



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

December 3, 2020

VIA EMAIL

Mr. Benjamin Gaeth
Vice President of Enterprise Services
Haviland Enterprise, Inc.
421 Ann Street NW
Grand Rapids, Michigan 49504
beng@havilandusa.com

Re: Haviland Products Company, Inc. and Haviland Consumer Products, Inc. Grand Rapids and Walker, Michigan, Consent Agreement and Final Order, Docket Nos. CERCLA-05-2021-0002
CWA-05-2021-0001
EPCRA-05-2021-0002
FIFRA-05-2021-0001
TSCA-05-2021-0001

Dear Mr. Gaeth:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on December 3, 2020.


Please pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$19,337 in the manner prescribed in paragraphs 327 and 328, and reference your check with the billing document number 2752130B002 and the docket number CERCLA-05-2021-0002.

Please pay the Clean Water Act, Emergency Planning and Community Right-to-Know Act, Toxic Substances Control Act, and Federal Insecticide, Fungicide, & Rodenticide Act civil penalty in the amount of \$906,110 in the manner prescribed in paragraphs 326 and 328, and reference your check with the docket number(s) CWA-05-2021-0001 EPCRA-05-2021-0002 TSCA-05-2021-0001 FIFRA-05-2021-0001.

Your payments are due on January 4, 2021.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to me at (312) 886-2250. Thank you for your assistance in resolving this matter.

Sincerely,
TAMARA
CARNOVSKY
Tamara Carnovsky
Associate Regional Counsel

 Digitally signed by TAMARA CARNOVSKY
Date: 2020.12.03 12:09:03 -06'00'

Enclosure

cc: Sharon R. Newlon
SNewlon@dickinsonwright.com

CERCLA-05-2021-0002
CWA-05-2021-0001
EPCRA-05-2021-0002
FIFRA-05-2021-0001
TSCA-05-2021-0001

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:	)	Docket No. MM-05-2021-0002	CERCLA-05-2021-0002 CWA-05-2021-0001 EPCRA-05-2021-0002 FIFRA-05-2021-0001 TSCA-05-2021-0001
)		
Haviland Consumer Products, Inc.	)	Proceeding to Assess a Civil Penalty	
Haviland Products Company, Inc.	)	Under Section 14(a) of the Federal	
Grand Rapids and Walker Michigan,	)	Insecticide, Fungicide, and Rodenticide	
	)	Act, 7 U.S.C. § 136l(a); Sections	
	)	325(b)(2) and 325(c) of the Emergency	
	)	Planning and Community Right-to-Know	
Respondents.	)	Act of 1986, 42 U.S.C. § 11045(b)(2) and	
	)	(c); Section 109(b) of the Comprehensive	
	)	and Environmental Response,	
	)	Compensation and Liability Act, 42	
	)	U.S.C. § 9609(b), Section 309(g) of the	
	)	Clean Water Act, 33 U.S.C. § 1319(g);	
	)	and Section 16(a) of the Toxic Substances	
	)	Control Act, 15 U.S.C. § 2615(a)	

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), Sections 325(b)(2) and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(b)(2) and (c)(3), Section 109(b) of the Comprehensive and Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9609(b), Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), 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 Complainants are the Director of the Enforcement and Compliance Assurance Division and the Chief of the Emergency Response Branch 1, Superfund & Emergency Management 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 14(a) of the FIFRA, 7 U.S.C. § 136/(a), Section 325(c) of the EPCRA, 42 U.S.C. § 11045(c)(3), Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and Section 16(a) of the TSCA, 15 U.S.C. § 2615(a).

4. The Chief of the Emergency Response Branch 1, Superfund & Emergency Management Division is, by lawful delegation, authorized to institute and settle civil administrative actions brought pursuant to Sections 325(b)(2) of the EPCRA, 42 U.S.C. § 11045(b)(2), and Section 109(b) of the CERCLA, 42 U.S.C. § 9609(b).

5. Respondents are Haviland Products Company, Inc. (HPC) and Haviland Consumer Products, Inc. (HCP) (collectively, "Respondents"), corporations doing business in the State of Michigan.

6. 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).

7. 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.

8. Respondents consent 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

9. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

10. Respondents waive 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

TSCA

11. Section 8(a) of TSCA, 15 U.S.C. § 2607(a), states, in pertinent part, that the Administrator shall promulgate rules under which each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance shall maintain records, and shall submit to the Administrator such reports, as the Administrator may reasonably require.

12. Section 8(b) of TSCA, 15 U.S.C. § 2607(b), states the Administrator shall compile, keep current, and publish a list (TSCA Inventory) of each chemical substance which is manufactured or processed in the United States.

13. The Chemical Data Reporting rule promulgated at 40 C.F.R. Part 711 specifies reporting and recordkeeping procedures under Section 8(a) of TSCA for certain manufacturers (including importers) of chemical substances. Section 8(a) of TSCA authorizes the Administrator to require reporting of information necessary for administration of TSCA, including issuing regulations for the purpose of compiling and keeping current the TSCA Chemical Substance Inventory (TSCA Inventory) as required by Section 8(b) of TSCA.

14. Under 40 C.F.R. § 711.8(a)(2), any person who manufactured, including imported, for commercial purposes 25,000 pounds or more of a chemical substance described in 40 C.F.R. § 711.5 at any single site owned or controlled by that person during any calendar year since the last principal reporting year (for the 2016 submission period consider calendar years 2012, 2013, 2014, and 2015) is subject to the requirements of 40 C.F.R. Part 711.

15. Under 40 C.F.R. § 711.5, any chemical substance that is in the Master Inventory File at the beginning of the submission period described in 40 C.F.R. § 711.20, unless the chemical substance is specifically excluded by § 711.6, must be reported.

16. The 2016 Chemical Data Reporting submission period was from June 1, 2016 to September 30, 2016. 40 C.F.R. § 711.20.

17. Manufacturers submitting information to EPA under 40 C.F.R. Part 711 must use e-CDRweb to complete and submit the Form U (EPA Form 7740-8). 40 C.F.R. § 711.35.

18. 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 not to exceed \$37,500 for each violation.

19. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and its implementing regulations at 40 C.F.R. Part 19 (collectively, the FCPIAA), increased the amount that can be assessed to \$40,576 for each violation of Section 15 of TSCA occurring after November 2, 2015 and assessed after January 13, 2020. See 85 Fed. Reg. 1751 (January 13, 2020).

EPCRA Section 313

20. EPA promulgated the Toxic Chemical Release Reporting Community Right-to-Know Rule at 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C.

§§ 11023 and 11048.

21. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313 and Part 372 apply to any facility that has 10 or more full-time employees, a Standard Industrial Classification (SIC) code 5169, among other codes, and that manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c) and listed at 40 C.F.R. § 372.65 in an amount that exceeds the threshold for reporting, as set forth in Section 313(f) and in 40 C.F.R. §§ 372.25, 372.27 and 372.28.

