



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE
(302) 739-9000

**CONCILIATION ORDER BY CONSENT
AND SECRETARY'S ORDER**

Pursuant to *7 Del. C.* § 6005

Order No. 2022-A-0020

Issued To:

GT USA Wilmington, LLC
Attn: Mr. Joseph F. Cruise, CEO
1 Hausel Road
Wilmington, DE 19801

Registered Agent:

Corporate Creations Network, Inc.
Tatnall Building, Suite 104
3411 Silverside Road
Wilmington, DE 19810

Ecolab, Inc.

Attn: Ms. Meg Carr, VP & GM Specialty Pest Services
1 Ecolab Place
St. Paul, MN 55120

Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

GT USA Wilmington, LLC. (“GT USA”), Ecolab Inc. (“Ecolab”) and the State of Delaware Department of Natural Resources and Environmental Control (“DNREC” or the “Department”) are endeavoring by Conciliation to ensure compliance with *7 Del. C.* Chapter 60. The Department believes that a violation of *7 Del. C.* Chapter 60 is continuing concerning unpermitted methyl bromide emissions from fumigation activities at the Port of Wilmington (the “Port”) which is located near the confluence of the Christina and Delaware rivers. Accordingly, the Department is issuing this Conciliation Order by Consent and Secretary’s Order (“Order”) in an endeavor to obtain compliance with the requirements of *7 Del. C.* Chapter 60.

WHEREAS, the Port is owned by Diamond State Port Corporation (“DSPC”) and was historically operated by DSPC until October 2018;

WHEREAS, GT USA became the operator of the Port as of October 2018, where it facilitates cargo handling of commodities such as fruits and vegetables from other countries on which fumigation must be performed as a condition of entry into the United States;

WHEREAS, GT USA and Ecolab contend that the import of fruits and vegetables and associated methyl bromide fumigation operations have been ongoing at the Port since approximately the mid-1980s, and are typically at their highest volume during the time period of December through April (“Fumigation Season”), though fumigation operations occur in lesser amounts year-round;

WHEREAS, fumigation operations at the Port involve the application of methyl bromide, which is a hazardous air pollutant (“HAP”) and volatile organic compound (“VOC”);

WHEREAS, the U. S. Department of Agriculture (“USDA”) regulates the application of fumigants to commodities that are imported into the Port for the eradication of dangerous agricultural pests;

WHEREAS, Ecolab performs the required fumigation activities on the commodities received at the Port, and began such operations in December 2017 when it acquired Royal Pest Solutions, Inc. (“Royal”);

WHEREAS, Ecolab follows fumigation procedures published in the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine (“USDA-APHIS-PPQ”) Treatment Manual (“Manual”) and the United States Environmental Protection Agency (“EPA”) Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) Pesticide Labeling for the use of methyl bromide;

WHEREAS, the Department issued Conciliation Order by Consent Secretary’s Order No. 2012-A-0012 to DSPC on April 17, 2012 (“2012 DSPC Order”);

WHEREAS, the Department issued Conciliation Order by Consent Secretary’s Order No. 2012-A-0016 to Royal on May 10, 2012 (“2012 Royal Order”);

WHEREAS, in an October 2, 2018, letter to the Department, GT USA affirmed it is the new operator of the Port as of October 2018, and acknowledged its responsibility to comply with the 2012 DSPC Order;

WHEREAS, in a March 18, 2019, letter to the Department, Ecolab acknowledged its responsibility to comply with the 2012 Royal Order which includes a prohibition against changes to the fumigation practices at the Port that would cause an increase in methyl bromide ambient air concentrations without prior approval of the Department, unless such changes are required by the USDA and would not create a condition of air pollution (as defined in Air Quality Management Regulations 1101 § 2.0 Definitions);

WHEREAS, the Department issued Conciliation Order by Consent and Secretary's Order No. 2021-A-0032 to GT USA and Ecolab on December 20, 2021 ("2021 GT and Ecolab Order"), and the parties have been engaged in discussions to implement a path forward to submission and processing of a final and complete air quality permit application for methyl bromide fumigation activities at the Port;

WHEREAS, GT USA and Ecolab submitted a Maximum Achievable Control Technology ("MACT") Analysis to the Department on July 1, 2022, and the Department provided comments on the MACT Analysis to GT USA and Ecolab on September 9, 2022;

WHEREAS, the 2021 GT and Ecolab Order terminates on October 31, 2022;

WHEREAS, the Department, GT USA, and Ecolab are desirous of continuing to work toward a final and complete air quality permit application;

NOW THEREFORE, this Conciliation Order on Consent is being issued pursuant to 7 *Del. C.* § 6005(b)(2) for that purpose.

