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8 UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
9 REGION IX

10  
11 In the matter of: ) Docket No. FIFRA-09-2024-0072  
12 )  
13 Mari's Gardens LLC, )  
14 Respondent. )  
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29 I. CONSENT AGREEMENT

30 The United States Environmental Protection Agency ("EPA"), Region IX, and Mari's  
31 Gardens, LLC ("Respondent") agree to settle this matter and consent to the entry of this Consent  
32 Agreement and Final Order ("CAFO"). This CAFO simultaneously initiates and concludes this  
33 proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

34 A. AUTHORITY AND PARTIES

35 1. This is a civil administrative action brought pursuant to Section 14(a)(2) of the Federal  
36 Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a)(2), for the assessment  
37 of a civil administrative penalty against Respondent for the use of a registered pesticide in a  
38 manner inconsistent with its labeling in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §  
39 136j(a)(2)(G), and the Worker Protection Standard set forth at 40 C.F.R. Part 170.

40 2. Complainant is the Manager of the Toxics Section in the Enforcement and  
41 Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to

1 bring this action and to sign a consent agreement settling this action.

2 3. Respondent is Mari's Gardens, LLC, a Hawaii limited liability company with  
3 headquarter offices located at 171 Waokanaka Place in Honolulu, Hawaii.

4 B. STATUTORY AND REGULATORY BASIS

5 4. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), makes it unlawful for any  
6 person to use any registered pesticide in a manner inconsistent with its labeling.

7 5. Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), provides that a registered pesticide is  
8 used in a manner inconsistent with its labeling if the registered pesticide is used in a manner not  
9 permitted by the labeling.

10 6. Pursuant to 40 C.F.R. § 170.509, the handler employer must provide decontamination  
11 and eye flushing supplies in accordance with 40 C.F.R. Part 170 for any handler that is  
12 performing any handler activity. Specifically, 40 C.F.R. § 170.509(b)(2) states that the handler  
13 employer must provide soap and single-use towels for drying in quantities sufficient to meet the  
14 handlers' needs, and 40 C.F.R. § 170.509(c)(1) states that decontamination supplies must be  
15 provided at any mixing site.

16 7. Pursuant to 40 C.F.R. § 170.317(b), a person who has a duty under 40 C.F.R. Part 170,  
17 as referenced on the pesticide label, and who fails to perform that duty, violates Section  
18 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and is subject to a civil penalty under Section  
19 14 of FIFRA, 7 U.S.C. § 136l.

20 8. Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), 40 C.F.R. Part 19, and the Civil  
21 Monetary Penalty Inflation Adjustment Rule at 88 Fed. Reg. 89309 (December 27, 2023) provide  
22 that, for any offense that occurred after November 2, 2015, where penalties are assessed on or  
23 after December 27, 2023, any private applicator or other person not included in Section 14(a)(1)  
24 who violates any provision of FIFRA subsequent to receiving a written notice from the  
25 Administrator or following a citation for a prior violation, may be assessed a civil penalty by the  
26 Administrator of up to \$3,558 for each offense.

27 C. ALLEGED VIOLATION

28 9. At all times relevant to this CAFO, Respondent was a limited liability company and

1 therefore a “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as  
2 such is subject to FIFRA and the regulations promulgated thereunder.

3 10. At all times relevant to this matter, Respondent operated a facility (the “Facility”)  
4 located at 94-415 Makapipipi Street in Mililani, Hawaii.

5 11. This Facility is a nursery and therefore an “agricultural establishment” as that term is  
6 defined at 40 C.F.R. § 170.305.

7 12. At all times relevant to this matter, the individuals employed by Respondent for  
8 assistance with the application of pesticides at the Facility were “handlers” as that term is defined  
9 at 40 C.F.R. § 170.305.

10 13. At all times relevant to this matter, Respondent was a “handler employer” as that  
11 term is defined at 40 C.F.R. § 170.305.

12 14. Torac Insecticide (EPA Reg. No. 71711-31) is a registered “pesticide” as that term is  
13 defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

14 15. The labeling for the registered pesticide, Torac Insecticide, provides, under the  
15 section labeled “Agricultural Use Requirements,” that, with respect to “agricultural workers” and  
16 “handlers of agricultural pesticides,” this product must be used “only in accordance with its  
17 labeling and with the Worker Protection Standard, 40 C.F.R. Part 170” and its “specific  
18 instructions.”