22. Under Section 313(f), 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25(a), the threshold amount for purposes of reporting under 40 C.F.R. § 372.30 for toxic chemicals manufactured or processed in 2015 is 25,000 pounds.

23. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require the owner or operator of a facility subject to the requirements of Section 313 and Part 372 to complete and submit to the Administrator of EPA and to the state in which the facility is located, no later than July 1, 1988 and each July 1 thereafter, a chemical release form published pursuant to Section 313(g) for each toxic chemical listed under Section 313(c) that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold established by Section 313(f).

24. EPA published the Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-88) (Form R) at 40 C.F.R. § 372.85 pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g).

25. All persons required to report pursuant to Section 313(b) must use Form R according to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

26. Section 325(c) (3) of EPCRA, 42 U.S.C. § 11045(c)(3), authorizes the

Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA, 42 U.S.C. § 11023. Under the FCPIAA, EPA may assess a civil penalty of up to \$57,317 per day for each violation of Section 313 that occurred after November 2, 2015, where penalties are assessed on or after February 6, 2019.

CWA

27. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters by any person except in compliance with, *inter alia*, Section 307 of the CWA, 33 U.S.C. § 1317.

28. Pursuant to Section 307 of the CWA, 33 U.S.C. § 1317, the EPA has established standards that govern discharges into publicly owned treatment works (POTWs) that discharge to navigable waters. The General Pretreatment Regulations found at 40 C.F.R. Part 403, are designed to ensure that each POTW can comply with its National Pollution Discharge Elimination System permit.

29. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), prohibits the discharge of pollutants into a POTW in violation of any effluent standard, prohibition or pretreatment standard promulgated under Section 307 of the CWA, 33 U.S.C. § 1317.

30. EPA promulgated pretreatment standards for specified categories of industrial users pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b). These categories of industrial users are subject to specific pretreatment requirements set forth at 40 C.F.R. Parts 405-471.

31. The pesticide formulating, packaging, repackaging subcategory is one of the specified operations subject to categorical pretreatment standards. 40 C.F.R. § 455.40. These categorical standards apply to process wastewater discharges resulting from all pesticide

formulating, packaging and repackaging operations except as provided in paragraphs (b), (c), (d), (e) and (f) of 40 C.F.R. § 455.40.

32. Pursuant to 40 C.F.R. § 455.46(a), except as provided in 40 C.F.R. §§ 403.7 and 403.13 or in 455.45(b), no later than November 6, 1999, any existing source subject to Part 403 which introduces pollutants into a POTW must comply with 40 C.F.R. Part 403 and achieve pretreatment standards for existing sources as follows: there shall be no discharge of process wastewater pollutants.

33. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State in which the violation occurs, when the Administrator finds, on the basis of any information available, that a person has violated Sections 301 or 307 of the CWA, 33 U.S.C. §§ 1311 and 1317.

34. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and the FCPIAA, the Administrator may assess a Class II civil penalty of up to \$16,000 per day of violation up to a total of \$187,500, for violations of Section 301 of the CWA that occurred after December 6, 2013 through November 2, 2015 and up to \$21,933 per day of violation up to a total of \$274,159, for violations of Section 301 of the CWA that occurred after November 2, 2015 and for which penalties are assessed on or after February 6, 2019.

FIFRA

35. 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 FIFRA or whose registration has been cancelled or suspended.

36. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for

any person in any state to distribute or sell to any person any pesticide that is adulterated.

37. Section 2(c)(1) of FIFRA, 7 U.S.C. § 136(c), states that a pesticide is “adulterated” if its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold.

38. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is misbranded.

39. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states that a pesticide is misbranded if its label does not bear the registration number assigned under Section 7 of FIFRA to the establishment in which it was produced.

40. 40 C.F.R. § 156.10(a)(1)(i) states that every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently the name, brand, or trademark under which the product is sold as prescribed in paragraph (b) of this section.

41. 40 C.F.R. § 156.10(b)(1) states the name, brand or trademark under which a pesticide product is sold shall appear on the front panel of the product’s label.

42. 40 C.F.R. § 152.132 states that supplemental distribution is permitted upon notification to the Agency if all of the following conditions are met: (a) The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor’s company number, the additional brand name(s) to be used, and the registration number of the registered product; (b) The distributor product is produced, packaged and labeled in a registered establishment operated by the same producer who produces, packages, and labels the registered product; (c) The distributor product is not repackaged (remains in the producer’s

unopened containers); (d) The label of the distributor product is the same as that of the registered product, except that the product name of the distributor product may be different, the name and address of the distributor may appear instead of that of the registrant, the registration number of the registered product must be followed by a dash, followed by the distributor's company number, the establishment number must be that of the final establishment at which the product was produced, and specific claims may be deleted, provided that no other changes are necessary; and (e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

43. 40 C.F.R. § 152.132 also specifies that a distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

44. Section 14(a)(1), 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

45. The FCPIAA increased the amount that can be assessed to \$20,228 for each offense occurring after November 2, 2015 and assessed after January 13, 2020.

EPCRA 304/CERCLA

46. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

47. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires the owner or operator of a facility to immediately provide notice, as described in Section 304(b) of EPCRA,

42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

48. Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), requires the owner or operator of a facility to immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of a hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

49. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), the owner or operator of a facility must give the notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), immediately after the release, to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

50. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

51. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term "hazardous chemical" has the meaning given such term by 29 C.F.R. § 1910.1200(c).

52. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

53. Section 304(c) requires an owner or operator to provide a written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b), as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C § 11004(a).

54. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The FCPIAA increased the statutory maximum penalty to \$57,317 per day of violation for each violation that occurred after November 2, 2015, and for which penalties are assessed on or after January 13, 2020.

Factual Allegations and Alleged Violations

55. On August 1 through 4 and August 8 through 10, 2016, (the August 2016 inspection) inspectors employed by EPA conducted a multi-media inspection of Haviland Enterprises, Inc. and its subsidiaries, HPC and HCP located at 421 Ann Street NW, Grand Rapids, Michigan (East Facility); 1855 Turner Avenue Northwest, Grand Rapids, Michigan (“Corner Facility” or “Corner Building”); 521 Ann Street NW, Grand Rapids, Michigan (West Facility); and 2168 Avastar Parkway Northwest, Walker, Michigan (North Facility). Based on the inspection and/or other information received by EPA, EPA alleges the following violations of TSCA, EPCRA Section 313, CWA, FIFRA, EPCRA Section 304 and CERCLA.

TSCA

56. HPC is a “person” as that term is defined at 40 C.F.R. §§ 710.3 and 720.3(r).

57. For all times relevant to these TSCA allegations, HPC owned or controlled the East Facility.

58. For all times relevant to these TSCA allegations, HPC owned or controlled the West Facility.

59. HPC’s East Facility and West Facility are divided only by a public right-of-way.

60. HPC’s East Facility and West Facility are considered one “site” as that term is defined under 40 C.F.R. § 711.3.

61. HPC’s North Facility is considered a “site” as that term is defined under 40 C.F.R. § 711.3.

62. HPC was directly responsible for importing chemical substances at the East, West and North Facilities (Sites).

63. HPC manufactured, produced or imported during calendar years 2012 through 2015, at its Sites as listed in Table 1, below, the chemical substances listed in the annual amounts identified.