CONCILIATION AND ORDER

It is the desire of the Secretary that GT USA and Ecolab take actions to ensure that its operation at the Port of Wilmington comply with Delaware law and regulations. Therefore,

IT IS HEREBY ORDERED and agreed as follows:

1. GT USA and Ecolab will take prompt action to obtain all necessary air permits to cover methyl bromide emissions from fumigation activities at the Port and this Order will establish a framework to further define those obligations of GT USA and Ecolab;

2. GT USA and Ecolab reaffirm its understanding that this Order and prior Orders prohibit changes to the fumigation practices at the Port as of April 17, 2012, that would cause an increase in methyl bromide ambient air concentrations without prior approval of the Department, unless the changes are required by the USDA and would not create a condition of air pollution (as defined in Air Quality Management Regulations 1101 § 2.0 Definitions);

3. Until a final air quality permit can be issued covering the fumigation activities at the Port, or until this Order is terminated pursuant to paragraph [5, or 6], GT USA and Ecolab commit to only fumigating products as necessary and required by USDA rule/policy.

PERMIT COMPLIANCE

4. GT USA and Ecolab are working to address some of the Department's concerns with its proposed MACT Analysis, but doing so requires certain information from third-party vendors. GT USA and Ecolab are working expeditiously to obtain the information to respond. Further, GT USA and Ecolab have offered to provide DNREC with a site visit to the fumigation operations at the Port, to help inform them regarding the current process. No later than 30 days after DNREC's visit to the Port and DNREC's receipt of a draft incorporating the GT USA and Ecolab's responses to current comments, whichever is later, DNREC will provide any additional responses or concerns in writing to GT USA and Ecolab.

5. DNREC shall notify GT USA and Ecolab in writing whether they determine the Revised MACT submission appears to meet the legal requirements of Delaware and federal law, based on the information provided in the submissions sufficient to move forward with the application process. If DNREC does not determine the Revised MACT submission meets the legal requirements as submitted, DNREC, GT USA and Ecolab shall meet and confer in an effort to bring the Revised Proposal into compliance with applicable regulations, so it can move forward with the application process. After March 31, 2023, if DNREC, GT USA, and Ecolab cannot agree within 90 days of DNREC's written notice, the provisions of this Order will terminate.

6. DNREC has not yet made a determination of the applicability of nonattainment New Source Review (“NSR”) to the project. If DNREC determines that it does not agree with GT USA and Ecolab’s determination of NSR applicability (as submitted in the Air Permit Review on March 31, 2022, and the supplemental information provided on July 25, 2022), DNREC shall notify GT USA and Ecolab in writing with the basis for such determination. Thereafter, DNREC, GT USA and Ecolab shall meet and confer in an effort to reach agreement on the issue of NSR applicability. After March 31, 2023, if DNREC, GT USA, and Ecolab cannot agree within 90 days of DNREC’s written notice, the provisions of this Order will terminate.

7. Within 90 days of the later of DNREC’s written determination of NSR applicability and DNREC’s determination that the Revised MACT meets the legal requirements and can move forward with the application process (or written comments if such determination is not made), GT USA and Ecolab will submit a complete air quality construction permit application consistent with the Revised MACT, Delaware’s air permitting regulations (7 DE Admin. Code § 1100 *et seq.*), and all applicable federal requirements. For the purposes of this paragraph, a complete permit application includes (but is not limited to) all required forms (as provided by the Department on our website), zoning approval from the City of Wilmington (or proof that zoning approval has been requested), modeling for every operating scenario (that shows downwind concentrations no greater than 1 ppm at all potential exposure locations using current topography and future permitted topography), and a plan to demonstrate compliance.

8. GT USA and Ecolab will prepare a community engagement plan with milestones and timeline beginning at the date of application submittal regarding direct outreach from the facility regarding their operations and construction permit application. GT USA and Ecolab will prepare such plan in advance of the first public hearing on the construction permit application. The plan will be submitted to DNREC for reference at the time of the permit application submittal, but will not be part of the application.

