordkeeping and reporting, and universal waste. Please see the attachment for a list of the violations we believe Ecolab committed.

Based on information currently available, EPA plans to propose a penalty of \$615,882 in the complaint. In developing the penalty amount proposed in a complaint, EPA considers the particular facts and circumstances of the case, as well as EPA's penalty policy.

Please note that, in determining the appropriate penalty amount, EPA may also consider a violator's voluntary performance of a Supplemental Environmental Project ("SEP"). A SEP is a project that a violator has not otherwise planned to perform and is not otherwise legally required to perform, and is designed to either (1) reduce the likelihood that similar violations will occur in the future, (2) reduce adverse public-health or environmental impacts to which the violations contributed, or (3) reduce the overall risk to public health or the environment potentially affected by the violations. You may learn more about SEPs on EPA's SEP website, which includes a link to a database with examples of past-completed SEPs: <https://www.epa.gov/enforcement/supplemental-environmental-projects-seps>, and EPA's 2015 SEP Policy: <https://www.epa.gov/sites/default/files/2015-04/documents/sepupdatedpolicy15.pdf>.

If you are interested in proposing or discussing performance of a SEP as part of the settlement of this matter, please review the SEP Policy prior to our meeting. EPA would welcome discussion of any proposals or questions you may have about potential SEPs.

This letter is not a demand to pay a penalty. EPA will not ask you to pay a penalty until it files a complaint or a final order. Before filing the complaint, EPA is giving you the opportunity to present any information that you believe it should consider. Relevant information might include evidence that you did not violate the law; evidence that you relied on compliance assistance from EPA or a state agency; evidence that EPA identified the wrong party; or financial data bearing on your ability to pay a penalty. If you believe that you will be unable to pay the proposed penalty because of financial reasons, please electronically send us certified, complete financial statements including balance sheets, income statements and all notes to the financial statements, and your company's signed income tax returns with all schedules and amendments, for the past three years.

You may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B for any part of the information you submit to EPA in response to this letter. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth at 40 C.F.R. Part 2, Subpart B. If you do not assert a business confidentiality claim when you submit the information, EPA may make this information available to the public without further notice.

Please send any written responses to this letter to:

r5lecab@epa.gov

and

Dierich.andrea@epa.gov

If you want to confer with us regarding this notice, you should contact Andrea Dierich via email or by phone at 312-353-6134, requesting such a conference, within ten (10) calendar days after you receive this notice. Please be advised that this conference is not a settlement negotiation covered by Federal Rule of Evidence 408 or 40 C.F.R. § 22.22 and we may use any information you submit in support of any administrative, civil, or criminal action. After this conference (or after you have submitted a written reply), you will have an opportunity to engage in settlement negotiations before we file the complaint.

After 30 days from receipt of this letter, EPA may file an administrative complaint without further notice against Ecolab as authorized under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

This letter is being made available to the State of Illinois as a means of notifying the State pursuant to Section 3008(a) of RCRA, as amended, that EPA is preparing to issue a formal enforcement action to Ecolab.

Questions from legal counsel can be directed to Andrew Futerman in the Office of Regional Counsel at (312) 353-2325 or Futerman.andrew@epa.gov.

Sincerely,

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2024.12.17
11:22:36 -06'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Chris Cahnovsky, Illinois EPA, chris.cahnovsky@illinois.gov
Dustin Burger, Illinois EPA, Dustin.Burger@illinois.gov

**Attachment
List of Violations**

Storage of Hazardous Waste without a Permit or Interim Status and Violations of TSD Requirements

At the time of the inspection, Ecolab was out of compliance with the following large quantity generator permit exemption conditions (see notice of violation dated March 1, 2024 for full details):

1. Hazardous Waste Accumulation

Under IAC tit. 35 § 722.134(a) and (b), a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or interim status unless the generator has been granted an extension of the 90-day period. At the time of the inspection, at least thirty-one containers were marked with an accumulation date indicating that they had been stored for 616 days.

2. Date When Each Period of Accumulation Begins

Under IAC tit. 35 § 722.134(a)(2), a large quantity generator must clearly mark each container holding hazardous waste with the date upon which each period of accumulation begins. At the time of the inspection, five containers were missing the required date, and no dates were observed on items held in the customer return area.