Table 1

Numbers	Chemical Substance and CAS No.	Pounds Per Calendar Year			
		2012	2013	2014	2015
1	Ferric Sulfate CAS No. 10028-22-5	65,615	56,958	63,406	75,732
2	Ferric ammonium oxalate (1:3:3) trihydrate CAS No. 13268-42-3	30,162	26,614	29,420	

Numbers	Chemical Substance and CAS No.	Pounds Per Calendar Year			
		2012	2013	2014	2015
3	Urea, monohydrochloride CAS No. 506-89-8	62,493	106,606	71,683	141,528
4	Calcium Chloride CAS No. 10043-52-4	65,760			
5	Lanthanum Chloride CAS No. 10099-58-8		60,866		
6	Cyanuric acid CAS No. 108-80-5	545,541	699,321	1,222,219	1,069,236
7	Bis(2-chloroethyl) ether CAS No. 111-44-4	100,320			
8	Copper carbonate, basic CAS No. 12069-69-1				41,891
9	Ammonium bifluoride CAS No. 1341-49-7	419,132	293,238	460,803	544,586
10	Tetramethylethylenediamine CAS No. 110-18-9	87,296			
11	Borate(1-), tetrafluoro-, tin(2+) (2:1) CAS No. 13814-97-6	52,650	26,520		
12	Sodium bicarbonate CAS No. 144-55-8	172,320			57,600
13	2,4-Hexadienoic acid potassium salt, (E,E)- CAS No. 24634-61-5				52,915
14	Sodium carbonate CAS No. 497-19-8	79,200			
15	Sulfuric acid, tin(2+) salt (1:1) CAS No. 7488-55-3		33,072		
16	Sodium bisulfate CAS No. 7681-38-1	37,800			
17	o-Isopropylphenol CAS No. 88-69-7	29,983			

64. HPC manufactured or imported chemical substances numbered 1 - 17, listed in Table I, above, for obtaining an immediate or eventual commercial advantage.

65. HPC “manufactured” the chemical substances numbered 1 - 17, listed in Table 1, as that term is defined in 40 C.F.R. § 711.3.

66. HPC “manufactured for commercial purposes” the chemical substances numbered 1 - 17, listed in Table 1, above, as that term is defined in 40 C.F.R. § 704.3.

67. The chemical substances identified in Table 1 are listed on EPA’s Master Inventory File and are included in the TSCA Inventory.

68. HPC manufactured for commercial purposes the chemical substances listed in Table 1, above, at the Site in amounts greater than 25,000 pounds in any given calendar year in calendar years 2012 through 2015.

69. HPC did not submit a Form U for the 2016 reporting year for each chemical substance listed in Table 1, above, as required by 40 C.F.R. § 711.20.

70. HPC’s failure to submit the Form U for the manufacture of each chemical substance listed in Table 1, above, at its Sites constitutes seventeen separate violations of 40 C.F.R. § 711.20 and Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

EPCRA 313

71. HPC is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

72. For all times relevant to these ECPRA 313 allegations, HPC owned or operated the East Facility.

73. HPC’s East Facility consists of buildings, equipment and structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned by the same person, entity, or corporation.

74. HPC’s East Facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

75. During the calendar year 2015, HPC employed at its East Facility the equivalent of at least 10 employees with total paid hours equal to or more than 20,000 hours per calendar year.

76. HPC's East Facility is covered by SIC Code #5169.

Copper Compounds

77. Copper Compounds is a toxic chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

78. HPC's East Facility imported Copper Compounds during the 2015 calendar year.

79. During the 2015 calendar year, HPC's East Facility "manufactured" Copper Compounds as defined by 40 C.F.R. § 372.3.

80. During the 2015 calendar year, HPC's East Facility manufactured 41,895 pounds of Copper Compounds, Chemical Category N495.

81. HPC's East Facility manufactured Copper Compounds, as referenced in paragraph 80 above, in quantities exceeding the threshold amount of 25,000 pounds.

82. On September 20, 2019, HPC submitted to the Administrator of EPA and to Michigan a Form R for Copper Compounds for the 2015 calendar year.

83. HPC's failure to submit timely to the Administrator of EPA a Form R for Copper Compounds for the 2015 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Chromium Compounds

84. Chromium Compounds is a toxic chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

85. HPC's East Facility processed Chromium Compounds contained in a mixture or trade name product during the 2015 calendar year.

86. During the 2015 calendar year, HPC's East Facility "processed" Chromium Compounds as defined by 40 C.F.R. § 372.3.

87. During the 2015 calendar year, HPC's East Facility processed 391,089 pounds of Chromium Compounds, Chemical Category N090.

88. HPC's East Facility processed Chromium Compounds, as referenced in paragraph 87, above, in quantities exceeding the threshold amount of 25,000 pounds.

89. On September 20, 2019, HPC submitted to the Administrator of EPA and to Michigan a Form R for Chromium Compounds for the 2015 calendar year.

90. HPC's failure to submit timely to the Administrator of EPA a Form R for Chromium Compounds for the 2015 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Ethylene Glycol

91. Ethylene Glycol is a toxic chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

92. HPC's East Facility processed Ethylene Glycol contained in a mixture or trade name product during the 2015 calendar year.

93. During the 2015 calendar year, HPC's East Facility "processed" Ethylene Glycol as defined by 40 C.F.R. § 372.3.

94. During the 2015 calendar year, HPC's East Facility processed 58,248 pounds of Ethylene Glycol, CAS No. 107-21-1.

95. HPC's East Facility processed Ethylene Glycol, as referenced in paragraph 94, above, in quantities exceeding the threshold amount of 25,000 pounds.

96. On September 20, 2019, HPC submitted to the Administrator of EPA and to

Michigan a Form R for Ethylene Glycol for the 2015 calendar year.

97. HPC's failure to submit timely to the Administrator of EPA a Form R for Ethylene Glycol for the 2015 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Certain Glycol Ethers

98. Certain Glycol Ethers is a toxic chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

99. HPC's East Facility processed Certain Glycol Ethers contained in a mixture or trade name product during the 2015 calendar year.

100. During the 2015 calendar year, HPC's East Facility "processed" Certain Glycol Ethers as defined by 40 C.F.R. § 372.3. HPC's East Facility processed 78,831 pounds of Certain Glycol Ethers, Chemical Category N230.

101. HPC's East Facility processed Certain Glycol Ethers, as referenced in paragraph 100, above, in quantities exceeding the threshold amount of 25,000 pounds.

