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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2017-00 05
11)
12 Wonder Farm 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 Wonder
17 Farm 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)(2) of the Federal
23 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(2), for the assessment
24 of a civil administrative penalty against Respondent for the use of registered pesticides in
25 manners inconsistent with their labeling in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §
26 136j(a)(2)(G), and the Worker Protection Standard set forth at 40 C.F.R. Part 170.

27 2. Complainant is the Director of the Enforcement Division, EPA Region IX, who has
28 been duly delegated to commence and settle an enforcement action in this matter.

1 3. Respondent is Wonder Farm Inc., a Hawaii corporation with headquarter offices
2 located at 86-151 Kuwale Road in Waianae, Hawaii, 96792-2705.

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. Pursuant to 40 C.F.R. § 170.122, when workers are on an agricultural establishment
7 and a pesticide has been applied on the establishment in the production of agricultural plants
8 within the past 30 days, the agricultural employer shall display, in accordance with this section,
9 specific information about the pesticide, including: (1) the location and description of the treated
10 area; (2) the product name, EPA registration number, and active ingredient(s) of the pesticide; (3)
11 the time and date the pesticide is to be applied; and (4) the restricted-entry interval for the
12 pesticide.

13 6. Pursuant to 40 C.F.R. § 170.130(a), the agricultural employer shall assure that each
14 worker, required by this section to be trained, has been trained according to this section during
15 the last 5 years.

16 7. Pursuant to 40 C.F.R. § 170.135, when workers are on an agricultural establishment
17 and, within the last 30 days, a pesticide covered by this subpart has been applied on the
18 establishment or a restricted-entry interval has been in effect, the agricultural employer shall
19 display, in accordance with this section, pesticide safety information on or near a pesticide safety
20 poster in a central location where it can be readily seen and read by workers.

21 8. Pursuant to 40 C.F.R. § 170.230(a), before any handler performs any handling task,
22 the handler employer shall assure that the handler has been trained in accordance with this
23 section during the last 5 years.

24 9. Pursuant to 40 C.F.R. § 170.240(c), when personal protective equipment is specified
25 by the labeling of any pesticide for any handling activity, the handler employer shall provide the
26 appropriate personal protective equipment in clean and operating condition to the handler.

27 10. Pursuant to 40 C.F.R. § 170.9(b), a person who has a duty under 40 C.F.R. Part 170,
28 as referenced on the pesticide label, and who fails to perform that duty, violates Section

1 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and is subject to a civil penalty under Section
2 14 of FIFRA, 7 U.S.C. § 136l.

3 11. Pursuant to 40 C.F.R. § 180.111, which sets forth the per-commodity chemical
4 tolerance limits for residues of the pesticidal active ingredient, Malathion, the tolerance for
5 Malathion residue on basil is zero.

6 12. Pursuant to 40 C.F.R. § 180.169, which sets forth the per-commodity chemical
7 tolerance limits for residues of the pesticidal active ingredient, Carbaryl, the tolerance for
8 Carbaryl residue on basil is zero.

9 13. Pursuant to 40 C.F.R. § 180.204, which sets forth the per-commodity chemical
10 tolerance limits for residues of the pesticidal active ingredient, Dimethoate, the tolerance for
11 Dimethoate residue on basil is zero.

12 C. ALLEGED VIOLATIONS

13 14. Respondent is a corporation and therefore fits within the definition of “person” as
14 that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s). As such, Respondent is subject
15 to FIFRA and the implementing regulations promulgated thereunder.

16 15. At all times relevant to this matter, Respondent operated a facility (the “Facility”)
17 located at 86-151 Kuwale Road in Waianae, Hawaii.

18 16. This Facility is a “farm” and therefore an “agricultural establishment” as those terms
19 are defined at 40 C.F.R. § 170.3.

20 17. At all times relevant to this matter, the individuals employed by Respondent for the
21 performance of activities relating to the production of agricultural plants at the Facility were
22 “workers” as that term is defined at 40 C.F.R. § 170.3.

23 18. At all times relevant to this matter, Respondent was an “agricultural employer” as
24 that term is defined at 40 C.F.R. § 170.3.