19 16. On or about June 16, 2021, Respondent, as the handler employer, failed to provide  
20 decontamination supplies (single-use towels) to its handlers at a pesticide mixing site located at  
21 the Facility in conjunction with an application of the registered pesticide, Torac Insecticide.

22 17. Thus, on or about June 16, 2021, Respondent failed to provide its handlers with  
23 decontamination supplies (single-use towels) for handler activity at the Facility as specified by  
24 the labeling of the registered pesticide, Torac Insecticide, as required by 40 C.F.R § 170.509.

25 18. Respondent’s failure to provide its handlers with decontamination supplies (single-  
26 use towels) for handler activity at the Facility as specified by the labeling of the registered  
27 pesticide, Torac Insecticide, on or about June 16, 2021, constitutes “use of a registered pesticide  
28 in a manner inconsistent with its labeling” pursuant to 40 C.F.R. § 170.509(b)(2) and is thereby a

1 violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

2 19. Respondent received a Notice of Warning from the State of Hawaii for a previous use  
3 violation in March 2019.

4 D. RESPONDENT'S ADMISSIONS

5 20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
6 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
7 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section  
8 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the  
9 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any  
10 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the  
11 proposed Final Order contained in this CAFO.

12 E. CIVIL ADMINISTRATIVE PENALTY

13 21. In full and final settlement of the violation specifically alleged in Section I.C of this  
14 CAFO, Respondent shall pay a civil administrative penalty of ONE THOUSAND, ONE  
15 HUNDRED, AND SEVENTY-THREE DOLLARS (\$1,173). Respondent shall pay this civil  
16 penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid  
17 by remitting a certified or cashier's check, including the name and docket number of this case,  
18 for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other  
19 methods listed below) and sent as follows:

20 Regular Mail:

21 U.S. Environmental Protection Agency  
22 Fines and Penalties  
23 Cincinnati Finance Center  
24 PO Box 979077  
25 St. Louis, MO 63197-9000

26 Wire Transfers:

27 Wire transfers must be sent directly to the Federal Reserve Bank in New  
28 York City with the following information:  
Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street

1 New York, NY 10045  
2 Beneficiary = U.S. Environmental Protection Agency

3 Certified or Overnight Mail:

4 U.S. Bank  
5 1005 Convention Plaza  
6 Mail Station SL-MO-C2GL  
7 ATTN Box 979077  
8 St. Louis, MO 63101

9 ACH (also known as Remittance Express or REX):

10 Automated Clearinghouse (ACH) payments to EPA can be made through  
11 the U.S. Treasury using the following information:

12 U.S. Treasury REX/Cashlink ACH Receiver  
13 ABA = 051036706  
14 Account = 31006, Environmental Protection Agency  
15 CTX Format Transaction Code 22 – checking

16 Physical location of U.S. Treasury facility:

17 5700 Rivertech Court  
18 Riverdale, MD 20737

19 Remittance Express (REX) = (866) 234-5681

20 On Line Payment:

21 This payment option can be accessed from the information below:

22 [www.pay.gov](http://www.pay.gov)  
23 Enter "SFO 1.1" in the search field  
24 Open form and complete required fields

25 If clarification regarding a particular method of payment remittance is  
26 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

27 A copy of each check, or notification that the payment has been made by one of the other  
28 methods listed above, including proof of the date payment was made, shall be sent with a  
transmittal letter, indicating Respondent's name, the case title, and docket number, to the  
following regular mail or email addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
R9HearingClerk@epa.gov

1 Brandon Boatman  
2 Toxics Section  
3 Enforcement and Compliance Assurance Division (ENF-2-3)  
4 U.S. Environmental Protection Agency, Region IX  
5 75 Hawthorne Street  
6 San Francisco, CA 94105  
7 boatman.brandon@epa.gov

8 22. Respondent shall not use payment of any penalty under this CAFO as a tax deduction  
9 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to  
10 use such payment as a tax deduction.

