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6 **UNITED STATES**  
7 **ENVIRONMENTAL PROTECTION AGENCY**  
8 **REGION IX**

9 **IN THE MATTER OF:**

10 DEL MONTE FRESH PRODUCE (HAWAII), INC.,  
11  
12 Respondent.  
13

**Docket No.**  
RCRA-9-2008- 00 1 9

09

**CONSENT AGREEMENT  
AND  
FINAL ORDER  
PURSUANT TO 40 C.F.R.  
SECTIONS 22.13 and 22.18**

14 **CONSENT AGREEMENT**

15 Complainant, the United States Environmental Protection Agency, Region IX  
16 (“Complainant” or “EPA”), and Respondent, Del Monte Fresh Produce (Hawaii), Inc.  
17 (“Respondent”), the parties herein, having agreed that settlement of this matter is in the public  
18 interest and that entry of this Consent Agreement and Final Order, pursuant to 40 C.F.R. Sections  
19 22.13 and 22.18, (“CA/FO”), without further litigation is the most appropriate means of  
20 resolving this matter;

21 NOW, THEREFORE, Complainant and Respondent hereby agree as follows:

22  
23 A. **PRELIMINARY STATEMENT**

24 1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1)  
25 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C.  
26 § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative  
27

1 Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits  
2 ("Consolidated Rules"), 40 C.F.R. Part 22. Complainant is the United States  
3 Environmental Protection Agency, Region IX. Respondent is Del Monte Fresh Produce  
4 (Hawaii), Inc. ("Respondent" or "Del Monte"), a corporation organized under the laws of  
5 the State of Delaware.

6 2. At the time of the violations alleged, Respondent was managing hazardous waste at a  
7 facility located in Kunia, Hawaii, EPA Identification Number HID 981 638 042  
8 (hereinafter referred to as the "Facility").

9 3. Respondent generated and stored waste pesticides, waste cleaning fluids, waste acids,  
10 paint wastes, waste aerosols, waste mercury, used oil and universal waste.

11 4. This CA/FO, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), simultaneously commences  
12 and concludes this proceeding, wherein EPA alleges that Respondent managed hazardous  
13 waste in violation of the RCRA Hazardous Waste Management requirements, 42 U.S.C.  
14 §§ 6921 - 6939e, the implementing regulations, and requirements of the State of Hawaii's  
15 federally authorized RCRA Hazardous Waste Management Program at Hawaii Revised  
16 Statutes ("HRS"), Chapter 342J, and the Hawaii Administrative Rules ("HAR"), Title 11,  
17 Chapters 260-266, 268, 273 and 279.

18 5. EPA is enforcing Hawaii hazardous waste management program requirements as  
19 approved and authorized by the United States on November 13, 2001 (*see* 66 Fed. Reg.  
20 55115, November 1, 2001). Citations in this CA/FO are to Hawaii hazardous waste  
21 management program requirements, followed by the corresponding federal citations  
22 provided in brackets.

23  
24 B. GENERAL ALLEGATIONS

25 6. The State of Hawaii's Hazardous Waste Management Program is a federally authorized  
26 RCRA Hazardous Waste Management Program.