3. Hazardous Waste Container Labeling

Under IAC tit. 35 § 722.134(a)(3), a large quantity generator must label or clearly mark each container holding hazardous waste with the words "Hazardous Waste." At the time of the inspection, eleven pallets and seventy-six containers were missing the required label.

4. Excess Hazardous Waste in Satellite Accumulation

Under IAC tit. 35 §§ 722.134(c)(1) and (c)(1)(A) and (B), a large quantity generator may have as much as 55-gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation, under the control of the operator of the process, which must be marked with the words "Hazardous Waste" or with other words that identify the contents of the containers. At the time of the inspection, two containers accumulating hazardous waste were not marked with the words "Hazardous Waste".

5. Satellite Container Management

Under IAC tit. 35 § 722.134(c)(2), a large quantity generator must move excess amounts of waste within three days of generation to continue to comply with IAC tit. 35 § 722.134(c)(1). The generator must mark the container holding the excess accumulation of hazardous waste

with the date the excess amount began accumulating. At the time of the inspection two full 55-gallon containers were in a satellite accumulation area and dated December 1, 2022.

The permit exemption conditions identified below are also independent TSD requirements violated by Ecolab:

6. Use and Management of Containers

Under IAC tit. 35 §§ 722.134(a)(1)(A) and 725.273(a), a large quantity generator must always keep a container holding hazardous waste closed during storage, except when it is necessary to add or remove waste. At the time of the inspection, fifteen containers were left open when waste was not being added or removed.

7. Training

Under IAC tit. 35 §§ 722.134(a)(4) and 725.116(d), a large quantity generator of hazardous waste must have a program of classroom instruction or on-the-job training that teaches facility personnel to perform their duties in a way that ensures the facility's compliance with requirements of RCRA. With respect to this training program, a large quantity generator must maintain the following documents and records at its facility for employees filling a position related to hazardous waste management: the job title for each position at the facility and the name of the employee filling each job; a written job description for each position; a written description of the type and amount of both introductory and continuing training that will be given; and records that document that the training or job experience described above has been given to and completed by facility personnel. At the time of the inspection, Ecolab did not have documentation of training given to and completed by facility personnel for the years 2020 and 2021.

8. Maintenance and Operation of Facility

Under IAC tit. 35 § 725.131, the facility must be maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden releases of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. At the time of the inspection, six spills were observed throughout the facility.

9. Required Aisle Space

Under IAC tit. 35 § 725.135, the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes. At the time of the inspection two of the

hazardous waste central accumulation areas, referred to by the facility as the horseshoe and east wall, and the customer returns area had inadequate aisle space between hazardous waste preventing unobstructed movement of personnel.

10. Design and Installation of New Tank Systems

- a. Under IAC tit. 35 § 725.292(a), an owner or operator of a new tank system must obtain a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with IAC tit. 35 § 702.126(d), attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. Ecolab was unable to provide a written assessment as required by IAC tit. 35 § 725.292(a).
- b. Under IAC tit. 35 § 725.292(b), an owner or operator of a new tank system or component must have a qualified Professional Engineer (P.E.) inspect the system prior to placing the new tank system for weld breaks, punctures, scrapes of protective coatings, cracks, corrosion, and other structural damage or inadequate installation. At the time of the inspection and based on its RFI response, Ecolab did not provide a P.E. inspection certification for the hard piped frac tank (T-6902).
- c. Under IAC tit. 35 § 725.292(d), all new tanks and ancillary equipment must be tested for tightness prior to being placed in use. At the time of the inspection and based on its RFI response, Ecolab was unable to verify the hard piped frac tank (T-6902) had undergone tightness testing prior to being placed in use.
- d. Under IAC tit. 35 § 725.292(f), an owner or operator of a new tank system or component must provide the type and degree of corrosion protection necessary, based on the information provided under subsection (a)(3), to ensure the integrity of the tank system during use of the tank system. At the time of the inspection, the hard piped frac tank (T-6902) had an external metal shell and held corrosive wastewaters that were shipped off prior to October 2022 as D002 when zinc concentrations exceeded allowable WWTU limits. Ecolab has not provided a written assessment, including the information required under IAC tit. 35 § 725.292(a)(3) as part of the ensuring the integrity of the tank system and providing the type and degree of corrosion protection by an independent corrosion expert.
- e. Under IAC tit. 35 § 725.292(g), the owner or operator must obtain and keep on file at the facility written statements and certification statement by those persons required to certify and design the tank system and supervise installation with requirements (b) to (f) and as required in IAC. tit. 35 § 702.126(d). At the time of the inspection, Ecolab was unable to provide written statements or certifications to certify the design and installation of the tank system.