25 19. At all times relevant to this matter, the individuals employed by Respondent for
26 assistance with the application of pesticides at the Facility were “handlers” as that term is defined
27 at 40 C.F.R. § 170.3.

1 20. At all times relevant to this matter, Respondent was a “handler employer” as that
2 term is defined at 40 C.F.R. § 170.3.

3 21. Pyronol Crop Spray (EPA Reg. No. 655-489), Radiant SC Insecticide (EPA Reg. No.
4 62719-545), Admire Pro Systemic Protectant (EPA Reg. No. 264-827), Fosphite Fungicide (EPA
5 Reg. No. 68573-2), Prev-Am Ultra Fungicide (EPA Reg. No. 72662-3), Abamectin 0.15 EC
6 (EPA Reg. No. 66222-210), and Clorox Germicidal Bleach (EPA Reg. No. 67619-8) are
7 registered “pesticides” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

8 22. Malathion, Carbaryl, and Dimethoate are pesticidal “active ingredients” as that term
9 is defined in Section 2(a) of FIFRA, 7 U.S.C. § 136(a).

10 23. At all times relevant to this matter, the entire Facility (including its basil crop)
11 represented a “treated area” as that term is defined at 40 C.F.R. § 170.3.

12 24. On or about May 15, 2012, Respondent used, “in a manner inconsistent with its
13 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
14 pesticide Pyronyl Crop Spray at the Facility. Specifically, Respondent failed to provide workers
15 with specific information about the application of this pesticide at the Facility within the past 30
16 days. Pursuant to 40 C.F.R. § 170.122, this failure represents the use of a registered pesticide in
17 a manner inconsistent with its labeling and is thus a violation of Section 12(a)(2)(G) of FIFRA, 7
18 U.S.C. § 136j(a)(2)(G).

19 25. On or about May 15, 2012, Respondent used, “in a manner inconsistent with its
20 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
21 pesticide Pyronyl Crop Spray at the Facility. Specifically, after the application of this pesticide at
22 the Facility within the preceding 30 days, Respondent failed to assure that each of its workers had
23 received pesticide safety training during the preceding five years. Pursuant to 40 C.F.R. §
24 170.130(a), this failure represents the use of a registered pesticide in a manner inconsistent with
25 its labeling and is thus a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

26 26. On or about May 15, 2012, Respondent used, “in a manner inconsistent with its
27 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
28 pesticide Clorox Germicidal Bleach at the Facility. Specifically, in a manner not permitted by

1 the pesticide Clorox Germicidal Bleach's labeling, Respondent applied the pesticide to clean a
2 pesticide spray tank despite the absence of such directions for use or the approval of such a use.

3 27. On or about May 15, 2012, Respondent used, "in a manner inconsistent with its
4 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), an unknown
5 pesticide containing the active ingredient Malathion at the Facility. Specifically, in a manner not
6 permitted by the Malathion-containing pesticide's labeling, Malathion residue was detected on
7 Respondent's basil crop at the Facility despite the fact that 40 C.F.R. § 180.111 sets forth a basil
8 tolerance limit of zero for this active ingredient.

9 28. On or about May 15, 2012, Respondent used, "in a manner inconsistent with its
10 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), an unknown
11 pesticide containing the active ingredient Carbaryl at the Facility. Specifically, in a manner not
12 permitted by the Carbaryl-containing pesticide's labeling, Carbaryl residue was detected on
13 Respondent's basil crop at the Facility despite the fact that 40 C.F.R. § 180.169 sets forth a basil
14 tolerance limit of zero for this active ingredient.

15 29. On or about May 20, 2013, Respondent used, "in a manner inconsistent with [their]
16 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
17 pesticides Admire Pro Systemic Protectant and Radiant SC Insecticide at the Facility.
18 Specifically, Respondent failed to provide workers with specific information about the
19 applications of these pesticides at the Facility within the past 30 days. Pursuant to 40 C.F.R. §
20 170.122, these two separate failures represent the use of registered pesticides in a manner
21 inconsistent with their labeling and are thus two violations of Section 12(a)(2)(G) of FIFRA, 7
22 U.S.C. § 136j(a)(2)(G).