- 1 7. Respondent is, and at all times referred to herein was, a "person" as defined in HAR 11-  
2 260-10 [*see also* 40 C.F.R. § 260.10].
- 3 8. Respondent was the "owner" or "operator" of a facility as defined in HAR 11-260-10 [*see*  
4 *also* 40 C.F.R. § 260.10] at the time of the violations alleged.
- 5 9. Respondent was a "generator" of "hazardous waste" as defined in HAR 11-260-10 [*see*  
6 *also* 40 C.F.R. § 260.10] at the time of the violations alleged.
- 7 10. Respondent was engaged in the "storage" of "hazardous waste" as defined in HAR 11-  
8 260-10 [*see also* 40 C.F.R. § 260.10] at the time of the violations alleged.
- 9 11. At the Facility, Respondent generated and accumulated, materials that are "wastes" as  
10 defined in HAR 11-260-10 and HAR 11-261-2 [*see also* 40 C.F.R. §§ 260.10 and 261.2  
11 for definition of "solid waste"].
- 12 12. At the Facility, Respondent generated and accumulated, "hazardous waste" as defined in  
13 HAR 11-260-10, and HAR 11-261-3 [*see also* RCRA Section 1004(5), and 40 C.F.R. §§  
14 260.10 and 261.3]. These hazardous wastes include, but are not limited to: compressed  
15 gas cylinders, sodium hypochlorite, waste pesticides, waste cleaning fluids, waste acids,  
16 paint wastes, waste aerosols, and waste mercury.
- 17 13. On August 16, 2007, EPA conducted a RCRA Compliance Evaluation Inspection ("CEI")  
18 at the Facility. Based upon the findings EPA made during the inspection and additional  
19 information obtained subsequent to the inspection, EPA determined that Respondent  
20 violated HRS 342-J [*see also* RCRA Sections 3002, 3004, 3005, 3010 and 3014 of  
21 RCRA, 42 U.S.C. §§ 6922, 6924, 6925, 6930 and 6935] and the regulations adopted  
22 pursuant thereto, as approved and authorized by the United States.
- 23 14. EPA alleges that Respondent (1) stored hazardous waste without a permit in violation of  
24 violation of H.A.R 11-270-1 [*see also* 40 C.F.R § 270.1], (2) failed to close containers of  
25 hazardous waste in violation of HAR §11-265-173(a) [*see also* 40 C.F.R. §265.173(a)],  
26 (3) failed to properly manage used oil in violation of HAR §11-279-22 [*see also* 40  
27

1 C.F.R. §279.22], (4) had an inadequate contingency plan in violation of HAR §11-265-  
2 54(d) [see also 40 C.F.R. §265.54(d)], (5) had inadequate training records in violation of  
3 HAR §11-265-16 [see also 40 C.F.R. § 265.16], and (6) failed to properly manage  
4 universal waste in violation of HAR §11-273-14(a) [see also 40 C.F.R. §273.14(a)].

5 15. Under Section 3006 of RCRA, 42 U.S.C. § 6926, violations of the State of Hawaii's  
6 authorized RCRA Hazardous Waste Management Program are federally enforceable.  
7 Respondent is therefore subject to the powers vested in the EPA Administrator by Section  
8 3008 of RCRA, 42 U.S.C. § 6928.

9 16. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue  
10 orders assessing a civil penalty for any past or current violation, or requiring compliance  
11 immediately or within a specified time for violation of any requirement of Subtitle C of  
12 RCRA, Sections 3001 - 3023 of RCRA, 42 U.S.C. §§ 6921 - 6939e.

13 17. Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), provides that when a violation of  
14 Subtitle C of RCRA occurs in a state which has been authorized under Section 3006 of  
15 RCRA, 42 U.S.C. § 6926, the Administrator must notify an authorized state prior to  
16 issuing an order under Section 3008 of RCRA in that state. EPA notified the State of  
17 Hawaii as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

18 18. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA  
19 Regional Administrator for Region IX, who has redelegated this authority to the Director  
20 of the Waste Management Division.

21  
22 C. ALLEGED VIOLATIONS

23 COUNT I

24 (Storage of Hazardous Waste Without a Permit)

25 19. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were  
26 set forth here in their entirety.

