

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 ECOLAB, INC., a Delaware corporation, )  
 and CHARLES A. WINSLETT, )  
 )  
 Respondents. )

RECEIVED  
CLERK'S OFFICE

FEB 14 2006

STATE OF ILLINOIS  
Pollution Control Board

PCB No. 06-45  
(Enforcement)

NOTICE OF FILING

To: Charles A. Winslett  
c/o Daniel C. Murray  
Johnson & Bell  
Suite 400  
55 East Monroe Street  
Chicago, IL 60603-5896

Ecolab, Inc.  
c/o Daniel C. Murray  
Johnson & Bell  
Suite 400  
55 East Monroe Street  
Chicago, IL 60603-5896

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY: 

KRISTEN LAUGHRIDGE GALE  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 9, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that I did on February 9, 2006, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Charles A. Winslett  
c/o Daniel C. Murray  
Johnson & Bell  
Suite 400  
55 East Monroe Street  
Chicago, IL 60603-5896

Ecolab, Inc.  
c/o Daniel C. Murray  
Johnson & Bell  
Suite 400  
55 East Monroe Street  
Chicago, IL 60603-5896

and the original and ten copies by First Class Mail with postage thereon fully prepaid of this

Certificate of Service and Notice of Filing:

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794



Kristen Laughridge Gale  
Assistant Attorney General

This filing is submitted on recycled paper.

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STATE OF ILLINOIS  
Pollution Control Board

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**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2004), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004). In support of this motion, Complainant states as follows:

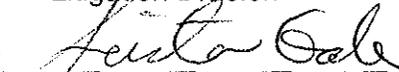
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
KRISTEN LAUGHRIDGE GALE  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 9, 2006

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STATE OF ILLINOIS  
Pollution Control Board

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)  
Respondents. )

PCB No. 06-45

(Enforcement)

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondents, Ecolab, Inc. and Charles A. Winslett, have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondents agree to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

## I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2004).

## II. AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

## III. STATEMENT OF FACTS

### A. Parties

1. On September 21, 2005, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2004), against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

3. At all times relevant to the Complaint, Respondent, Ecolab, Inc. was and is a Delaware corporation that is authorized to transact business in the State of Illinois. Ecolab, Inc. provides pest control services.

4. Respondent, Charles A. Winslett, is a pesticide technician for Ecolab and can be

reached at 1929 Saint Claire Street, Pekin, Illinois, 61554. Mr. Winslett is licensed to use pesticides through the Illinois Department of Agriculture, license #1525744.

**B. Site Description**

1. Phostoxin ® is aluminum phosphide and is highly toxic. It is used to fumigate buildings. Once completely spent, the Phostoxin ® powder waste has a low oral and dermal toxicity and consists of aluminum hydroxide, inert ingredients, and about 2%-3% of unreacted aluminum phosphide.

2. On October 13, 2003, Respondent, Charles Winslett finished fumigating the Mycogen Seed Company in Pontiac, Illinois and spread the spent Phostoxin ® powder waste along Hurt Road, approximately 1/4 mile west of Apple Road, South Pekin, Tazewell County, Illinois ("site").

3. On October 13, 2003, the Tazewell County Sheriff's Office responded to a complaint of a white vehicle with "Ecolab" on its side dumping a white powder along the side of Hurt Road. A white powder was at the site along Hurt Road, approximately 1/4 mile west of Apple Road.

4. Illinois EPA met Tazewell County Sheriff's Officers on October 14, 2003 and inspected the site for the spent Phostoxin ® powder waste. However, it had rained the night of October 13, 2003 and no white powder was present when Illinois EPA inspected the site.

**C. Allegations of Non-Compliance**

Complainant contends that the Respondents have violated the following provisions of the

Act and Board regulations:

Count I: Section 21(a) and 21(e) of the Act, 415 ILCS 5/21(a), (e) (2004)

Count II: Section 12(d) of the Act, 415 ILCS 5/12(d) (2004)

**D. Admission of Violations**

The Respondents admit to the violations alleged in the Complaint filed in this matter and referenced within Section III.C herein.

**E. Compliance Activities to Date**

Ecolab, Inc. created and distributed to its Pest Elimination Field Associates a memo entitled *Spent Aluminum and Magnesium Phosphide Dust Disposal*. The memo states procedures for the proper handling and disposal of spent aluminum and magnesium phosphide dust from space fumigation using aluminum phosphide or magnesium phosphide fumigants. It requires:

- 1) All aluminum and magnesium phosphide dust be disposed at a sanitary landfill.
- 2) The Pest Elimination Field Associate must plan for the disposal at a local landfill capable of accepting the material and receive authorization prior to fumigation.
- 3) Prior to ordering any aluminum and magnesium phosphide products, Ecolab's Materials Management must be notified of the disposal method and the location of the landfill used for the spent waste.
- 4) All fumigation work must have a Fumigation Management Plan which includes details regarding how the fumigator will deactivate and dispose of the spent fumigant.
- 5) Any aluminum or magnesium phosphide dust to be disposed must be fully deactivated on-site by utilizing wet deactivation pursuant to the product label instructions prior to removal from the site.

- 6) Only Ecolab Pest Elimination authorized Department of Transportation drivers can transport the fully spent aluminum or magnesium phosphide dust to the approved landfill.