23 30. On or about May 20, 2013, Respondent used, "in a manner inconsistent with [their]
24 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
25 pesticides Admire Pro Systemic Protectant and Radiant SC Insecticide at the Facility.
26 Specifically, Respondent failed to post pesticide safety information in a central location after
27 these pesticides had been applied at the Facility within the preceding 30 days. Pursuant to 40
28 C.F.R. § 170.135, this failure represents the use of registered pesticides in a manner inconsistent

1 with their labeling and is thus a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §
2 136j(a)(2)(G).

3 31. On or about May 20, 2013, Respondent used, “in a manner inconsistent with its
4 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
5 pesticide Admire Pro Systemic Protectant at the Facility. Specifically, in a manner not permitted
6 by the pesticide Admire Pro Systemic Protectant’s labeling, Respondent applied the pesticide at a
7 rate in excess of the limit of 1.2 ounces per acre of basil as set forth on the label.

8 32. On or about May 20, 2013, Respondent used, “in a manner inconsistent with its
9 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
10 pesticide Admire Pro Systemic Protectant at the Facility. Specifically, in a manner not permitted
11 by the pesticide Admire Pro Systemic Protectant’s labeling, Respondent applied the pesticide at a
12 frequency in excess of the limit of 3.6 fluid ounces per acre of basil per season as set forth on the
13 label.

14 33. On or about May 20, 2013, Respondent used, “in a manner inconsistent with its
15 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
16 pesticide Radiant SC Insecticide at the Facility. Specifically, in a manner not permitted by the
17 pesticide Radiant SC Insecticide’s labeling, Respondent applied the pesticide at a frequency in
18 excess of the limit of 39 fluid ounces per acre of basil per season or a maximum of five
19 applications per year for basil as set forth on the label.

20 34. On or about May 20, 2013, Respondent used, “in a manner inconsistent with its
21 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), an unknown
22 pesticide containing the active ingredient Malathion at the Facility. Specifically, in a manner not
23 permitted by the Malathion-containing pesticide’s labeling, Malathion residue was detected on
24 Respondent’s basil crop at the Facility despite the fact that 40 C.F.R. § 180.111 sets forth a basil
25 tolerance limit of zero for this active ingredient.

26 35. On or about May 20, 2013, Respondent used, “in a manner inconsistent with its
27 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), an unknown
28 pesticide containing the active ingredient Carbaryl at the Facility. Specifically, in a manner not

1 permitted by the Carbaryl-containing pesticide's labeling, Carbaryl residue was detected on
2 Respondent's basil crop at the Facility despite the fact that 40 C.F.R. § 180.169 sets forth a basil
3 tolerance limit of zero for this active ingredient.

4 36. On or about May 20, 2013, Respondent used, "in a manner inconsistent with its
5 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), an unknown
6 pesticide containing the active ingredient Dimethoate at the Facility. Specifically, in a manner
7 not permitted by the Dimethoate-containing pesticide's labeling, Dimethoate residue was
8 detected on Respondent's basil crop at the Facility despite the fact that 40 C.F.R. § 180.204 sets
9 forth a basil tolerance limit of zero for this active ingredient.

10 37. On or about May 20, 2014, Respondent used, "in a manner inconsistent with [their]
11 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
12 pesticides Fosphite Fungicide and Prev-Am Ultra Fungicide at the Facility. Specifically,
13 Respondent failed to provide workers with specific information about the applications of these
14 pesticides at the Facility within the past 30 days. Pursuant to 40 C.F.R. § 170.122, these two
15 separate failures represent the use of registered pesticides in a manner inconsistent with their
16 labeling and are thus two violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

17 38. On or about May 20, 2014, Respondent used, "in a manner inconsistent with [their]
18 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
19 pesticides Fosphite Fungicide and Prev-Am Ultra Fungicide at the Facility. Specifically, after the
20 application of these pesticides at the Facility within the preceding 30 days, Respondent failed to
21 assure that each of its workers had received pesticide safety training during the preceding five
22 years. Pursuant to 40 C.F.R. § 170.130(a), this failure represents the use of registered pesticides
23 in a manner inconsistent with their labeling and is thus a violation of Section 12(a)(2)(G) of
24 FIFRA, 7 U.S.C. § 136j(a)(2)(G).