- 1 20. HAR § 11-270-1 requires that owners and operators of a RCRA hazardous waste  
2 treatment, storage or disposal facility must have a permit [*see also* 40 C.F.R. § 270.1(c)].
- 3 21. Respondent does not have a permit or grant of interim status to treat, store or dispose of  
4 hazardous waste under HAR § 11-270-1 [*see also* 40 C.F.R. § 270.1].
- 5 22. HAR § 11-262-34 [*see also* 40 C.F.R. § 262.34] provides that a generator of hazardous  
6 waste may accumulate hazardous waste onsite for a limited period of time, without a  
7 permit or grant of interim status, provided the generator complies with the requirements  
8 which are set forth or referenced by HAR § 11-262-34 [*see also* 40 C.F.R. § 262.34].  
9 Failure to comply with the time limits or any of the requirements set forth in or referenced  
10 by HAR § 11-262.34 [*see also* 40 C.F.R. § 262.34] subjects the generator to the  
11 permitting requirements of HAR § 11-270-1 [*see also* 40 C.F.R. § 270.1].
- 12 23. Respondent violated several of the requirements set forth or referenced in HAR § 11-262-  
13 34 [*see also* 40 C.F.R. § 262.34].
- 14 24. HAR § 11-262-34(a) [*see also* 40 C.F.R. § 262.34(a)(3)] requires that generators who  
15 accumulate hazardous waste onsite without a permit or grant of interim statues shall label  
16 or mark containers of hazardous waste with the words “Hazardous Waste.” Generators  
17 who fail to label containers of hazardous waste with the words “Hazardous Waste” fail to  
18 meet the requirements of HAR § 11-262-34(a) [*see also* 40 C.F.R. § 262.34(a)(3)] and are  
19 subject to the permitting requirements of HAR § 11-270-1 [*see also* 40 C.F.R. § 270.1].
- 20 25. On August 16, 2007, EPA’s inspector observed containers for hazardous waste at the  
21 Facility that were not labeled with the words “Hazardous Waste.”
- 22 26. Respondent’s failure to mark the containers of hazardous waste at the Facility with the  
23 words “Hazardous Waste” violated the labeling requirements of HAR § 11-262-34(a)  
24 [*see also* 40 C.F.R. § 262.34(a)(3)]. Therefore, Respondent violated HAR § 11-270-1  
25 [*see also* 40 C.F.R. § 270.1].
- 26 27. HAR § 11-262-34(a) [*see also* 40 C.F.R. § 262.34(a)] provides that generators of  
27

1 hazardous waste may accumulate hazardous waste onsite for up to 90 days, without a  
2 permit or grant of interim status.

3 28. On August 16, 2007, EPA's inspector observed containers of hazardous waste that had  
4 been stored at the Facility for more than 90 days.

5 29. Respondent's accumulation of hazardous waste at the Facility for more than 90 day  
6 without a permit or grant of interim status violated the requirements of HAR § 11-262-  
7 34(a) [*see also* 40 C.F.R. § 262.34(a)]. Therefore, Respondent violated HAR § 11-270-1  
8 [*see also* 40 C.F.R. § 270.1].

9 30. HAR § 11-262-34(a)(1)(I) [*see also* 40 C.F.R. §262.34(a)(1)(I)] requires that generators  
10 who accumulate hazardous waste onsite without a permit or grant of interim status  
11 comply with the requirements of HAR § 11-265-173(a) [*see also* 40 C.F.R. § 265.173(a)].  
12 HAR § 11-265-173(a) [*see also* 40 C.F.R. § 265.173(a)] requires that containers holding  
13 hazardous waste must always be closed during storage, except when it is necessary to add  
14 or remove waste. Failure to comply with the requirements referenced by HAR § 11-262-  
15 34(a)(1)(I) [*see also* 40 C.F.R. §262.34(a)(1)(I)] subjects the generator to the permitting  
16 requirements of HAR § 11-270-1 [*see also* 40 C.F.R. § 270.1].

17 31. On August 16, 2007, EPA's inspector observed containers of hazardous waste at the  
18 Facility that had no lids or lids that were not properly attached to the containers. None of  
19 those containers were closed.

20 32. Respondent's failure to close containers of hazardous waste violated HAR § 11-265-  
21 173(a) [*see also* 40 C.F.R. § 265.173(a)]. Therefore, Respondent has violated HAR § 11-  
22 270-1 [*see also* 40 C.F.R. § 270.1].

## 23 COUNT II

### 24 (Failure to Close Containers)

25 33. Paragraphs 1 through 32 above are incorporated herein by this reference as if they were  
26 set forth here in their entirety.

1 34. HAR § 11-265-173(a) [*see also* 40 C.F.R. § 265.173(a)] requires that containers holding  
2 hazardous waste must always be closed during storage, except when it is necessary to add  
3 or remove waste..

4 35. On August 16, 2007, EPA's inspector observed containers of hazardous waste at the  
5 Facility that had no lids or lids that were not properly attached to the containers. None of  
6 those containers were closed.

7 36. Respondent's failure to close containers of hazardous waste violated HAR § 11-265-  
8 173(a) [*see also* 40 C.F.R. § 265.173(a)].

9 COUNT III

10 (Failure to Properly Manage Used Oil)

11 37. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were  
12 set forth here in their entirety.

13 38. HAR § 11-279-22(c) [*see also* 40 C.F.R. § 279.22(c)] requires that containers used to  
14 store used oil must be labeled or marked clearly with the words "Used Oil."