9. When the Department determines that the permit application meeting the legal requirements has been submitted, the Department will notify GT USA and Ecolab in writing that the application is complete, and will review the application and prepare a draft permit.

10. GT USA and Ecolab may review the draft permit and submit any comments in writing to the Department within 15 calendar days from receipt of the draft permit.

11. After the draft permit is prepared and/or the Department has responded to any comments, the Department will advertise the draft permit and schedule a public meeting and hearing on the matter as prescribed by law.

12. Following the public hearing, if the Secretary issues a Secretary's Order approving issuance of a permit to GT USA and Ecolab, the Department will submit a proposed permit to United States EPA for a 45 calendar-day review period.

13. Upon U.S. EPA approval of a proposed permit, or upon expiration of the 45-day review period without comment, the Department will issue the proposed construction permit to GT USA and Ecolab.

14. When construction is complete, GT USA and Ecolab will schedule a construction to operation inspection ("C to O inspection") and the equipment shall not be operated until completion of a successful C to O inspection and written approval by the Department.

15. GT USA and Ecolab will develop an inspection safety plan and submit such plan to the Department for review at least 30 calendar days in advance of the scheduled C to O inspection.

16. Within 180 days of DNREC's issuance of the operating permit, GT USA and Ecolab will submit to DNREC a Title V State Operating Permit application for methyl bromide fumigation activities, pursuant to 7 DE Admin. Code § 1130, if applicable.

17. The provisions of this Order shall apply to GT USA and Ecolab's operations at the Port until October 31, 2023, so long as GT USA and Ecolab are in compliance with the terms of this Order, unless the Order terminated in accordance with paragraph 3.

INTERIM FUMIGATION MONITORING AND REQUIREMENTS

18. To the extent that GT USA and Ecolab meet the permitting deadlines established herein and undertake all ongoing methyl bromide fumigation activities in accordance with USDA

requirements and this Order, and in a safe manner that will not cause undue conditions of air pollution, the Department will not take enforcement action to shut down the fumigation activities for lack of an operating permit prior to October 31, 2023.

19. From the Effective Date of this Order and until issuance of an operating permit or October 31, 2023, GT USA and Ecolab will conduct methyl bromide air monitoring during all active aeration events in accordance with the Ambient Air Monitoring Plan, which is provided as Attachment A to this Order. The Ambient Air Monitoring Plan sets forth the location and frequency of monitoring, recordkeeping, and training. For purposes of this Order, "active aeration events" means the active release of methyl bromide following commodity treatment in accordance with USDA requirements.

20. If sampling pursuant to the Ambient Air Monitoring Plan indicates a detection greater than 1 ppm and less than 5 ppm, GT USA and Ecolab will ensure that sampled concentrations do not persist beyond the below-listed time frames. If at any point one of the below-listed time frames would be exceeded on the next regularly scheduled sample, GT USA and Ecolab will halt aeration until readings decrease to less than 1 ppm.

- A. greater than 3.0 to 5.0 ppm: no more than 90 minutes;
- B. greater than 2.0 to 3.0 ppm: no more than 160 minutes;
- C. greater than 1.0 to 2.0 ppm: no more than 240 minutes.

21. If sampling pursuant to the Ambient Air Monitoring Plan indicates a detection greater than 5 ppm, aeration will be halted for a minimum of 15 minutes or until readings decrease to less than 5 ppm, at which point aeration may resume and the monitoring requirements in the previous paragraph will be followed. In the event of a detection greater than 3 ppm, GT USA and Ecolab will prepare a plan to reduce ground-level concentrations of fumigants. The plan will be submitted to DNREC within 48 hours following the detection.

22. Sampling and fumigation records will be compiled into monthly reports that will be submitted to the Department electronically by the 15th of each following month. Ecolab will keep records of all fumigation activities and monitoring results until issuance of an operating permit. This includes time stamped photos of all samples collected, logs of sample readings and logs of fumigation operations (date, time, quantity of methyl bromide discharged, commodity fumigated) as described in Attachment A.

23. After the effective date of this Order, methyl bromide fumigation activities shall not violate the following operating parameters:

- A. Aeration shall not occur between the hours of 6:00 am to 10:00 pm; and
- B. Methyl bromide fumigation shall not occur in locations other than F Shed, C Shed, and G Shed; and
- C. Fumigation operations shall not consist of more than one treatment per building during a 24-hour period.

