



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

December 16, 2021

VIA EMAIL ONLY

Mr. Benjamin Gaeth  
Vice President of Enterprise Services  
Haviland Products Company, Inc.  
521 Ann Street NW  
Grand Rapids, Michigan 49504

[beng@havilandusa.com](mailto:beng@havilandusa.com)

Consent Agreement and Final Order  
In the Matter of Haviland Products Company, Inc.  
Docket Number ~~TKA-05-2022-000~~ Should be: TSCA-05-2022-0001

Mr. Gaeth:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on December 16, 2021 with the Regional Hearing Clerk.

The civil penalty in the amount of \$130,996 is to be paid in the manner described in paragraphs 34-35 of the CAFO. The payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,  
**CLAUDIA  
NIESS**

Digitally signed by  
CLAUDIA NIESS  
Date: 2021.12.01 13:30:29  
-06'00'

Claudia Niess  
Enforcement Officer  
Pesticides and Toxics Compliance Section

cc: Ms. Sharon Newlon  
Dickinson Wright PLLC  
[SNewlon@dickinsonwright.com](mailto:SNewlon@dickinsonwright.com)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No.</b> <del>TSCA-05-2022-0001</del> Should be: TSCA-05-2022-0001
	)	
	)	
<b>Haviland Products Company</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Grand Rapids, Michigan,</b>	)	<b>Under Section 16(a) of the Toxic Substances</b>
	)	<b>Control Act, 15 U.S.C. § 2615(a)</b>
	)	
<b>Respondent</b>	)	

**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. The Director of the Enforcement and Compliance Assurance Division is, by lawful delegation, authorized to institute and settle civil administrative actions brought pursuant to Section 16(a) of the TSCA, 15 U.S.C. § 2615(a).

4. Haviland Products Company, Inc. (Respondent) is a corporation doing business in the State of Michigan.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

#### **Statutory and Regulatory Background**

10. Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A), states, in pertinent part, that no person may manufacture a new chemical substance unless such person submits to the Administrator, at least 90 days before such manufacture, a notice of such person's intention to manufacture each substance.

11. Under 40 C.F.R. § 720.22(a)(1), any person who intends to manufacture a new chemical substance in the United States for a commercial purpose must submit a notice.

12. For purposes of Section 5 of TSCA, 15 U.S.C. § 2604, the term "manufacture" means "to import into the customs territory of the United States ..., produce, or manufacture." 15 U.S.C. § 2602(7) and 40 C.F.R. § 720.3(q).

13. For purposes Sections 5 of TSCA, 15 U.S.C. §§ 2604 and 2607(a), the term "manufacture for a commercial purpose" means to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and

includes among other things, such “manufacture” of any amount of a chemical substance or mixture: (i) for commercial distribution, including test marketing (ii) for use by the manufacturer, including use for product research and development, or as an intermediate.

14. The term “chemical substance” means “any organic or inorganic substance of a particular molecular identity including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and any chemical element or uncombined radical.” 15 U.S.C. § 2602(2)(A).

15. The term “new chemical substance” means “any chemical substance which is not included in the Inventory.” 15 U.S.C. § 2602(9) and 40 C.F.R. § 720.3(v).

16. The term “mixture” means, in part, “any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction.” 15 U.S.C. § 2602(8).

17. The term “distribute in commerce” means “to sell, or the sale of, the substance mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.” 15 U.S.C. § 2602(4).

18. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), among other things, makes it unlawful for any person to fail to comply with any requirement prescribed by Section 2604 of TSCA.

19. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), makes it unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA, or any rule promulgated thereunder.

20. Section 16 of TSCA, 15 U.S.C. § 2615, states that any person who violates a provision of Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty.

### **Factual Allegations and Alleged Violations**

21. From at least 2015 to the present, Respondent was a “person” as that term is defined at 40 C.F.R. § 720.3(r).

22. From at least 2015 to the present, Haviland Products Company owned or controlled the East Facility located at 421 Ann Street Northwest, Grand Rapids, Michigan 49504 (the East facility).

23. EPA has identified three chemical substances at issue in this matter. These chemicals are referenced in documents dated August 4, 2021, which Haviland Products Company has claimed are Confidential Business Information. Thus, these chemicals are referred herein and throughout this CAFO as “Chemical A,” “Chemical B,” and “Chemical C,” respectively.

24. Chemicals A, B, and C are each a “chemical substance” as the term is defined by Section 3(2) of TSCA, 15 U.S.C. § 2602(2)(A).

25. From 2015 to the present, the chemicals referenced in paragraph 23, above, were not listed on the TSCA Inventory.

26. At all times relevant to this CAFO, the chemicals referenced in paragraph 23, above, were each a “new chemical substance,” as that term is defined in Section 3(11) of TSCA, 15 U.S.C. § 2602(11), and 40 CFR § 720.3(v).

27. Between March 3, 2015, and December 12, 2015, on 77 occasions, Haviland Products Company produced or manufactured products called Havacoat Deep Blue III, Prodigy Skybrite 100 or Prodigy Z-N TCP Part 1 at its East Facility.