15 39. On August 16, 2007, there were 5-gallon, 15-gallon and 55-gallon containers of used oil  
16 at the Facility that were not marked with the words "Used Oil."

17 40. HAR § 11-279-22(d) [*see also* 40 C.F.R. §279.22(d)] requires that generators of used oil,  
18 upon detection of a release of used oil, (1) stop the release, (2) contain the released used  
19 oil, (3) clean up and manage the released used oil properly, and (4) repair or replace  
20 leaking used oil containers prior to returning them to service.

21 41. On August 16, 2007, EPA's inspector observed that used oil from a pesticide spray truck  
22 was allowed to discharge to the ground. There were no visible attempts to stop, contain  
23 or clean up the release.

24 42. Respondent therefore violated HAR §§ 11-279-22(c) and 11-279-22(d) [*see also* 40  
25 C.F.R. §§ 279.22(c) and (d)].

1 COUNT IV

2 (Inadequate Contingency Plan)

3 43. Paragraphs 1 through 42 above are incorporated herein by this reference as if they were  
4 set forth here in their entirety.

5 44. HAR § 11-265-54(d) [*see also* 40 C.F.R. § 265.54(d)] requires that the owner or operator  
6 amend the contingency plan for the Facility immediately if the emergency response  
7 coordinator changes.

8 45. EPA's investigation revealed that the contingency plan for the Facility needed updated  
9 contact information for the Facility's emergency coordinators.

10 46. Respondent's failure to immediately update the contingency plan violated HAR § 11-265-  
11 54(d) [*see also* 40 C.F.R. § 265.54(d)].

12 COUNT V

13 (Inadequate Training Records)

14 47. Paragraphs 1 through 46 above are incorporated herein by this reference as if they were  
15 set forth here in their entirety.

16 48. HAR § 11-265-16 [*see also* 40 C.F.R. § 265.16] requires that the owner or operator must  
17 maintain records that the training required related to hazardous waste management has  
18 been given to and completed by facility personnel.

19 49. Respondent could not provide any documentation after February 2004 that the required  
20 training had been given to and completed by facility personnel.

21 50. Respondent's failure to provide training records violated HAR § 11-265-16 [*see also* 40  
22 C.F.R. § 265.16].

23 COUNT VI

24 (Failure To Properly Manage Universal Waste)

25 51. Paragraphs 1 through 50 above are incorporated herein by this reference as if they were  
26 set forth here in their entirety.



1 52. HAR § 11-273-14(a) [*see also* 40 C.F.R. § 273.14(a)] requires that universal waste must  
2 be marked or labeled to identify the type of universal waste.

3 53. On August 16, 2007, EPA's inspector observed a universal waste battery at the Facility  
4 that was not marked or labeled as required by HAR § 11-273-14(a) [*see also* 40 C.F.R.  
5 § 273.14(a)].

6 54. Respondent's failure to mark or label the universal waste battery at the facility violated  
7 HAR § 11-273-14(a) [*see also* 40 C.F.R. § 273.14(a)].  
8

9 D. CIVIL PENALTY

10 55. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Debt Collection  
11 Improvement Act of 1996, 40 C.F.R. Part 19, authorizes a civil penalty of up to THIRTY-  
12 TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$32,500) per day for each  
13 violation of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq.

14 56. Based upon the facts alleged herein and upon those factors which EPA must consider  
15 pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil  
16 Penalty Policy, including the seriousness of the violations, any good faith efforts by  
17 Respondents to comply with applicable requirements, and any economic benefit accruing  
18 to Respondents, as well as such other matters as justice may require, EPA proposes that  
19 Respondents be assessed ONE HUNDRED AND NINETY THOUSAND DOLLARS  
20 (\$190,000) as the civil penalty for the violations alleged herein. The proposed penalty is  
21 consistent with the "RCRA Civil Penalty Policy," dated June 2003, as adjusted by the  
22 Debt Collection Improvement Act.  
23

24 E. ADMISSIONS AND WAIVERS

25 57. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations  
26 set forth in Sections A and B of this CA/FO. Respondent consents to and agrees not to  
27

1 contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce  
2 its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel  
3 compliance with this CA/FO in any enforcement proceedings, either administrative or  
4 judicial, or to impose sanctions for violations of this CA/FO.