GENERAL PROVISIONS

24. By agreeing to the terms of this Order, GT USA and Ecolab do not admit any violation of any law, regulation, directive, instruction, Order, obligation or duty, or any liability to any person or party. GT USA and Ecolab reserve all rights, claims, and defenses related to any of the matters described in this Order.

25. Nothing in this Order shall relieve GT USA or Ecolab of their obligation to comply with all applicable federal, state, and local laws and regulations. Other than as expressly provided for in paragraph 18, nothing contained in this Order shall be construed to prevent, alter, or limit DNREC's ability to seek or obtain other remedies or sanctions available under federal, state, or local statutes or regulations, in response to any violation by GT USA or Ecolab of applicable statutes and regulations, nor to limit any claims, rights or defenses otherwise available to GT USA and Ecolab, including with respect to any such alleged violations.

26. The Department reserves the right to take additional enforcement actions regarding these and other violations by GT USA or Ecolab, including but not limited to one or more of the following: an action under the authority vested in the Secretary by 7 *Del. C.* Chapter 60 and 7 DE Admin. Code § 1100 *et seq.* to revoke GT USA or Ecolab's air quality permit(s) for the State of Delaware, an action under 7 *Del. C.* § 6005(b)(1) seeking penalties for past violations, an action under 7 *Del. C.* § 6005(b)(2) seeking penalties for continuing violations, an action in the Court of Chancery pursuant to 7 *Del. C.* § 6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§ 6005(b)(3) & (c)(1).

PUBLIC HEARING AND APPEAL RIGHTS

The Secretary is issuing this Conciliation Order on Consent anticipating that the Consent/Waiver provision herein will be signed by GT USA and Ecolab upon receipt. Nonetheless, should GT USA or Ecolab choose not to sign the Consent/Waiver provisions, this Order is effective and final upon receipt by GT USA and Ecolab. Pursuant to *7 Del. C. § 6008*, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within 20 calendar days of the receipt of the Order. In the alternative, Respondent may, pursuant to *7 Del. C. § 6005(b)(3)*, request a public hearing on the Order, within 30 calendar days of receipt of the Order. A hearing would be conducted pursuant to *7 Del. C. § 6006*, and the Secretary's Order following the hearing would be subject to appeal, pursuant to *7 Del. C. § 6008*, by any person substantially affected.

To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee, with a check made payable to the: "Environmental Appeals Board" and sent to:

Department of Natural Resources and Environmental Control Office
of the Secretary

Attn: Assistant to the Environmental Appeals Board 89

Kings Highway

Dover, DE 19901

Phone: (302) 739-9000

If you want a hearing and opportunity to contest this Order, you must submit your request, in writing, within 30 calendar days of receipt of this Order to:

Department of Natural Resources and Environmental Control Office
of the Secretary
89 Kings Highway
Dover, DE 19901
Phone: (302) 739-9000

Respondent may waive its right to request a hearing or to file an appeal by signing the waiver attached herein.

If you have any questions, please contact Angela Marconi at (302) 323-4542.

11/1/22

Date



Shawn M. Garvin, Secretary
Department of Natural Resources and
Environmental Control

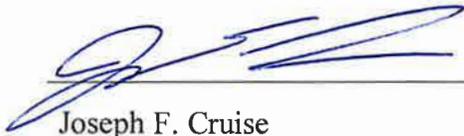
cc: Valerie S. Edge, Deputy Attorney General
Angela Marconi, P.E., Director

CONSENT/WAIVER OF STATUTORY RIGHT TO A HEARING

GT USA Wilmington, LLC hereby waives its right to a hearing and an opportunity to appeal or contest this Conciliation Order and agrees to the terms of this Order.

FOR GT USA WILMINGTON, LLC

By: _____



Joseph F. Cruise
Chief Executive Officer
GT USA Wilmington, LLC

Date: _____

10/31/22

CONSENT/WAIVER OF STATUTORY RIGHT TO A HEARING

Ecolab, Inc. hereby waives its right to a hearing and an opportunity to appeal or contest this Conciliation Order and agrees to the terms of this Order.

FOR ECOLAB, INC.

By: 

Meg Carr
VP & GM Specialty Pest Services
Ecolab, Inc.

Date: 