102. On September 20, 2019, HPC submitted to the Administrator of EPA and to Michigan a Form R for Certain Glycol Ethers for the 2015 calendar year.

103. HPC's failure to submit timely to the Administrator of EPA a Form R for Certain Glycol Ethers for the 2015 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Manganese Compounds

104. Manganese Compounds is a toxic chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

105. HPC's East Facility processed Manganese Compounds contained in a mixture or

trade name product during the 2015 calendar year.

106. During the 2015 calendar year, HPC's East Facility "processed" Manganese Compounds as defined by 40 C.F.R. § 372.3.

107. During the 2015 calendar year, HPC's East Facility processed 217,553 pounds of Manganese Compounds, Chemical Category N450.

108. HPC's East Facility processed Manganese Compounds, as referenced in paragraph 107, above, in quantities exceeding the threshold amount of 25,000 pounds.

109. On September 20, 2019, HPC's submitted to the Administrator of EPA and to Michigan a Form R for Manganese Compounds for the 2015 calendar year.

110. HPC's failure to submit timely to the Administrator of EPA a Form R for Manganese Compounds for the 2015 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Nickel Compounds

111. Nickel Compounds is a toxic chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

112. HPC's East Facility processed Nickel Compounds contained in a mixture or trade name product during the 2015 calendar year.

113. During the 2015 calendar year, HPC's East Facility "processed" Nickel Compounds as defined by 40 C.F.R. § 372.3.

114. During the 2015 calendar year, HPC's East Facility processed 169,197 pounds of Nickel Compounds, Chemical Category N495.

115. HPC's Facility processed Nickel Compounds, as referenced in paragraph 114, above, in quantities exceeding the threshold amount of 25,000 pounds.

116. On September 20, 2019, HPC submitted to the Administrator of EPA and to Michigan a Form R for Nickel Compounds for the 2015 calendar year.

117. HPC's failure to submit timely to the Administrator of EPA a Form R for Nickel Compounds for the 2015 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Nitrate Compounds

118. Nitrate Compounds is a toxic chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

119. HPC's East Facility processed Nitrate Compounds contained in a mixture or trade name product during the 2015 calendar year.

120. During the 2015 calendar year, HPC's East Facility "processed" Nitrate Compounds as defined by 40 C.F.R. § 372.3.

121. During the 2015 calendar year, HPC's East Facility processed 280,792 pounds of Nitrate Compounds, Chemical Category N511.

122. HPC's East Facility processed Nitrate Compounds, as referenced in paragraph 121, above, in quantities exceeding the threshold amount of 25,000 pounds.

123. On September 20, 2019, HPC submitted to the Administrator of EPA and to Michigan a Form R for Nitrate Compounds for the 2015 calendar year.

124. HPC's failure to submit timely to the Administrator of EPA a Form R for Nitrate Compounds for the 2015 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Nitric Acid

125. Nitric Acid is a toxic chemical identified at Section 313(c) of EPCRA, 42 U.S.C.

§ 11023(c), and listed at 40 C.F.R. § 372.65.

126. HPC's East Facility processed Nitric Acid contained in a mixture or trade name product during the 2015 calendar year.

127. During the 2015 calendar year, HPC's East Facility "processed" Nitric Acid as defined by 40 C.F.R. § 372.3.

128. During the 2015 calendar year, HPC's East Facility processed 239,444 pounds of Nitric Acid, CAS No. 7697-37-2.

129. HPC's East Facility processed Nitric Acid, as referenced in paragraph 128, above, in quantities exceeding the threshold amount of 25,000 pounds.

130. On September 20, 2019, HPC submitted to the Administrator of EPA and to Michigan a Form R for Nitric Acid for the 2015 calendar year.

131. HPC's failure to submit timely to the Administrator of EPA a Form R for Nitric Acid for the 2015 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Zinc Compounds

132. Zinc Compounds is a toxic chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

133. HPC's East Facility processed Zinc Compounds contained in a mixture or trade name product during the 2015 calendar year.

134. During the 2015 calendar year, HPC's East Facility "processed" Zinc Compounds as defined by 40 C.F.R. § 372.3.

135. During the 2015 calendar year, HPC's East Facility processed 61,525 pounds of Zinc Compounds, Chemical Category N982.

136. HPC's East Facility processed Zinc Compounds, as referenced in paragraph 135, above, in quantities exceeding the threshold amount of 25,000 pounds.

137. On September 20, 2019, HPC submitted to the Administrator of EPA and to Michigan a Form R for Zinc Compounds for the 2015 calendar year.

138. HPC's failure to submit timely to the Administrator of EPA a Form R for Zinc Compounds for the 2015 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

CWA

139. HPC and HCP are "persons" as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

140. At all times relevant to these CWA allegations, HPC owned and HCP operated the Corner Building.

141. The Corner Building is an "industrial user" as defined in 40 C.F.R. § 403.3(j).

142. From at least March 2015 to June 2018, HCP opened bulk bags of products named Casoron 4G and Blast it and repackaged the products into smaller bags and other containers as part of its bagging and blending process at the Corner Building.

143. Casoron 4G and Blast it contain dichlobenil.

144. Dichlobenil is a "pesticide" as defined in 40 C.F.R. § 455.10(a)(1).

145. The bagging and blending process consists of two baggers and a fill line which emit particulate matter, nickel, and other air pollutants.

146. To control emissions of particulate matter, nickel, and other air pollutants, HCP operated a wet scrubber at its Corner Building.

147. HCP generated wastewater at the Corner Building during its bagging and blending

process. Sources of the wastewater include, but are not limited to, blowdown from the Corner Building wet scrubber, and rinse water used in the Corner Building bagging and blending process.

148. The wastewater generated at the Corner Building is discharged to the sanitary sewer.

149. The wastewater generated at the Corner Building is “process wastewater” associated with pesticide formulating, packaging and repackaging as defined in 40 C.F.R. § 455.41(f).

150. Dichlobenil is a “pollutant,” as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

151. The Corner Building was constructed prior to November 6, 1999.

152. The Corner Building is an existing source which introduced dichlobenil into the City of Grand Rapids POTW (the POTW).

153. The POTW is a “POTW” as defined in Section 212 of the CWA, 33 U.S.C. § 1292(2), and 40 C.F.R. § 403.3(q).

154. The POTW discharges to the Grand River.

155. The Grand River is a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

156. Discharges of dichlobenil from HCP’s pesticide formulating, packaging, repackaging operations is subject to categorical pretreatment standards at 40 C.F.R. § 455.46(a).

157. From approximately March 2015 to June 2018, dichlobenil was introduced into the POTW on at least fifteen occasions from HPC’s Corner Building.

158. The introduction of dichlobenil into the POTW from HCP's pesticide formulating, packaging, repackaging operations at HPC's Corner Building is a prohibited discharge under 40 C.F.R. § 455.46(a).

159. Each day HPC and HCP discharged dichlobenil into the POTW was a violation of Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d).