5 58. Respondent neither admits nor denies any allegations of fact or law set forth in Section C  
6 of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the  
7 allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing  
8 on any issue relating to the factual allegations or legal conclusions set forth in this  
9 CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42  
10 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without  
11 adjudication. In addition, Respondent hereby waives any rights Respondent may have to  
12 appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.  
13

14 F. PARTIES BOUND

15 59. This CA/FO shall apply to and be binding upon Respondent and its agents, successors  
16 and assigns and upon all persons acting under or for Respondent, until such time as the  
17 civil penalty required under Section D has been paid in accordance with Section G, all  
18 compliance tasks have been completed, and any delays in performance and/or stipulated  
19 penalties have been resolved. At such time as those matters are concluded, this CA/FO  
20 shall terminate and constitute full settlement of the violations alleged herein.

21 60. No change in ownership or corporate, partnership or legal status relating to the Facility  
22 will in any way alter Respondent's obligations and responsibilities under this CA/FO.

23 61. The undersigned representative of Respondent hereby certifies that he is fully authorized  
24 by Respondent to enter into this CA/FO, to execute and to legally bind Respondent.  
25  
26  
27

1 G. PAYMENT OF CIVIL PENALTY

2 62. Respondent hereby consents to the assessment of a civil penalty in the amount of ONE  
3 HUNDRED AND NINETY THOUSAND DOLLARS (\$190,000) in settlement of the  
4 civil penalty claims of the United States for the violations of HRS 342-J [ *see also* RCRA  
5 Sections 3002, 3004, 3005, 3010 and 3014 of RCRA, 42 U.S.C. §§ 6922, 6924, 6925,  
6 6930 and 6935] and H.A.R 11-270-1 [ *see also* 40 C.F.R § 270.1], HAR §11-265-173(a)  
7 [ *see also* 40 C.F.R. §265.173(a)], HAR §11-279-22 [ *see also* 40 C.F.R. §279.22], HAR  
8 §11-265-54(d) [ *see also* 40 C.F.R. §265.54(d)], HAR §11-265-16 [ *see also* 40 C.F.R. §  
9 265.16], and HAR §11-273-14(a) [ *see also* 40 C.F.R. §273.14(a)], as alleged in Section C  
10 above.

11 63. Respondent shall submit payment of the civil penalty of ONE HUNDRED AND  
12 NINETY THOUSAND DOLLARS (\$190,000) within thirty (30) calendar days of the  
13 Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final  
14 Order contained in this CA/FO, having been approved and issued by either the Regional  
15 Judicial Officer or Regional Administrator, is filed. Payment shall be made by wire  
16 transfer to the account of the U.S. Treasury at the Federal Reserve Bank of New York.

17 Federal Reserve Bank of New York  
18 ABA: 021030004  
19 Account Number: 68010727  
20 SWIFT address: FRNYUS33  
21 33 Liberty Street  
22 New York NY 10045  
23 Field Tag 4200 of the Fedwire message should read:  
24 "D 68010727 Environmental Protection Agency"

25 *See also*, [http://www.epa.gov/cfo/finservices/make\\_a\\_payment\\_cin.htm](http://www.epa.gov/cfo/finservices/make_a_payment_cin.htm).

26 64. At the time payment is so made, a copy of the transmittal form shall be sent to:

27 Regional Hearing Clerk (RC-1)  
28 U.S. Environmental Protection Agency - Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

and

1 James Polek (WST-3)  
2 Waste Management Division  
3 U.S. Environmental Protection Agency - Region IX  
4 75 Hawthorne Street  
5 San Francisco, CA 94105

6 65. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM  
7 6-8000), the payment must be received within thirty (30) calendar days of the Effective  
8 Date of this CA/FO to avoid additional charges. If payment is not received within thirty  
9 (30) calendar days, interest will accrue from the Effective Date of this CA/FO at the  
10 current rate published by the United States Treasury as described at 40 C.F.R. § 13.11(a).  
11 A late penalty charge will be imposed after thirty (30) calendar days with an additional  
12 charge for each subsequent 30-day period, in accordance with 40 C.F.R. § 13.11(b). A  
13 6% per annum penalty will further apply on any principal amount not paid within ninety  
14 (90) calendar days of the due date, as described at 40 C.F.R. § 13.11(c). Respondent  
15 further will be liable for stipulated penalties as set forth below for any payment not  
16 received by its due date.