11. Containment and Detection of Releases

- a. Under IAC tit. 35 §§ 725.293(a)(1), (b), and (c), in order to prevent the release of hazardous waste or hazardous constituents to the environment, a new or existing tank system or component must meet the following secondary containment requirements of

the subsections prior to being put into service. At the time of the inspection, the zinc tank (T-6902) did not have a secondary containment system meeting the requirements of IAC tit. 35 § 725.293(a) to (c).

- b. Under IAC tit. 35 §§ 725.293(d) and (e)(1), “Secondary containment for tanks must include one or more of the following devices: 1) a liner (external to the tank); 2) a vault; 3) a double-walled tank; or 4) an equivalent device as approved by the Board in an adjusted standards proceeding.” At the time of the inspection, no external liner or vault was present inside of the asphalt berms. Ecolab stated in its RFI response that “The secondary containment consists of asphalt berms around the perimeter that mark the location of the 'tank' which is shaped like a shipping container, and in fact currently has wheels attached. This containment is not intended to capture the volume of the container.” The asphalt berm does not meet one or more of the specified devices in IAC tit. 35 § 725.293(d).
- c. Under IAC tit. 35 § 725.293(f), ancillary equipment must be provided with full secondary containment that meets the requirements of IAC tit. 35 §§ 725.293(c) and (h), except for ancillary equipment which is visually inspected for leaks on a daily basis and meets the criteria in IAC tit. 35 §§ 725.293(f)(1) to (4). At the time of the inspection, ancillary equipment in the form of aboveground piping was observed attached to the tank as an overflow diverter and a flexible hose for transferring hazardous waste liquids from the tank into a tanker truck. Leaked material and the ancillary equipment were located on the ground outside of the tank. No secondary containment was observed for ancillary equipment.
- d. Under IAC tit. 35 §§ 725.293(i)(2) to (4), all tank systems, until such time as secondary containment meeting the requirements of this Section is provided, must 2) conduct a leak test, or an internal inspection or other tank integrity examination; 3) maintain on file a record of the results of the assessments conducted; and 4) if a tank system or component is found to be leaking or unfit for use comply with the requirements of IAC tit. 35 § 725.296. At the time of the inspection, Ecolab was unable to produce any documentation meeting these requirements.

12. General Operating Requirements

- a. Under IAC tit. 35 § 725.294(a), hazardous waste or treatment reagents must not be placed in the tank system if they could cause the tank, its ancillary equipment, or the secondary containment system to rupture, leak, corrode, or otherwise fail. At the time of the inspection, the hard piped, metal frac tank (T-6902) was used for liquid process waste from the Caste process. This process waste is corrosive and meets the characteristic for D002. Ecolab has not provided a written assessment, including the information required under IAC tit. 35 § 725.292(a)(3) as part of the ensuring the integrity of the tank system and providing the type and degree of corrosion protection by an independent corrosion expert. Ecolab as failed to ensure that the hazardous waste

placed in the tank system would not cause the tank, its ancillary equipment or secondary containment system to rupture, leak, corrode, or otherwise fail.

- b. Under IAC tit. 35 § 725.294(b)(1) and (2), the owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include 1) spill prevention controls, and 2) overfill prevention controls. At the time of the inspection, Ecolab did not have spill prevention controls in place or appropriate overfill prevention that would prevent or capture a release.