FIFRA

160. HCP is a person, as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

161. HCP is a "registrant" as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

162. At all times relevant to these FIFRA allegations, HCP owned or controlled an establishment at the East Facility.

163. At all times relevant to these FIFRA allegations, HCP owned or controlled an establishment at the North Facility.

164. At all times relevant to these FIFRA allegations, HCP owned or controlled an establishment at the Corner Facility.

165. The North Facility is an "establishment" as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

166. The Corner Facility is an "establishment" as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

167. At all times relevant to these FIFRA allegations, the North Facility was assigned EPA Establishment Number (EPA Est. No.) 57787-MI-001 under Section 7 of FIFRA.

168. At all times relevant to this CAFO, the Corner Facility was assigned EPA Est. No. 57787-MI-003 under Section 7 of FIFRA.

169. During the August 2016 inspection, the EPA inspectors collected copies of records of production, receipt, distribution or sale, bin labels, and statements regarding the labeling of Pool Brite Winterizing Kit and its contents, including Pool Brite Poly Algacide 30X, EPA Registration Number (EPA Reg. No.) 57787-2-36187; Blast It, EPA Reg. No. 400-168-57787; Family Pools 4 in 1 Pool Shock, EPA Reg. No. 57787-6-66066; Caribbean Spa Bromine Tabs, EPA Reg. No. 57787-32; and ProTeam Spa Brominating Tabs, EPA Reg. No. 57787-32.

170. During the August 2016 inspection, the EPA inspectors collected a physical sample of Blast It, EPA Reg. No. 400-168-57787, lot number 1607080386, held for distribution or sale at the North Facility for analysis.

Pool Brite Winterizing Kit and Pool Brite Poly Algacide 30X

171. On or about February 10, 1988, EPA registered Combat 30, EPA Reg. No. 57787-2, under Section 3(c)(5) of FIFRA.

172. Combat 30, EPA Reg. No. 57787-2, is a “pesticide” as that term, is defined by Section 2(u) of FIFRA.

173. HCP is the “registrant” of Combat 30, EPA Reg. No. 57787-2, as that term is defined by Section 2(y) of FIFRA.

174. On or about December 28, 2012, HCP submitted a Notice of Supplemental Distribution of a Registered Pesticide Product (Notice of Supplemental Distribution) to EPA.

175. On or about August 26, 2014, HCP submitted a Notice of Supplemental Distribution to EPA.

176. The December 28, 2012 and August 26, 2014 Notices of Supplemental Distribution identified EMSCO of Strongsville, Ohio as the distributor of Combat 30, EPA Reg. No. 57787-2.

177. The August 26, 2014 Notice of Supplemental Distribution identified the distributor product name for Combat 30 as Pool Brite Poly Algaecide 30X.

178. Pool Brite Poly Algaecide 30X was assigned EPA Reg. No. 57787-2-36187.

179. On or about January 8, 2015, HCP submitted a “Notification of Termination of Supplemental Distributor Agreement for base product Combat 30 (EPA Reg. No. 57787-2)” to EPA.

180. The January 8, 2015 Notification of Termination referenced in the preceding paragraph notified EPA that HCP was cancelling the distributor product assigned EPA Reg. No. 57787-2-36187, among other distributor products.

181. On or about January 23, 2015, EPA cancelled the registration of the distributor product Pool Brite Poly Algaecide 30X, EPA Reg. No. 57787-2-31687.

182. The bin label of Pool Brite Winterizing Kit collected during the August 2016 inspection states:

- a. “KIT INCLUDES:
Pool Brite Poly-Algaecide 30X (1 pt.)
Pool Brite Oxy-Klear (1 lb.)
Pool Brite Scale & Metal Control (1 pt.)”
- b. “EPA Reg. No. 57787-2-31687”
- c. “WINTER ALGAE PREVENTATIVE FOR SWIMMING POOLS This product when used as directed will prevent growth of most algae during the off-season winter months when pools are not in use.”

183. The contents of the pesticide product Pool Brite Winterizing Kit are not visible through the packaging in which the pesticide product was distributed or sold.

184. The pesticide product Pool Brite Winterizing Kit is a “pesticide” as that term is defined by Section 2(u) of FIFRA.

185. At all times relevant to these FIFRA allegations, the pesticide product Pool Brite Winterizing Kit was not registered under Section 3 of FIFRA.

186. At all times after January 23, 2015, the registration of the distributor product Pool Brite Poly Algaecide 30X, EPA Reg. No. 57787-2-31687, under FIFRA was cancelled.

187. On or about August 2, 2016, HCP held Pool Brite Poly Algaecide 30X, EPA Reg. No. 57787-2-36187, for distribution or sale at the North Facility.

188. On or about August 4, 2016, HCP distributed or sold Pool Brite Winterizing Kit to EMSCO, located at 11025 Parker Drive, Irwin, Pennsylvania 15642.

189. On or about August 4, 2016, HCP distributed or sold Pool Brite Winterizing Kit to EMSCO, located at 22350 Royalton Road, Strongsville, Ohio 44149.

190. On two separate occasions on August 4, 2016, HCP distributed or sold the pesticide product Pool Brite Winterizing Kit which was not registered under Section 3 of FIFRA.

191. HCP's distribution or sale of Pool Brite Winterizing Kit on two occasions constitutes two unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

192. On August 2, 2016, HCP distributed or sold the pesticide Pool Brite Poly Algaecide 30X, EPA Reg. No. 57787-2-31687, whose registration under Section 3 of FIFRA was cancelled.

193. HCP's distribution or sale of Pool Brite Poly Algaecide 30X on August 2, 2016 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

194. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Blast It

195. On or about October 20, 1982, EPA registered Casoron 4G, EPA Reg. No. 400-168, under Section 3(c)(5) of FIFRA.

196. Casoron 4G, EPA Reg. No. 400-168, is a “pesticide” as that term is defined by Section 2(u) of FIFRA.

197. On or about June 9, 2000, the registrant of Casoron 4G, EPA Reg. No. 400-168, submitted a Notice of Supplemental Distribution to EPA.

198. The Notice of Supplemental Distribution identified HCP as the distributor of Casoron 4G, EPA Reg. No. 400-168.

199. The Notice of Supplemental Distribution identified the distributor product name for Casoron 4G, to be Blast It.

200. Blast It is assigned EPA Reg. No. 400-168-57787.

201. On or about August 5, 2016, the Office of Indiana State Chemist and Seed Commissioner (OISC) received the physical sample of Blast It, EPA Reg. No. 400-168-57787, collected during the August 2016 inspection.

202. On or about September 16, 2016, OISC analyzed the physical sample of Blast It, EPA Reg. No. 400-168-57787, collected on August 4, 2016.

203. The September 16, 2016 analysis showed the concentration of dichlobenil in the sample of Blast It, EPA Reg. No. 400-168-57787, was 3.70%.