17 H. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

18 66. In addition to the interest and per annum penalties described above, in the event that  
19 Respondent fails to pay the full amount of the penalty within the time specified in  
20 Section G, Respondent agrees to pay Complainant a stipulated penalty in the amount of  
21 up to FIVE THOUSAND DOLLARS (\$5,000.00) for each day the default continues.

22 67. All penalties shall begin to accrue on the date that performance is due or a violation  
23 occurs, and shall continue to accrue through the final day of correction of the  
24 noncompliance. Nothing herein shall prevent the simultaneous accrual of separate  
25 penalties for separate violations.

26 68. All penalties owed to EPA under this Section shall be due within thirty (30) days of  
27 receipt of a notification of noncompliance. Such notification shall describe the

1 noncompliance and shall indicate the amount of penalties due. Interest at the current rate  
2 published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to  
3 accrue on the unpaid balance at the end of the thirty-day period.

4 69. All penalties under this Section shall be made payable by certified or cashier's check to  
5 "Treasurer of the United States" and shall be remitted to:

6 US Environmental Protection Agency  
7 Fines and Penalties  
8 Cincinnati Finance Center  
9 PO Box 979077  
10 St. Louis, MO 63197-9000

11 70. All payments shall indicate the name of the Facility, any EPA identification number of  
12 the Facility, Respondent's name and address, and the EPA docket number of this action.  
13 At the time payment is made, Respondent shall send a copy of the payment transmittal to:

14 James Polek(WST-3)  
15 Waste Management Division  
16 U.S. Environmental Protection Agency - Region IX  
17 75 Hawthorne Street  
18 San Francisco, CA 94105

19 71. The payment of stipulated penalties shall not alter in any way Respondent's obligation to  
20 complete the performance required hereunder.

21 72. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any  
22 other remedies or sanctions which may be available to EPA by reason of Respondent's  
23 failure to comply with any of the requirements of this CA/FO.

24 I. CERTIFICATION OF COMPLIANCE

25 73. Upon signing this CA/FO, Respondent certifies under penalty of law to EPA that the  
26 Respondent has fully complied with the requirements of HRS 342-J [ *see also* RCRA  
27 Sections 3002, 3004, 3005, 3010 and 3014 of RCRA, 42 U.S.C. §§ 6922, 6924, 6925,  
28 6930 and 6935] and H.A.R 11-270-1 [*see also* 40 C.F.R § 270.1], HAR §11-265-173(a)

1 [see also 40 C.F.R. §265.173(a)], HAR §11-279-22 [see also 40 C.F.R. §279.22], HAR  
2 §11-265-54(d) [see also 40 C.F.R. §265.54(d)], HAR §11-265-16 [see also 40 C.F.R. §  
3 265.16], and HAR §11-273-14(a) [see also 40 C.F.R. §273.14(a)], that formed the basis  
4 for the violations alleged in this CA/FO. This certification of compliance is based upon  
5 true, accurate and complete information, which the signatory can verify personally or  
6 regarding which the signatory has inquired of the person or persons directly responsible  
7 for gathering the information.  
8

9 J. RESERVATION OF RIGHTS

10 74. EPA expressly reserves all rights and defenses that it may have.

11 75. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and  
12 remedies, both legal and equitable, including the right to require that Respondent perform  
13 tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory  
14 and regulatory powers, authorities, rights and remedies, both legal and equitable, which  
15 may pertain to Respondent's failure to comply with any of the requirements of this  
16 CA/FO, including without limitation, the assessment of penalties under Section 3008(c)  
17 of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to  
18 sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or  
19 criminal, which EPA has under RCRA, the Comprehensive Environmental Response,  
20 Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other  
21 statutory, regulatory or common law enforcement authority of the United States.

22 76. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of  
23 its obligations to comply with any applicable local, state, or federal laws and regulations.

24 77. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise  
25 preclude EPA from taking additional enforcement actions should EPA determine that  
26 such actions are warranted except as they relate to Respondent's liability for federal civil  
27

1 penalties for the specific alleged violation and facts as set forth in Section C of this  
2 CA/FO.

