



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

June 13, 2012

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7667 7981

E. Bernard Haviland
Haviland Products Company
421 Ann St. NW
Grand Rapids, Michigan 49504

Consent Agreement and Final Order, In The Matter of Haviland Products Co.
Docket No. FIFRA-05-2012-0011

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 June 13, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 36 and 37. Please be certain that the number **BD 2751245P010** and the docket number are written on both the transmittal letter and on the check. Payment is due by July 13, 2012, (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:)
)
Haviland Products Company,)
Grand Rapids, Michigan)
Respondent.)
_____)

Docket No. FIFRA-05-2012-0011
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136(a)

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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. § 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 Haviland Products Company, a corporation doing business in the State of 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. Jurisdiction for this action is conferred upon EPA by Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

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 17(c) of FIFRA, 7 U.S.C. § 136o(c), states, in part, that the Secretary of the Treasury shall notify the Administrator of EPA (the Administrator) of the arrival of pesticides and devices and shall deliver to the Administrator, upon the Administrator's request, samples of the pesticides or devices which are being imported into the United States. If it appears from the examination of the sample that it is adulterated, or misbranded or otherwise violates the provisions set forth in this subchapter, the pesticide or device may be refused admission.

11. The Secretary of the Treasury in consultation with the Administrator, promulgated regulations, codified at 19 C.F.R. §§ 12.111-12.117, governing custom duties for pesticides and devices, pursuant to Section 17(c) of FIFRA, 7 U.S.C. § 136o(e).

12. 19 C.F.R. § 12.111 states, in pertinent 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.”

13. 19 C.F.R. § 12.112 states, in pertinent 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).

14. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it is unlawful for any person in any state to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

15. 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.”

16. 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.”

17. 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).”

18. 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.”

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

20. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$5,000 for each offense pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, EPA may assess a civil penalty for up to \$7,500 for each offense that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

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

22. Jiangnan Salt and Chemical Complex, care of Ponda International, located in Palo Alto, California is the “registrant” of Super-Chlor as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y). (Registrant).

23. On or about September 26, 2002, Registrant provided statements in support of Super-Chlor’s registration.

24. On September 26, 2002, the EPA’s Office of Pesticide Programs, Antimicrobials Division accepted a label for Super-Chlor submitted by the Registrant.

25. The label referenced in paragraph 24 above contained claims made by Registrant in connection with Super-Chlor's registration.

26. Super-Chlor is a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

27. At all times relevant to this CAFO, the pesticide product "Super-Chlor" was registered under FIFRA and was assigned an EPA Registration Number (EPA Reg. No.) of 74831-20005.

28. On or about March 30, 2012, BDP International, on behalf of Respondent, submitted a NOA to EPA for one import shipment of Super-Chlor from China.

29. Respondent was the importer of record listed on the NOA for the shipment of Super-Chlor.

30. On or about April 2, 2012, a shipment of Super-Chlor entered the United States for sale or distribution (Super-Chlor shipment).

31. Respondent was distributing or selling Super-Chlor as the terms "distribute or sell" are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

32. The labels on the Super-Chlor shipment contained claims related to first aid that substantially differed from claims made by the Registrant in connection with Super-Chlor's registration.

33. Respondent's distribution or sale of Super-Chlor containing claims that substantially differed from claims made by the Registrant in connection with Super-Chlor's registration violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

Civil Penalty

34. 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.

35. Pursuant to 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), Complainant determined that an appropriate civil penalty to settle this action is seven thousand five hundred dollars (\$7,500). In determining the penalty amount, 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.

36. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violation. 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

37. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document 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

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

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

39. 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. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

40. 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

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

42. 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.

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

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

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

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

47. 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.

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

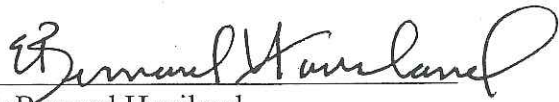
49. This CAFO constitutes the entire agreement between the parties.

50. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 5, Chicago, Illinois.

**In the Matter of:
Haviland Products Company
Docket No.**


Haviland Products Company, Respondent

5/16/12
Date


E. Bernard Haviland
President
Haviland Products Company

United States Environmental Protection Agency, Complainant

6/6/12
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Haviland Products Company
Docket No. FIFRA-05-2012-0011

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.

June 11, 2012
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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PROTECTION AGENCY

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 Products Co., was filed on June 13, 2012, with the Regional Hearing Clerk (E-13J), 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 7667 7981, a copy of the original to the Respondent:

E. Bernard Haviland
Haviland Products Company
421 Ann St. NW
Grand Rapids, Michigan 49504

and forwarded copies (intra-Agency) to:

John Breslin, Regional Judicial Officer, ORC/C-14J
Tamara Carnovsky, Counsel for Complainant/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 60604-3590

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