204. The label of Blast It, EPA Reg. No. 400-168-57787, states the pesticide product contains 4.0% dichlobenil.

205. The bin label of Blast It, EPA Reg. No. 400-168-57787, collected during the August 2016 inspection contained “EPA Est. No. 57787-MI-1.”

206. The production records collected during the August 2016 inspection documented the production of Blast It, EPA Reg. No. 400-168-57787, at the Corner Facility, EPA Est. No. 57787-MI-003.

207. On or about August 2, 2016, HCP distributed or sold Blast It, EPA Reg. No. 400-168-57787, to SCP Distributors #79, located at 600 Pegg Road, Greensboro, North Carolina 27409.

208. On or about August 2, 2016, HCP distributed or sold Blast It, EPA Reg. No. 400-168-57787, to SCP Distributors #04, located at 161 Concourse Drive, Pearl, Mississippi 39208.

209. On or about August 3, 2016, HCP distributed or sold Blast It, EPA Reg. No. 400-168-57787, to Leisure Depot, located at 8250 Dorchester Road, North Charleston, South Carolina 29418.

210. On or about August 4, 2016, HCP distributed or sold Blast It, EPA Reg. No. 400-168-57787, to SCP Distributors #17, located at 205 W Oklahoma Avenue, Knoxville, Tennessee 37917.

211. On or about August 4, 2016, HCP distributed or sold Blast It, EPA Reg. No. 400-168-57787, to SCP Distributors #02, located at 7115 Exchequer Drive, Baton Rouge, Louisiana 70809.

212. On or about August 3, 2016, HCP held Blast It, EPA Reg. No. 400-168-57787, for distribution or sale at the North Facility.

213. On six separate occasions, when HCP distributed or sold the pesticide Blast It, EPA Reg. No. 400-168-57787, its strength and purity fell below the professed standard of quality as expressed on its labeling under which it was sold.

214. HCP's distribution or sale of Blast It, EPA Reg. No. 400-168-57787, was adulterated as that term is defined by Section 2(c)(1) of FIFRA.

215. HCP's distribution or sale of Blast It, EPA Reg. No. 400-168-57787, in its adulterated form on six separate occasions constitutes six unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

216. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

217. On six separate occasions, HCP distributed or sold the pesticide Blast It, EPA Reg. No. 400-168-57787, and its label did not bear the registration number assigned under Section 7 of FIFRA to the establishment in which it was produced.

218. Blast It, EPA Reg. No. 400-168-57787, as referenced in paragraph 217, above, was misbranded as that term is defined by Section 2(q)(1)(D) of FIFRA.

219. HCP's distribution or sale of Blast It, EPA Reg. No. 400-168-57787, with a misbranded label on six separate occasions constitutes six unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

220. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Family Pools 4-in-1 Pool Shock Energizer Plus

221. On or about May 29, 1968, EPA registered Durachlor Granular, EPA Reg. No. 57787-6, under Section 3(c)(5) of FIFRA.

222. Durachlor Granular, EPA Reg. No. 57787-6, is a "pesticide" as that term is defined by Section 2(u) of FIFRA.

223. HCP is the “registrant” of Durachlor Granular, EPA Reg. No. 57787-6, as that term is defined by Section 2(y) of FIFRA.

224. On or about September 15, 2014, HCP submitted a Notice of Supplemental Distribution to EPA.

225. The Notice of Supplemental Distribution identified Family Pools & Patio, Inc. as the distributor of Durachlor Granular, EPA Reg. No. 57787-6.

226. The Notice of Supplemental Distribution identified the distributor product name for Durachlor Granular to be Family Pools 4-in-1 Pool Shock Energizer Plus.

227. Family Pools 4-in-1 Pool Shock Energizer Plus is assigned EPA Reg. No. 57787-6-66066.

228. The bin label of Family Pools 4-in-1 Pool Shock Energizer Plus, EPA Reg. No. 57787-6-66066, collected during the August 2016 inspection contained “EPA Est. No. 57787-MI-01.”

229. The production records collected during the August 2016 inspection documented the production of Family Pools 4-in-1 Shock Energizer Plus, EPA Reg. No. 57787-6-66066, at the Corner Facility, EPA Est. No. 57787-MI-003.

230. On or about June 17, 2016, HCP distributed or sold Family Pools 4-in-1 Pool Shock Energizer Plus, EPA Reg. No. 57787-6-66066, to Baystate Pool Nh, located at 18 Marin Way, Stratham, New Hampshire 03885.

231. On or about June 18, 2016, HCP distributed or sold Family Pools 4-in-1 Pool Shock Energizer Plus, EPA Reg. No. 57787-6-66066, to Baystate Pool Supplies, Inc., located at 26 Smith Place, Cambridge, Massachusetts 02138.

232. On or about August 3, 2016, HCP held family Pools 4-in-1 Pool Shock Energizer Plus, EPA Reg. No. 57787-6-66066, for distribution or sale at the North Facility.

233. On three separate occasions, HCP distributed or sold the pesticide Family Pools 4-in-1 Pool Shock Energizer Plus, EPA Reg. No. 57787-6-66066, and its label did not bear the registration number assigned under Section 7 of FIFRA to the establishment in which it was produced.

234. Family Pools 4-in-1 Pool Shock Energizer Plus, EPA Reg. No. 57787-6-66066, as referenced in paragraph 233, above, was misbranded as that term is defined by Section 2(q)(1)(D) of FIFRA.

235. HCP's distribution or sale of Family Pools 4-in-1 Pool Shock Energizer Plus, EPA Reg. No. 57787-6-66066, with a misbranded label on three separate occasions constitutes three unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

236. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Caribbean Spa Bromine Tabs and ProTeam Spa Brominating Tabs

237. On or about April 25, 2007, EPA registered Haviland Ultra Brom, EPA Reg. No. 57787-32, under Section 3(c)(5) of FIFRA.

238. Haviland Ultra Brom, EPA Reg. No. 57787-32, is a "pesticide" as that term is defined by Section 2(u) of FIFRA.

239. HCP is the "registrant" of Haviland Ultra Brom, EPA Reg. No. 57787-32, as that term is defined by Section 2(y) of FIFRA.

240. Caribbean Spa Bromine Tabs is an accepted alternate brand name for Haviland Ultra Brom, EPA Reg. No. 57787-32.

241. ProTeam Spa Brominating Tabs is an accepted alternate brand name for Haviland Ultra Brom, EPA Reg. No. 57787-32.

242. The bin label of Caribbean Spa Bromine Tabs, EPA Reg. No. 57787-32, collected during the August 2016 inspection contained:

- a. "EPA Est. No. 57787-MI-003(H)
75361-CHN-004(W)
87863-CHN-001(D)"
- b. "(See last letter on stamped pail code)"

243. The bin label of Caribbean Spa Bromine Tabs, EPA Reg. No. 57787-32, collected during the August 2016 inspection was representative of the label affixed to containers of Caribbean Spa Bromine Tabs, EPA Reg. No. 57787-32, observed during the August 2016 inspection.