3 78. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does  
4 not relieve Respondent of any obligation to obtain and comply with any local, state, or  
5 federal permits. Compliance by Respondent with the terms of this CA/FO shall not  
6 relieve Respondent of any obligations to comply with RCRA or any other applicable  
7 local, state, or federal laws and regulations.

8 79. EPA reserves its right to seek reimbursement from Respondent for any additional costs  
9 incurred by the United States which may result or arise from the alleged counts set forth  
10 in Section C. Notwithstanding compliance with the terms of this CA/FO, Respondent is  
11 not released from liability, if any, for the costs of any response actions taken by EPA.

12  
13 K. OTHER CLAIMS

14 80. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,  
15 cause of action or demand in law or equity by or against any person, firm, partnership,  
16 entity or corporation for any liability it may have arising out of or relating in any way to  
17 the generation, storage, treatment, handling, transportation, release, or disposal of any  
18 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or  
19 contaminants found at, taken to, or taken from the Facility.

20  
21 L. MISCELLANEOUS

22 81. This CA/FO may be amended or modified only by written agreement executed by both  
23 EPA and Respondent.

24 82. The headings in this CA/FO are for convenience of reference only and shall not affect  
25 interpretation of this CA/FO.

26 83. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this  
27

1 proceeding.

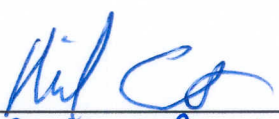

2 84. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective  
3 on the date that the Final Order contained in this CA/FO, having been approved and  
4 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

5  
6 **IT IS SO AGREED,**

7  
8 For Respondent **DEL MONTE FRESH PRODUCE (HAWAII), INC.**

9  
10  
11 7/30/2008


12 Date

13   
~~Hani El Naffy~~ **Richard Contreras**   
~~President~~ **Executive Vice President and Chief**  
Del Monte Fresh Produce (Hawaii), Inc. **Financial Officer**

14  
15  
16  
17 For Complainant **U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX**

18  
19  
20 9/18/08

21 Date

22   
Jeff Scott  
23 Director  
Waste Management Division  
United States Environmental Protection Agency,  
24 Region IX



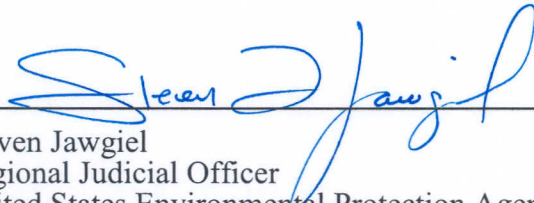
1  
2 **FINAL ORDER**  
3  
4  
5

6 **IT IS HEREBY ORDERED** that this Consent Agreement and Final Order ((U.S. EPA Docket  
7 No. RCRA-09-20080019) be entered and that Respondent pay a civil penalty in the  
8 amount of ONE HUNDRED AND NINETY THOUSAND DOLLARS (\$190,000) by wire  
9 transfer to the account of the U.S. Treasury at the Federal Reserve Bank of New York, within  
10 thirty (30) days after the Effective Date of this Consent Agreement and Final Order. A copy of  
11 the wire transfer form shall be sent to the EPA Region IX addresses specified in Section G of this  
12 Consent Agreement and Final Order within such 30-day period.

13  
14 This Final Order shall be effective upon filing.  
15  
16

17  
18 09/19/08

19 Date

20 

21 Steven Jawgiel  
22 Regional Judicial Officer  
23 United States Environmental Protection Agency,  
24 Region IX  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

**I hereby certify that the original copy of the foregoing Consent Agreement and Final Order in the matter of Del Monte Fresh Produce (Hawaii), Inc., has been filed with the Regional Hearing Clerk, Region IX, and that copies have been sent**

**by Certified Mail, Return Receipt Requested, to:**

**Mr. Hani El-Naffy, President  
Del Monte Fresh Produce (Hawaii), Inc.  
c/o Del Monte Fresh Produce Company  
P.O. Box 149222  
Coral Gables, FL 33114-9222**

CERTIFIED MAIL NO. P 765 056 468

**by Regular Mail to:**


**Mr. Michael W. Steinberg, Esq.  
Morgan Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004**

**by Hand Delivery to:**

**Letitia D. Moore  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105**

SEP 23 2008

**Date**



**Danielle Carr  
Regional Hearing Clerk**