13. Tank Inspections

Under IAC tit. 35 §§ 725.295(a), (b), (e), and (g), the owner or operator must inspect the following, where present, at least once each operating day as listed in IAC tit. 35 § 725.295(b): overfill/spill equipment; above ground portions of the tank system; and the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system. The owner or operator must also inspect ancillary equipment that is not provided with secondary containment at least once each operating day per subsection (e), and document in the operating record of the facility an inspection items in subsections (a) and (b) per subsection (g). At the time of the inspection, Ecolab was unable to provide inspection records for the zinc tank (T-6902).

14. Purpose and Implementation of Contingency Plan

Under IAC tit. 35 § 725.151(b), the provisions of a contingency plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents that could threaten human health or the environment. At the time of the inspection, at least five releases of waste were identified throughout the Ecolab warehouse and manufacturing facility. Ecolab had not identified the character, exact source, or made a determination on whether the material was hazardous. This is counter to the contingency plan which states: "Whenever there is a release, fire, or explosion the Emergency Coordinator will immediately identify the character, exact source, amount, and the extent of any released materials."

15. Content of Contingency Plan

- a. Under IAC tit. 35 § 725.152(d), the contingency plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see IAC tit. 35 § 725.155), and this list must be kept up to date. At the time of the inspection, Ms. Brittany Dorsey identified herself as one of the facility's emergency coordinators. However, Ms. Dorsey was not identified in the contingency plan as either an emergency coordinator or as her position of the safety, health, and environmental manager (SHE).
- b. Under IAC tit. 35 § 725.152(e), the contingency plan must include a list of all emergency equipment at the facility and where this equipment is required. In addition, the plan

must include the location and a physical description of each item on the list and a brief outline of its capabilities. At the time of the inspection, Ecolab identified the January 2022 contingency plan as the current active plan. The contingency plan did not provide a user with the ability to locate emergency response equipment if a need arose.

- c. Under IAC tit. 35 § 725.152(f), the contingency plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires). There was no identification of evacuation routes or alternative evacuation routes in the Ecolab January 2022 contingency plan.

16. Amendment of Contingency Plan

Under IAC tit. 35 §§ 725.154(c) and (d), the contingency plan must be reviewed and immediately amended, if necessary, whenever any of the following occurs: c) the facility changes – in its design, construction, operation, maintenance or other circumstances – in a way that materially increases the potential of fires, explosions, or releases of hazardous waste or hazardous waste constituents or changes the response necessary in an emergency; d) the list of emergency coordinators changes. At the time of the inspection, Ecolab identified three central accumulation areas, yet only two storage areas were listed in the contingency plan. This was a change of operations, and other circumstances that increased the potential of releases for hazardous waste or hazardous waste constituents, requiring an amendment to the facility's contingency plan. Additionally, Ms. Dorsey was not included in the contingency plan despite identifying herself as an emergency coordinator. Both changes required the immediate amendment of the contingency plan.

17. Inspections

Under IAC tit. 35 § 725.274, the owner or operator must inspect areas where containers are stored at least weekly. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. At the time of the inspection, Ecolab was unable to confirm it had completed weekly inspections of hazardous waste areas prior to October 6, 2022.

Other Violations

Ecolab violated the following generator requirements:

18. Hazardous Waste Determination

Under IAC tit. 35 § 722.111, a generator must determine whether its waste is hazardous. At the time of the inspection, Ecolab had not made a determination whether the waste generated in spills in organics area were hazardous. Additionally waste determinations were not made for

eight containers in the hazardous waste area or for four containers in the customer returns area.

19. Universal Waste Requirement

Under IAC tit. 35 § 733.114(e), a small quantity handler of universal waste must label or clearly mark each lamp or a container or package in which such lamps are contained with any one of the following phrases: "Universal Waste-Lamps," "Waste Lamps" or "Used Lamps." At the time of the inspection, Ecolab's containers of lamps were not labeled with the phrase "Universal Waste-Lamps," "Waste Lamps" or "Used Lamps."

20. RCRA Permit Program

Under IAC tit. 35 §§ 703.121(a) and (b), 703.180(c), and 705.121(a), no person may conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation without a RCRA permit for HWM facility; an owner or operator of an HWM unit must have permits during the active life of the unit. At the time of inspection, at least one hazardous waste container was stored, but not generated by Ecolab. The container was labeled with a generator address in Mahtomedi, MN and dated from September 2017.