25 39. On or about May 20, 2014, Respondent used, "in a manner inconsistent with [their]
26 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
27 pesticides Fosphite Fungicide and Prev-Am Ultra Fungicide at the Facility. Specifically,
28 Respondent failed to post pesticide safety information in a central location after these pesticides

1 had been applied at the Facility within the preceding 30 days. Pursuant to 40 C.F.R. § 170.135,
2 this failure represents the use of registered pesticides in a manner inconsistent with their labeling
3 and is thus a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

4 40. On or about May 20, 2014, Respondent used, “in a manner inconsistent with its
5 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
6 pesticides Fosphite Fungicide and Prev-Am Ultra Fungicide at the Facility. Specifically, after the
7 application of these pesticides at the Facility within the preceding 30 days, Respondent failed to
8 assure that each of its handlers had received handler safety training during the preceding five
9 years. Pursuant to 40 C.F.R. § 170.230(a), this failure represents the use of registered pesticides
10 in a manner inconsistent with their labeling and is thus a violation of Section 12(a)(2)(G) of
11 FIFRA, 7 U.S.C. § 136j(a)(2)(G).

12 41. On or about May 20, 2014, Respondent used, “in a manner inconsistent with its
13 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
14 pesticides Fosphite Fungicide and Prev-Am Ultra Fungicide at the Facility. Specifically, during
15 the performance of a handling task involving these pesticides at the Facility, a handler failed to
16 use the clothing (*i.e.*, waterproof gloves) and personal protective equipment (*i.e.*, protective
17 eyewear) specified by the labeling. Pursuant to 40 C.F.R. § 170.240(a), these two separate
18 failures represent the use of registered pesticides in a manner inconsistent with their labeling and
19 are thus two violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

20 42. On or about May 20, 2014, Respondent used, “in a manner inconsistent with its
21 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
22 pesticide Fosphite Fungicide at the Facility. Specifically, in a manner not permitted by the
23 pesticide Fosphite Fungicide’s labeling, Respondent applied the pesticide at a rate in excess of
24 the limit of one to three quarts per 100 gallons of water per acre of basil as set forth on the label.

25 43. On or about May 20, 2014, Respondent used, “in a manner inconsistent with its
26 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
27 pesticide Fosphite Fungicide at the Facility. Specifically, in a manner not permitted by the
28 pesticide Fosphite Fungicide’s labeling, Respondent failed to triple rinse the leftover non-

1 refillable pesticidal container as part of the disposal process after application of the pesticide as
2 set forth on the label.

3 44. On or about May 20, 2014, Respondent used, “in a manner inconsistent with its
4 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
5 pesticide Prev-Am Ultra Fungicide at the Facility. Specifically, in a manner not permitted by the
6 pesticide Prev-Am Ultra Fungicide’s labeling, Respondent failed to triple rinse the leftover non-
7 refillable pesticidal container as part of the disposal process after application of the pesticide as
8 set forth on the label.

9 45. On or about May 20, 2014, Respondent used, “in a manner inconsistent with its
10 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), an unknown
11 pesticide containing the active ingredient Malathion at the Facility. Specifically, in a manner not
12 permitted by the Malathion-containing pesticide’s labeling, Malathion residue was detected on
13 Respondent’s basil crop at the Facility despite the fact that 40 C.F.R. § 180.111 sets forth a basil
14 tolerance limit of zero for this active ingredient.

15 46. On or about May 20, 2014, Respondent used, “in a manner inconsistent with its
16 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), an unknown
17 pesticide containing the active ingredient Carbaryl at the Facility. Specifically, in a manner not
18 permitted by the Carbaryl-containing pesticide’s labeling, Carbaryl residue was detected on
19 Respondent’s basil crop at the Facility despite the fact that 40 C.F.R. § 180.169 sets forth a basil
20 tolerance limit of zero for this active ingredient.

