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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2023-0070
11)
12 Holley Brothers, Inc.,) CONSENT AGREEMENT
AND FINAL ORDER
13 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)
14)

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency (“EPA”), Region IX, and Holley
17 Brothers, Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent
18 Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this
19 proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
23 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for the assessment
24 of a civil administrative penalty against Respondent for the use of a registered pesticide in a
25 manner inconsistent with its labeling in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §
26 136j(a)(2)(G).

27 2. Complainant is the Manager of the Toxics Section in the Enforcement and
28 Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to
bring this action and to sign a consent agreement settling this action.

1 3. Respondent is Holley Brothers, Inc., an Idaho corporation with headquarter offices
2 located at 4477 S 65th W, in Idaho Falls, Idaho.

3 B. STATUTORY AND REGULATORY BASIS

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

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

9 6. Forty C.F.R. § 152.175 sets forth the pesticides “classified for restricted use.”

10 7. Pursuant to Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3), the term “commercial
11 applicator” means an applicator (whether or not the applicator is a private applicator with respect
12 to some uses) who uses or supervises the use of any pesticide` which is classified for restricted
13 use for any purpose or on any property other than as provided by paragraph (2).

14 C. ALLEGED VIOLATIONS

15 8. At all times relevant to this CAFO, Respondent was a corporation and therefore a
16 “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is
17 subject to FIFRA and the regulations promulgated thereunder.

18 9. The fumigant, “K-PAM HL” (EPA Reg. No. 5481-483), is a registered “pesticide” as
19 that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

20 10. K-PAM HL is a registered pesticide “classified for restricted use” pursuant to 40
21 C.F.R. § 152.175.

22 11. Respondent is a “commercial applicator” as that term is defined by Section 2(e)(3) of
23 FIFRA, 7 U.S.C. § 136(e)(3).

24 12. On or about April 22, 2022, Respondent used, “in a manner inconsistent with its
25 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
26 pesticide, K-PAM HL, at a field located at Navajo Mesa Farms on the Navajo Nation.
27 Specifically, in a manner not permitted by K-PAM HL’s labeling, Respondent, as a handler
28 operating motorized ground equipment with a closed cab, failed to wear the required personal

1 protective equipment (a long-sleeve shirt) during application of the fumigant, K-PAM HL, to the
2 field located at Navajo Mesa Farms on the Navajo Nation.

3 13. By using the registered pesticide, K-PAM HL, in the above-described manner
4 inconsistent with its labeling, Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §
5 136j(a)(2)(G) on one occasion.

6 14. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and the Civil Monetary Penalty
7 Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties
8 Inflation Adjustment Act of 2015, 28 U.S.C. § 2461, as amended, authorize civil penalties not to
9 exceed \$23,494 for each violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G),
10 that occurred after November 2, 2015, where penalties were assessed on or after January 6, 2023.

11 **D. RESPONDENT'S ADMISSIONS**

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

19 **E. CIVIL ADMINISTRATIVE PENALTY**

20 16. In full and final settlement of the violation specifically alleged in Section I.C of this
21 CAFO, Respondent shall pay a civil administrative penalty of FOUR THOUSAND, EIGHT
22 HUNDRED, AND NINETY-FOUR DOLLARS (\$4,894). Respondent shall pay this civil
23 penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid
24 by remitting a certified or cashier's check, including the name and docket number of this case,
25 for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other
26 methods listed below) and sent as follows:

27 **Regular Mail:**

28 U.S. Environmental Protection Agency

1 Fines and Penalties
2 Cincinnati Finance Center
3 PO Box 979077
4 St. Louis, MO 63197-9000

5 Wire Transfers:

6 Wire transfers must be sent directly to the Federal Reserve Bank in New
7 York City with the following information:
8 Federal Reserve Bank of New York
9 ABA = 021030004
10 Account = 68010727
11 SWIFT address = FRNYUS33
12 33 Liberty Street
13 New York, NY 10045
14 Beneficiary = U.S. Environmental Protection Agency