#### **IV. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

No change in ownership or corporate status shall in any way alter the responsibilities of the Respondents under this Stipulation and Proposal for Settlement.

#### **V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

#### **VI. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties state the following:

1. It is Complainant's position that human health and the environment were threatened by the Respondent's violations.
2. There is social and economic benefit to fumigation operations.
3. Spent Phostoxin ® powder waste is not suitable for disposal in the area where it was disposed.
4. Properly disposing of spent Phostoxin ® powder waste is both technically practicable and economically reasonable.
5. Respondents have subsequently complied with the Act and the Board Regulations.

## VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2004), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties state as follows:

1. The Respondents improperly disposed of spent Phostoxin ® powder waste along the side of a road in South Pekin, Illinois. The violation occurred on October 13, 2003, and was resolved the next day.
2. Respondents were diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance.
3. Economic benefit for the avoidance of proper disposal was nominal because the amount of material was small.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Two Thousand Five Hundred Dollars (\$2,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter includes a supplemental environmental project ("SEP"). The SEP is discussed below in Section VIII.A.

## VIII. TERMS OF SETTLEMENT

### A. Supplemental Environmental Project

1. In order to promote the goals of the Act to restore, protect and enhance the quality of the environment, Respondents shall perform the following supplemental environmental project ("SEP"). The value of the SEP is Ten Thousand Dollars (\$10,000.00). The parties agree that this SEP consists of a monetary payment of Ten Thousand Dollars (\$10,000.00) for the restoration of a park and playground in South Pekin that was severely damaged by a tornado in May 2004. The City of South Pekin owns the park. The local Veteran's of Foreign Wars (VFW) Post and Boy Scout Troop 1232 shall perform the work and Ecolab shall remain in contact the VFW Post to ensure that the work is completed. The restoration work shall include the painting and repair of all swings, slides, bars and related equipment, installation of a new drinking fountain fixture, procurement and installation of two or three park benches, repair of the existing park fence and addition of a gate and 300 feet of fence to fully enclose the park, addition of

topsoil to level the playground and seeding of the site, and planting of five large trees on the park's west side for shade. See also Attachment A.

**B. Penalty Payment**

1. The Respondents shall pay a civil penalty in the sum of Two Thousand Five Dollars (\$2,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondents stipulate that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondents stipulate that said attorney has been directed to make the penalty payment on behalf of Respondents, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency  
Fiscal Services Section  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name and number of the case shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Kristen Laughridge  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

James G. Richardson  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2004). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. For purposes of payment and collection, Respondents may be reached at the following address:

Ecolab Inc.  
Law and Regulatory Affairs  
370 Wabasha Street  
St. Paul, MN 55102-1390

4. In the event of default of Sections VIII.A or VIII.B, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

**C. Future Use**

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.E, below, the Respondents hereby agree that this Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h)(2004). Further, Respondents agree to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

**D. Cease and Desist**

The Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C ("Allegations of Non-Compliance") of this Stipulation.

**E. Release from Liability**

In consideration of the Respondents' payment of the \$2,500.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.D and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for violations of the Act and

Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on September 21, 2005. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondents.

**F. Modification of Stipulation**

The parties may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.B. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized

representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

**G. Enforcement of Board Order**

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. Respondents agree that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondents that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

WHEREFORE, Complainant and Respondents request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

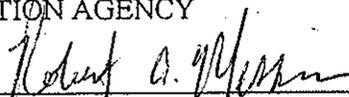
LISA MADIGAN  
Attorney General  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

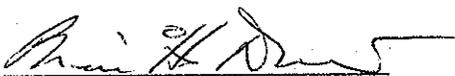
DATE: 2/09/06

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

BY:   
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 2/6/06

ECOLAB INC.

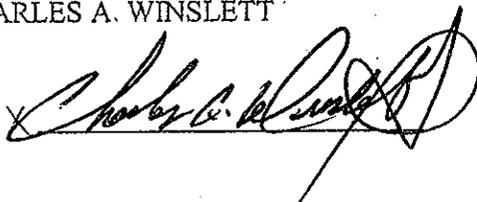
BY: 

DATE: 1/16/06

Name: Brian H. Davis

Title: Senior Corporate Counsel

CHARLES A. WINSLETT

BY: 

DATE: 1-11-06

**ATTACHMENT A**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

The focus of the Supplemental Environmental Project (SEP) is a long-neglected, storm-damaged public park centrally located on Main Street (adjacent to the South Pekin Fire Department at 209 W. Main), South Pekin, Tazewell County, Illinois. This city-owned park is in an overall state of general disrepair. With the assistance of Boy Scout Troop 1232 (contact: Bradley Kupris) and VFW Post 1232 (contact: Ronald Hubert), Ecolab's SEP will undertake a general renovation of the park, to restore it for regular public use.

Ecolab assumes responsibility for either repairing and painting the playground equipment, or replacing it if repair is not feasible. Park benches will be acquired, and an appropriate fence extension with a gate will be installed. Topsoil will be added so as to level the playground, and shade trees will be planted.

VFW Post 1232 will assist with administering the SEP, and wherever feasible, labor will be performed by Boy Scout Troop 1232 and other volunteers, assisted by local professional contractors. Ecolab will monitor progress of the work, to assure completion of the project.