28. Havacoat Deep Blue III, Prodigy Skybrite 100 and Prodigy Z-N TCP Part 1 were products that each contained one of the three new chemical substances referenced in paragraph 26, above.

29. Respondent manufactured Havacoat Deep Blue III, Prodigy Skybrite 100 and Prodigy Z-N TCP Part 1 to sell in commerce, to introduce or deliver for introduction into commerce, or hold after its introduction into commerce.

30. Respondent “manufactured for commercial purpose” Chemicals A, B, and C as that term is defined in 40 C.F.R. § 720.3(r) when it manufactured Havacoat Deep Blue III, Prodigy Skybrite 100 and Prodigy Z-N TCP Part 1.

31. At least ninety days before each day Haviland Products Company manufactured Chemicals A, B, and C in 2015, as referenced in paragraphs 27 through 30 above, Haviland Products Company failed to submit a notice of its intention to manufacture Chemicals A, B, and C

32. Haviland Products Company’s failure to submit notices of its intention to manufacture Chemicals A, B, and C at least ninety days before each day it manufactured Chemicals A, B, and C in 2015, in accordance with Section 5 of TSCA, 15 U.S.C. § 2604, constitutes 77 separate violations of Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

#### **Civil Penalty**

33. Complainants have determined that an appropriate civil penalty to settle this action is \$130,996 for the TSCA violations. The civil penalty is based upon consideration of the

statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B). EPA also considered its Amended TSCA Section 5 Enforcement Response Policy, and 40 C.F.R. Part 19.

34. Within 30 days after the effective date of this CAFO, Respondent must pay \$130,996 civil penalty for the TSCA violations by ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state Haviland Products Company, Inc., and the docket number of this CAFO.

35. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Tamara Carnovsky (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
[Carnovsky.tamara@epa.gov](mailto:Carnovsky.tamara@epa.gov)

Claudia Niess (ECP-17J)  
Pesticides and Toxics Compliance Section  
U.S. EPA Region 5  
[niess.claudia@epa.gov](mailto:niess.claudia@epa.gov)

36. The civil penalties for TSCA is not deductible for federal tax purposes.

37. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties

and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

### **General Provisions**

38. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Carnovsky.tamara@epa.gov and Asque.gillian@epa.gov (for Complainant), and beng@havilandusa.com and snewlon@dickinsonwright.com (for Respondent).

39. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

40. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

41. This CAFO does not affect Respondent's responsibility to comply with TSCA and other applicable federal, state and local laws.

42. This CAFO is a "final order" for purposes of EPA's Amended TSCA Section 5 Enforcement Response Policy.

43. The terms of this CAFO bind Respondent, its successors and assigns.

44. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

45. Each party agrees to bear its own costs and attorney's fees in this action.

46. This CAFO constitutes the entire agreement between the parties.

47. The effective date for this CAFO is the date it is filed with the Regional Hearing Clerk.

**Haviland Products Company, Inc., Respondent**

11/23/21

Date



Benjamin Gaeth  
Vice President of Enterprise Services  
Haviland Products Company, Inc.

**United States Environmental Protection Agency, Complainant**

12/14/21

**Date**

---

**MICHAEL  
HARRIS**

Digitally signed by MICHAEL  
HARRIS  
Date: 2021.12.14 13:16:41  
-06'00'

---

**Michael D. Harris  
Director  
Enforcement and Compliance Assurance Division**

**In the Matter of:**  
**Haviland Products Company, Inc.**  
**Docket No.** ~~XXXXXXXXXXXX~~ Should be: TSCA-05-2022-0001

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

\_\_\_\_\_  
Date

**ANN COYLE**

Digitally signed by ANN  
COYLE  
Date: 2021.12.15 08:05:00  
-06'00'

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

**In the Matter of: Haviland Products Company, Inc.**  
**Docket No. ~~EPRA-05-2022-0005~~ Should be: TSCA-05-2022-0001**

**Certificate of Service**

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on December 16, 2021, in the following manner to the addressees:

Copy by E-Mail to Attorney for Respondent: Sharon R. Newlon  
[SNewlon@dickinsonwright.com](mailto:SNewlon@dickinsonwright.com)

Copy by E-mail to Respondent: Benjamin Gaeth  
[beng@havilandusa.com](mailto:beng@havilandusa.com)

Copy by E-mail to Attorneys for Complainant: Tamara Carnovsky  
[Carnovsky.tamara@epa.gov](mailto:Carnovsky.tamara@epa.gov)

Gillian Asque  
[Asque.gillian@epa.gov](mailto:Asque.gillian@epa.gov)

Copy by E-mail to Regional Judicial Officer: Ann Coyle  
[Coyle.ann@epa.gov](mailto:Coyle.ann@epa.gov)

Dated: \_\_\_\_\_

\_\_\_\_\_  
Isidra Martinez  
Acting Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)