15 Certified or Overnight Mail:

16 U.S. Bank
17 1005 Convention Plaza
18 Mail Station SL-MO-C2GL
19 ATTN Box 979077
20 St. Louis, MO 63101

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

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

24 U.S. Treasury REX/Cashlink ACH Receiver
25 ABA = 051036706
26 Account = 31006, Environmental Protection Agency
27 CTX Format Transaction Code 22 – checking

28 Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737

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

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "SFO 1.1" in the search field
Open form and complete required fields

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

A copy of each check, or notification that the payment has been made by one of the other

1 methods listed above, including proof of the date payment was made, shall be sent with a
2 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
3 following regular mail or email addresses:

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5 Regional Hearing Clerk
6 Office of Regional Counsel (ORC-1)
7 U.S. Environmental Protection Agency, Region IX
8 75 Hawthorne Street
9 San Francisco, CA 94105
10 R9HearingClerk@epa.gov

11
12 Julie Jordan
13 Toxics Section
14 Enforcement and Compliance Assurance Division (ENF-1-1)
15 U.S. Environmental Protection Agency, Region IX
16 75 Hawthorne Street
17 San Francisco, CA 94105
18 jordan.julie@epa.gov

19
20 17. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
21 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
22 use such payment as a tax deduction.

23
24 18. If Respondent fails to pay the assessed civil administrative penalty of FOUR
25 THOUSAND, EIGHT HUNDRED, AND NINETY-FOUR DOLLARS (\$4,894), as identified in
26 Paragraph 16, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated
27 penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the assessed
28 penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all accrued
stipulated penalties are paid and shall become due and payable upon EPA's written request.
Failure to pay the civil administrative penalty specified in Paragraph 16 by the deadline specified
in that Paragraph may also lead to any or all of the following actions:

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

(2) The U.S. Government may collect the debt by administrative offset

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

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

8 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
9 Government may assess interest, administrative handling charges, and nonpayment penalties
10 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
11 civil administrative penalty specified in Paragraph 16 by the deadline specified in that Paragraph.

12 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
13 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
14 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
15 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
16 (30) days of the effective date of this CAFO.

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

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

24 F. CERTIFICATION OF COMPLIANCE

25 19. In executing this CAFO, Respondent certifies that the information it has supplied
26 concerning this matter was at the time of submission, and is at the time of signature to this
27 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violation alleged
28 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading

1 information can result in significant penalties, including the possibility of fines and
2 imprisonment for knowing submission of such information.

3 G. RETENTION OF RIGHTS

4 20. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
5 liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C
6 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
7 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
8 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
9 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
10 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
11 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

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

15 H. ATTORNEYS' FEES AND COSTS

16 22. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
17 this proceeding.

18 I. EFFECTIVE DATE

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

22 J. BINDING EFFECT


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

26 25. The provisions of this CAFO shall apply to and be binding upon Respondent and its
27 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
28 and assigns.

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FOR RESPONDENT HOLLEY BROTHERS, INC.:

6/7/2023
DATE



JON HOLLEY
President
Holley Brothers, Inc.

FOR COMPLAINANT EPA:

7/6/2023
DATE

MATTHEW SALAZAR Digitally signed by
MATTHEW SALAZAR
Date: 2023.07.06
10:21:49 -07'00'

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

1 II. FINAL ORDER

2 EPA and Holley Brothers, Inc. having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2023- 0070) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of FOUR
5 THOUSAND, EIGHT HUNDRED, AND NINETY-FOUR DOLLARS (\$4,894) and comply
6 with the terms and conditions set forth in the Consent Agreement.

7
8 **BEATRICE**
9 **WONG**

Digitally signed by
BEATRICE WONG
Date: 2023.07.07 11:24:32
-07'00'

10 Beatrice Wong Date
11 Regional Judicial Officer
12 U.S. Environmental Protection Agency, Region IX
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