244. The bin label of ProTeam Spa Brominating Tabs, EPA Reg. No. 57787-32, collected during the August 2016 inspection contained:

- a. "EPA Est. No. 57787-MI-001(H)
75361-CHN-004(W)
87863-CHN-001(D)"
- b. "(See last letter on stamped pail code)"

245. The bin label of ProTeam Spa Bromine Tabs, EPA Reg. No. 57787-32, collected during the August 2016 inspection was representative of the label affixed to containers of ProTeam Spa Bromine Tabs, EPA Reg. No. 57787-32, observed during the August 2016 inspection.

246. The containers of Caribbean Spa Bromine Tabs, EPA Reg. No. 57787-32, observed during the August 2016 inspection bore a sticker stating "C7447 3936."

247. The containers of ProTeam Spa Brominating Tabs, EPA Reg. No. 57787-32, observed during the August 2016 inspection bore a sticker stating “C6546 2492.”

248. The containers of Caribbean Spa Bromine Tabs, EPA Reg. No. 57787-32, and ProTeam Spa Brominating Tabs, EPA Reg. No. 57787-32, did not contain a pail code which further identified the establishment number assigned to the establishment in which the pesticide products were produced.

249. On or about May 16, 2016, HCP distributed or sold Caribbean Spa Bromine Tabs, EPA Reg. No. 57787-32, to EMSCO Ky, located at 148 Trade Street, Lexington, Kentucky 40511.

250. On or about August 3, 2016, HCP held Caribbean Spa Bromine Tabs, EPA Reg. No. 57787-32, for distribution or sale at the North Facility.

251. On or about August 3, 2016, HCP held ProTeam Spa Brominating Tabs, EPA Reg. No. 57787-32, for distribution or sale at the North Facility.

252. On or about August 3, 2016, HCP distributed or sold ProTeam Spa Brominating Tabs, EPA Reg. No. 57787-32, to Gorman Company, located at 4191 SE Commerce Drive, Stuart, Florida 34997.

253. On or about August 2, 2016, HCP distributed or sold ProTeam Spa Brominating Tabs, EPA Reg. No. 57787-32, to SCP Distributions LLC #04, located at 161 Concourse Drive, Pearl, Mississippi 39208.

254. On or about August 4, 2016, HCP distributed or sold ProTeam Spa Brominating Tabs, EPA Reg. No. 57787-32, to Gorman Apopka, located 1845 S Orange Blossom Trail, Apopka, Florida 32703.

255. On two separate occasions, HCP distributed or sold the pesticide Caribbean Spa Bromine Tabs, EPA Reg. No. 57787-32, and its label did not bear the registration number assigned under Section 7 of FIFRA to the establishment in which it was produced.

256. Caribbean Spa Bromine Tabs, EPA Reg. No. 57787-32, as referenced in paragraph 255, above, was misbranded as that term is defined by Section 2(q)(1)(D) of FIFRA.

257. HCP's distribution or sale of Caribbean Spa Bromine Tabs, EPA Reg. No. 57787-32, with a misbranded label on two separate occasions constitutes two unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

258. On four separate occasions, HCP distributed or sold the pesticide ProTeam Spa Brominating Tabs, EPA Reg. No. 57787-32, and its label did not bear the registration number assigned under Section 7 of FIFRA to the establishment in which it was produced.

259. ProTeam Spa Brominating Tabs, EPA Reg. No. 57787-32, as referenced in paragraph 258, above, was misbranded as that term is defined by Section 2(q)(1)(D) of FIFRA.

260. HCP's distribution or sale of ProTeam Spa Brominating Tabs, EPA Reg. No. 57787-32, with a misbranded label on four separate occasions constitutes four unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

261. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

EPCRA Non-313/CERCLA

262. HPC is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

263. HPC is a "person" as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

264. At all times relevant to these EPCRA non-313 and CERCLA allegations, HPC owned and operated the East Facility.

265. At all times relevant to these CERCLA allegations, HPC was in charge of the East Facility.

266. HPC's East facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

267. HPC's East Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

268. HPC's East Facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

269. HPC's East Facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

270. At all times relevant to these EPCRA allegations, the Michigan SERC was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

271. At all times relevant to these EPCRA allegations, the Kent County LEPC was the LEPC for Kent County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

Sodium Hydroxide

272. Sodium hydroxide (CAS # 1310-73-2) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

273. Sodium hydroxide (CAS #1310-73-2) has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

274. Sodium hydroxide is classified as a physical or health hazard, or hazard not otherwise classified.

275. Sodium hydroxide (CAS #1310-73-2) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

276. On at least August 11, 2015, HPC produced, used or stored sodium hydroxide at the East Facility.

277. On August 11, 2015, between 7:35 am and 10:55 am, a release occurred from HPC’s East Facility of approximately 4,527 pounds of sodium hydroxide (the sodium hydroxide release).

278. In a 24-hour time period, the sodium hydroxide release of sodium hydroxide exceeded 1,000 pounds.

279. During the sodium hydroxide release, approximately 4,527 pounds of sodium hydroxide spilled, leaked, emitted, discharged, or escaped into navigable water, surface water, and land surface or substrata strata.

280. The sodium hydroxide release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

281. The sodium hydroxide release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

282. HPC had knowledge that the sodium hydroxide release of sodium hydroxide from the East Facility was equal to or greater than the reportable quantity of 1,000 pounds on August 11, 2015, at approximately 10:42 a.m.

283. The sodium hydroxide release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

284. The sodium hydroxide release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

285. The sodium hydroxide release was likely to affect Michigan.

286. The sodium hydroxide release was likely to affect Kent County, Michigan.

287. HPC notified the NRC of the sodium hydroxide release on August 12, 2015, at 2:37 p.m.

288. HPC did not immediately notify the NRC as soon as HPC had knowledge of the sodium hydroxide release.

289. HPC's failure to immediately notify the NRC of the sodium hydroxide release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

290. HPC notified the Michigan SERC of the sodium hydroxide release on August 11, 2015, at 11:55 a.m.

291. HPC did not immediately notify the SERC after HPC had knowledge of the sodium hydroxide release.

292. HPC's failure to immediately notify the SERC of the sodium hydroxide release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

293. HPC provided the Michigan SERC its written follow-up emergency notice on October 13, 2015, about the sodium hydroxide release.

294. HPC's failure, prior to October 13, 2015, to provide the Michigan SERC any written follow-up emergency notice of its sodium hydroxide release that occurred on August 11, 2015, is a failure to provide such information as soon as practicable after the sodium hydroxide release, and a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

295. HPC provided the Kent County LEPC its written follow-up emergency notice on

October 13, 2015, about the sodium hydroxide release.

