



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

July 8, 2013

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7676 4933

Mr. E. Bernard Haviland  
Haviland Consumer Products, Inc.  
421 Ann Street NW  
Grand Rapids, Michigan 49504

Consent Agreement and Final Order In the Matter of  
Haviland Consumer Products, Inc. Docket # FIFRA-05-2013-0014

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 8, 2013 with the Regional Hearing Clerk.

The civil penalty in the amount of \$24,000 is to be paid in the manner described in paragraphs 32 and 33. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by August 7, 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

In the Matter of:	)	Docket No. FIFRA-05-2013-0014
	)	
Haviland Consumer Products, Inc.	)	Proceeding to Assess a Civil Penalty
Grand Rapids, Michigan,	)	Under Section 14(a) of the Federal
	)	Insecticide, Fungicide, and Rodenticide
Respondent.	)	Act, 7 U.S.C. § 136/(a)

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JUL - 8 2013

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

Consent Agreement and Final Order

Preliminary Statement

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. § 136/(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 Haviland Consumer Products, Inc. (Haviland), a corporation doing business in Michigan.
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 it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

**Statutory and Regulatory Background**

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under FIFRA, except in certain circumstances which are not relevant to this case.

11. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

12. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

13. The term “distribute or sell” means “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.” 7 U.S.C. § 136(gg).

14. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

15. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

16. A “label” is the written, printed, or graphic matter on, or attached to, the pesticide or any of its containers or wrappers. 7 U.S.C. § 136(p)(1).

17. “Labeling” is all labels and other written, printed, or graphic matter accompanying the pesticide at any time or to which reference is made on the label or in literature accompanying the pesticide. 7 U.S.C. § 136(p)(2).

18. The Administrator of EPA may assess a civil penalty against any registrant, wholesaler, dealer, retailer, or other distributor 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. § 136(a)(1), and 40 C.F.R. Part 19.

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

19. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. Respondent is a wholesaler, dealer, retailer, or other distributor.

21. Respondent owned or operated a place of business located at 2168 Avastar, Grand Rapids, Michigan 49544 during the calendar year 2010.

22. On July 6, 2010, an inspector employed by North Carolina Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at SCP Distributors, LLC (SCP), located at 4460 South Boulevard, Charlotte, North Carolina 28209.

23. During the July 6, 2010 inspection, the inspector collected photographs, labeling and five shipping invoices for the product "ProTeam Liquid Magic."

24. The label of "ProTeam Liquid Magic" collected during the July 6, 2010 inspection states: "Acts fast. Go from green water to clear faster than any other method."

25. The brochure labeling of "ProTeam Liquid Magic" collected during the July 6, 2010 inspection states, among other claims:

- a. "Algaecides";
- b. "Keeps water free of algae";
- c. "Maintenance treatment use bi-weekly or as needed to keep water free of algae."

26. The five shipping invoices, identified by Purchase Order Numbers 11201647-2, 11202869-1, 11203263-1, 11202638-1, and 11203998-4, collected during the July 6, 2010 inspection document the distribution of "ProTeam Liquid Magic" from Respondent to SCP.

27. "ProTeam Liquid Magic" is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

28. At all times relevant to this CAFO, "ProTeam Liquid Magic," also referred to as "ProTeam Liquid Magic Algaecide" was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

29. Respondent distributed or sold "ProTeam Liquid Magic" to SCP on the following dates: (1) on or about May 15, 2010; (2) on or about June 7, 2010; (3) on or about June 8, 2010; (4) on or about June 10, 2010; and (5) on or about June 18, 2010.

30. Respondent's distribution or sale of the unregistered pesticide "ProTeam Liquid Magic" on each date as referenced in paragraph 29, above, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

### Civil Penalty

31. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136j(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$24,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$24,000 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO.

33. 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

Claudia Niess (LC-8J)  
Pesticides and Toxics Compliance Section  
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  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

35. If Respondent does not pay timely the civil penalty, 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. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

36. Pursuant to 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**

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

38. 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.

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

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

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

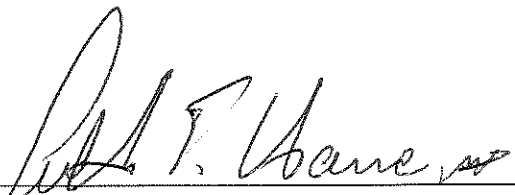
42. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

43. Each party agrees to bear its own costs and attorneys' fees in this action.

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


**Haviland Consumer Products, Inc., Respondent**

6/2/2013  
Date

  
Art Harre  
Chief Sales Officer

**United States Environmental Protection Agency, Complainant**

6/25/2013  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division




In the Matter of:  
Haviland Consumer Products, Inc.  
Docket No. FIFRA-05-2013-0014

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.

6-27-13  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5



JUL - 8 2013

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
OFFICE OF REGIONAL  
COUNSEL

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 Haviland Consumer Products, Inc., was filed on July 8, 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 4933, a copy of the original to the Respondents:

Mr. E. Bernard Haviland  
Haviland Consumer Products, Inc.  
421 Ann Street NW  
Grand Rapids, Michigan 49504

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Tamara Carnovsky, 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-05-2013-0014