11 23. If Respondent fails to pay the assessed civil administrative penalty of ONE  
12 THOUSAND, ONE HUNDRED, AND SEVENTY-THREE DOLLARS (\$1,173), as identified  
13 in Paragraph 21, by the deadline specified in that Paragraph, then Respondent shall pay a  
14 stipulated penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the  
15 assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all  
16 accrued stipulated penalties are paid and shall become due and payable upon EPA's written  
17 request. Failure to pay the civil administrative penalty specified in Paragraph 21 by the deadline  
18 specified in that Paragraph may also lead to any or all of the following actions:

19 (1) EPA may refer the debt to a credit reporting agency, a collection  
20 agency, or to the Department of Justice for filing of a collection action in the appropriate United  
21 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and  
22 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such  
23 collection proceeding.

24 (2) The U.S. Government may collect the debt by administrative offset  
25 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a  
26 person to satisfy the debt the person owes the U.S. Government), which includes, but is not  
27 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40  
28 C.F.R. §§ 13(C) and 13(H).

(3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke  
Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing  
business with EPA or engaging in programs EPA sponsors or funds.

1 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
2 Government may assess interest, administrative handling charges, and nonpayment penalties  
3 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
4 civil administrative penalty specified in Paragraph 21 by the deadline specified in that Paragraph.

5 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.  
6 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
7 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
8 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
9 (30) days of the effective date of this CAFO.

10 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.  
11 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,  
12 based on either actual or average cost incurred (including both direct and indirect costs), for  
13 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

14 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)  
15 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,  
16 may be assessed on all debts more than ninety (90) days delinquent.

17 F. CERTIFICATION OF COMPLIANCE

18 24. In executing this CAFO, Respondent certifies that the information it has supplied  
19 concerning this matter was at the time of submission, and is at the time of signature to this  
20 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violation alleged  
21 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading  
22 information can result in significant penalties, including the possibility of fines and  
23 imprisonment for knowing submission of such information.

24 G. RETENTION OF RIGHTS

25 25. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
26 liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C  
27 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil  
28 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,

1 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal  
2 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
3 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address  
4 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

5 26. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's  
6 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,  
7 and permits.

8 H. ATTORNEYS' FEES AND COSTS

9 27. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in  
10 this proceeding.

11 I. EFFECTIVE DATE

12 28. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be  
13 effective on the date that the Final Order contained in this CAFO, having been approved and  
14 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

15 J. BINDING EFFECT

16 29. The undersigned representative of Complainant and the undersigned representative of  
17 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions  
18 of this CAFO and to bind the party he or she represents to this CAFO.

19 30. The provisions of this CAFO shall apply to and be binding upon Respondent and its  
20 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,  
21 and assigns.



FOR RESPONDENT MARI'S GARDENS, LLC:

4/29/2024  
DATE

  
BRENDON LAU  
General Manager  
Mari's Gardens, LLC

FOR COMPLAINANT EPA:

6/12/2024  
DATE

**MATTHEW SALAZAR** Digitally signed by  
MATTHEW SALAZAR  
Date: 2024.06.12  
16:26:53 -07'00'

MATT SALAZAR, P.E.  
Manager, Toxics Section  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX

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II. FINAL ORDER

EPA and Mari's Gardens, LLC having entered into the foregoing Consent Agreement,  
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2024-0072) be  
entered, and Respondent shall pay a civil administrative penalty in the amount of ONE  
THOUSAND, ONE HUNDRED, AND SEVENTY-THREE DOLLARS (\$1,173) and comply  
with the terms and conditions set forth in the Consent Agreement.

Beatrice Wong  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing Consent Agreement and Final Order in the matter of Mari’s  
3 Gardens LLC (Docket No. FIFRA-09-2024-0072) was filed with the Regional Hearing Clerk, and  
4 that a true and correct copy of the same was sent to the following parties via electronic mail, as  
5 indicated below:

6 **RESPONDENT:** Brendon Lau  
7 General Manager  
8 Mari’s Gardens LLC  
9 94-415 Makapipipi Street  
10 Mililani, HI 96789  
11 [Brendon@marisgardens.com](mailto:Brendon@marisgardens.com)

12 **COMPLAINANT:** Edgar Coral  
13 Assistant Regional Counsel  
14 U.S. EPA – Region IX  
15 75 Hawthorne Street, ORC-2-1  
16 San Francisco, CA 94105  
17 [Coral.Edgar@epa.gov](mailto:Coral.Edgar@epa.gov)

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20 Regional Hearing Clerk  
21 U.S. EPA - Region IX  
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