296. HPC's failure, prior to October 13, 2015, to provide the Kent County LEPC any written follow-up emergency notice of its sodium hydroxide that occurred release on August 11, 2015, is a failure to provide such information as soon as practicable after the sodium hydroxide release, and a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Ammonia

297. Ammonia (CAS # 7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

298. Ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

299. Ammonia is classified as a physical or health hazard, or hazard not otherwise classified.

300. Ammonia (CAS #7664-41-7) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

301. Ammonia CAS #7664-41-7) is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

302. Ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

303. On at least September 12, 2017, HPC produced, used or stored ammonia at the East Facility.

304. On September 12, 2017, between 1:28 and 1:45 pm, a release occurred from HPC's East Facility of approximately 337 pounds of ammonia (the ammonia release).

305. In a 24-hour time period, the ammonia release of ammonia exceeded 100 pounds.

306. During the ammonia release, approximately 337 pounds of ammonia spilled, leaked, emitted, discharged, or escaped into the air.

307. The ammonia release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

308. The ammonia release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

309. HPC had knowledge that the ammonia release of ammonia from the East Facility was equal to or greater than the reportable quantity of 100 pounds on September 12, 2017, at approximately 1:45 p.m.

310. The ammonia release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

311. The ammonia release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

312. The ammonia release was likely to affect Michigan.

313. The ammonia release was likely to affect Kent County, Michigan.

314. HPC notified the NRC of the ammonia release on September 20, 2017, at 5:26 p.m.

315. HPC did not immediately notify the NRC as soon as HPC had knowledge of the ammonia release.

316. HPC’s failure to immediately notify the NRC of the ammonia release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

317. HPC notified the Michigan SERC of the ammonia release on September 20, 2017, at 5:30 p.m.

318. HPC did not immediately notify the SERC after HPC had knowledge of the

ammonia release.

319. HPC's failure to immediately notify the SERC of the ammonia release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

320. HPC notified the LEPC of the ammonia release on September 12, 2017, at 5:20 p.m.

321. HPC did not immediately notify the LEPC after HPC had knowledge of the ammonia release.

322. HPC's failure to immediately notify the LEPC of the ammonia release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

323. HPC provided a written follow-up emergency of the ammonia release to the Kent County LEPC on October 13, 2017.

324. HPC's failure to provide a written follow-up emergency notice of the ammonia release to the Kent County LEPC as soon as practicable after the ammonia release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Civil Penalty

325. Complainants have determined that an appropriate civil penalty to settle this action is \$925,447 for the TSCA, EPCRA, CWA, FIFRA, and CERCLA 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); Section 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C); Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3); Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3); and Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a). EPA also considered its Enforcement Response Policy for TSCA Sections 8, 12 and 13 (1999), its Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended) (April 12, 2001), its Interim

Clean Water Act Settlement Civil Penalty Policy dated March 1, 1995, its Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, its Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999, and 40 C.F.R. Part 19.

326. Within 30 days after the effective date of this CAFO, Respondents must pay \$906,110 civil penalty for the TSCA violations (\$382,145), EPCRA 313 violations, (\$200,128), CWA violations (\$153,004), FIFRA violations (\$117,341), and EPCRA 304 violations (\$53,492), 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., Haviland Consumer Products, Inc. and the docket number of this CAFO.

327. Within 30 days after the effective date of this CAFO, HPC must pay the \$19,337 civil penalty for the CERCLA violations by ACH electronic funds transfer, payable to “EPA Hazardous Substance Superfund” 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., Haviland Consumer Products, Inc., the docket number of this CAFO and the billing document

number.

328. Respondents must send a notice of payment that states Respondents' names 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

James Entzminger (SE-5J)
Chemical Emergency Preparedness and
Prevention Section
U.S. EPA, Region 5
Entzminger.james@epa.gov

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

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

329. The civil penalties for TSCA, EPCRA, CWA, FIFRA, and, CERCLA are not deductible for federal tax purposes.

330. If Respondents do 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

331. 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@haviglandusa.com and snewlon@dickinsonwright.com (for Respondent).

332. This CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in the CAFO.

333. 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.

334. This CAFO does not affect Respondents' responsibility to comply with TSCA, EPCRA, CWA, FIFRA and CERCLA and other applicable federal, state and local laws.

335. This CAFO is a "final order" for purposes of EPA's FIFRA, EPCRA, CERCLA, and TSCA Enforcement Response Policies and CWA Interim Clean Water Act Settlement Civil Penalty Policy.

336. The terms of this CAFO bind Respondents, its successors and assigns.

337. 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.

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

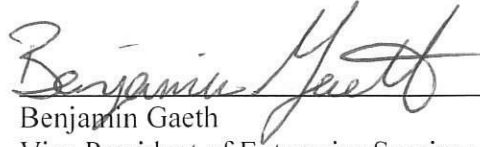
339. This CAFO constitutes the entire agreement between the parties.

340. The effective date for this CAFO is the date it is filed with the Regional Hearing Clerk, which is after completion of the notice and comment requirements of Sections 309(g)(4)(C) and 309(g)(5) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C), (5) and 40 C.F.R. §§ 22.38, 22.45, and which shall be at least 30 days after the CAFO has been signed by the Regional Judicial Officer or Regional Administrator.

Haviland Products Company, Inc., Respondent
Haviland Consumer Products, Inc., Respondent

9/17/20

Date



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

United States Environmental Protection Agency, Complainants

MICHAEL HARRIS Digitally signed by MICHAEL HARRIS
Date: 2020.12.02 12:19:29 -06'00'

Date

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

JASON EL-ZEIN Digitally signed by JASON EL-ZEIN
Date: 2020.12.02 08:42:43 -05'00'

Date

Jason El-Zein, Chief
Emergency Response Branch 1
Superfund and Emergency Management Division

In the Matter of:

Haviland Products Company, Inc. and Haviland Consumer Products, Inc

Docket No. MM-05-2021-0002

CERCLA-05-2021-0002
CWA-05-2021-0001
EPCRA-05-2021-0002
FIFRA-05-2021-0001
TSCA-05-2021-0001

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: 2020.12.03 11:44:31
-06'00'

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

**In the Matter of: Haviland Products Company, Inc. and
Haviland Consumer Products, Inc.**

Docket No. [M-05-2021-0002 CERCLA-05-2021-0002
CWA-05-2021-0001
EPCRA-05-2021-0002
FIFRA-05-2021-0001
TSCA-05-2021-0001

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 3, 2020** in the following manner to the addressees:

Copy by E-Mail to
Attorney for Respondent: Sharon R. Newlon
SNewlon@dickinsonwright.com

Copy by E-mail to
Respondent: Benjamin Gaeth
beng@havilandusa.com

Copy by E-mail to
Attorneys for Complainant: Tamara Carnovsky
Carnovsky.tamara@epa.gov

Gillian Asque
Asque.gillian@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: _____

LADAWN WHITEHEAD Digitally signed by LADAWN WHITEHEAD
Date: 2020.12.03 13:15:00 -06'00'

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5