



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
July 16, 2013

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7676 9020

Mr. Randy Yaroch
Hacco, Inc.
110 Hopkins Dr.
Randolph, Wisconsin 53956

Consent Agreement and Final Order In the Matter of
Hacco, Inc. Docket # **FIFRA-05-2013-0016**

Dear Mr. Haviland:

Enclosed, please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on July 16, 2013 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 38 and 39. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by August 15, 2013, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
JUL 16 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)	Docket No. FIFRA-05-2013-0016
)	
Hacco, Inc.)	
Randolph, Wisconsin)	Proceeding to Assess a Civil Penalty
)	Under Section 14(a) of the Federal
Respondent.)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
_____)	

Consent Agreement and Final Order
Commencing and Concluding a Proceeding

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(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 Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Hacco, Inc. (Hacco), a partnership, association, corporation, or any organized group of persons whether incorporated or not, doing business in Randolph, Wisconsin.

4. 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).

5. 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.

6. 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

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

8. 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.

9. Respondent certifies that to the best of its knowledge, it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states in part that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated thereunder by the Administrator before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states in part that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states, in part, that it is

unlawful for any person to violate any regulation issued under Section 19 of FIFRA.

14. Section 19(a)(1)(B) of FIFRA, 7 U.S.C. § 136q(a)(1)(B), states, in pertinent part, that the Administrator may require under Section 3 that the labeling of a pesticide contain requirements and procedures for the transportation, storage, and disposal of any container of the pesticide.

15. Section 19(e)(1)(B) of FIFRA, 7 U.S.C. § 136q(e)(1)(B), states, in pertinent part, that the Administrator shall promulgate regulations that facilitate the safe disposal or refill and reuse of pesticide containers.

16. 40 C.F.R. § 156.140, which became effective on August 16, 2011, states, in pertinent part, that other than for plant-incorporated protectants, the following statements, as applicable, must be placed on the label or container of a pesticide:

(a) *Nonrefillable container.* For non-refillable containers, the statements in paragraphs

(a)(1) through (a)(4) of 40 C.F.R. § 156.140 are required.

(1) *Statement identifying a nonrefillable container.* The following phrase is required: “Nonrefillable container.”

(2) *Reuse statement.* One of the following statements is required.

(i) “Do not use or refill this container.”

(ii) “Do not reuse this container to hold materials other than pesticides or dilute pesticides (rinsate). After emptying and cleaning, it may be allowable to temporarily hold rinsate or other pesticide-related materials in the container. Contact your state regulatory agency to determine allowable practices in your state.”

(iii) The following statement may be used if a product is “ready to use”

and its directions for use allow a different product (that is a similar, but concentrated formulation) to be poured into the container and diluted by the end user: “Do not reuse or refill this container unless the directions for use allow a different (concentrated) product to be diluted in the container.”

(3) *Recycling or reconditioning statement.* One of the following statements is required:

- (i) “Offer for recycling if available.”
- (ii) “Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or contact [a pesticide container recycling organization] at [phone number] or [web site].”
- (iii) A recycling statement approved by EPA and published in an EPA document, such as a Pesticide Registration Notice.
- (iv) An alternative recycling statement that has been reviewed and approved by EPA.
- (v) “Offer for reconditioning if appropriate.”

(4) *Batch Code.* A lot number, or other code used by the registrant or producer to identify the batch of the pesticide product which is distributed and sold is required.

17. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment,

ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

18. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

19. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

20. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

21. Section 2(y) of FIFRA, 7 U.S.C. § 136(y) defines a “registrant” as a person who has registered any pesticide pursuant to the provisions of FIFRA.

22. The Administrator may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

23. At all times relevant to this CAFO, Respondent was a corporation or any organized group of persons and therefore was a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

24. At all times relevant to this CAFO, Respondent was a “registrant” as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

25. On or about May 3, 2013, Respondent submitted to EPA an NOA under entry number GL9-0304523-2 for an import shipment of the pesticide “Tributyltin Oxide,” EPA Registration Number (EPA Reg. No.) 61282-58.

26. Respondent used entry number 202-2909585-4 for the import shipment discussed at paragraph 25, above, when dealing with U.S. Customs & Border Protection.

27. The import shipment associated with entry numbers GL9-0304523-2 and 202-2909585-4 entered the United States on or about May 27, 2013.

28. The NOA stated that Respondent was the importer of record.

29. Respondent, as the importer of record of “Tributyltin Oxide,” EPA Reg. No. 61282-58, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

30. “Tributyltin Oxide,” EPA Reg. No. 61282-58, is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

31. The imported quantity of “Tributyltin Oxide,” EPA Reg. No. 61282-58, associated with entry numbers GL9-0304523-2 and 202-2909585-4 failed to bear a label on the immediate containers of the pesticide product that identified the containers as being “refillable” or “non-refillable,” as required by 40 C.F.R. § 156.140.

32. On or about May 27, 2013, Respondent “distributed or sold” the pesticide “Tributyltin Oxide,” EPA Reg. No. 61282-58, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count 1

33. Complainant incorporates by reference paragraphs 1 through 32 of this CAFO.

34. On or about May 13, 2013, in an import shipment associated with entry numbers GL9-0304523-2 and 202-2909585-4, Respondent distributed or sold the pesticide “Tributyltin Oxide,” EPA Reg. No. 61282-58, in violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

35. Respondent’s violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

36. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

37. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$7,500. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

38. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the alleged FIFRA violations. Respondent must pay the penalty by sending a cashier’s or certified check, payable to the “Treasurer, United States of America,” to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "In the Matter of Hacco, Inc." and the docket number of this CAFO.

39. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

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

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Kris Vezner (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

40. This civil penalty is not deductible for federal tax purposes.

41. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 1367(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

42. Pursuant to 40 C.F.R. § 13.11 and 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury.

Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

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

44. This CAFO does not 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.

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

46. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

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


48. 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.

49. Each party agrees to bear its own costs and attorney fees in this action.

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


Respondent:
Hacco, Inc.
Randolph, Wisconsin

06/12/13
Date


Randy Yaroach
General Manager
Hacco, Inc.

Complainant:
Region 5
U.S. Environmental Protection Agency

7/11/2013
Date


Margaret M. Guerriero, Director
Land and Chemicals Division
United States Environmental Protection Agency
Region 5

In the Matter of:
Hacco, Inc.
Docket No. FIFRA-05-2013-0016

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.

7-12-13

Date

S. Hedman

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Hacco, Inc., was filed on July 16, 2013 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7676 9020, a copy of the original to the Respondents:

Mr. Randy Yaroch
Hacco, Inc.
110 Hopkins Dr.
Randolph, Wisconsin 53956

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Kris Vezner, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2013-0016



JUL 16 2013

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