21 47. On or about May 20, 2014, Respondent used, “in a manner inconsistent with its
22 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), an unknown
23 pesticide containing the active ingredient Dimethoate at the Facility. Specifically, in a manner
24 not permitted by the Dimethoate-containing pesticide’s labeling, Dimethoate residue was
25 detected on Respondent’s basil crop at the Facility despite the fact that 40 C.F.R. § 180.204 sets
26 forth a basil tolerance limit of zero for this active ingredient.

27 48. On or about April 28, 2015, Respondent used, “in a manner inconsistent with its
28 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered

1 pesticide Abamectin 0.15 EC at the Facility. Specifically, in a manner not permitted by the
2 pesticide Abamectin 0.15 EC's labeling, Respondent applied the pesticide to its basil crop
3 despite the absence of such directions for use or the approval of such a use.

4 49. Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), as amended by the Civil Monetary
5 Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, and the FIFRA Enforcement Response
6 Policy dated December 2009 provide for a penalty of up to \$1,100 for each violation.

7 D. RESPONDENT'S ADMISSIONS

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

15 E. CIVIL ADMINISTRATIVE PENALTY

16 51. In final settlement of the violations of FIFRA specifically alleged in Section I.C of
17 this CAFO, Respondent shall pay a civil administrative penalty of TWENTY-SIX THOUSAND,
18 SEVEN HUNDRED, AND THIRTY DOLLARS (\$26,730). Respondent shall pay this civil
19 penalty no later than thirty (30) calendar days from the effective date of this CAFO. The civil
20 penalty shall be paid by remitting a certified or cashier's check, including the name and docket
21 number of this case, for the amount, payable to "Treasurer, United States of America," (or be
22 paid by one of the other methods listed below) and sent as follows:

23 Regular Mail:
24 U.S. Environmental Protection Agency
25 Fines and Penalties
26 Cincinnati Finance Center
27 PO Box 979077
28 St. Louis, MO 63197-9000

1 Wire Transfers:

2 Wire transfers must be sent directly to the Federal Reserve Bank in New
3 York City with the following information:

4 Federal Reserve Bank of New York
5 ABA = 021030004
6 Account = 68010727
7 SWIFT address = FRNYUS33
8 33 Liberty Street
9 New York, NY 10045
10 Beneficiary = U.S. Environmental Protection Agency

11 Certified or Overnight Mail:

12 U.S. Environmental Protection Agency
13 1005 Convention Plaza
14 Mail Station SL-MO-C2-GL
15 ATTN Box 979077
16 St. Louis, MO 63101

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

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

20 U.S. Treasury REX/Cashlink ACH Receiver
21 ABA = 051036706
22 Account = 31006, Environmental Protection Agency
23 CTX Format Transaction Code 22 – checking

24 Physical Location of U.S. Treasury facility:
25 5700 Rivertech Court
26 Riverdale, MD 20737

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

28 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.

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

1 Regional Hearing Clerk
2 Office of Regional Counsel (ORC-1)
3 U.S. Environmental Protection Agency, Region IX
4 75 Hawthorne Street
5 San Francisco, CA 94105

6 Scott McWhorter
7 SDWA/FIFRA Section
8 Enforcement Division (ENF-3-3)
9 U.S. Environmental Protection Agency, Region IX
10 75 Hawthorne Street
11 San Francisco, CA 94105

12 Edgar P. Coral
13 Office of Regional Counsel (ORC-2)
14 U.S. Environmental Protection Agency, Region IX
15 75 Hawthorne Street
16 San Francisco, CA 94105

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

20 53. If Respondent fails to pay the assessed civil administrative penalty of TWENTY-SIX
21 THOUSAND, SEVEN HUNDRED, AND THIRTY DOLLARS (\$26,730) as identified in
22 Paragraph 51 by the deadline specified in that Paragraph, then Respondent shall also pay a
23 stipulated penalty to EPA upon EPA's written request. The amount of the stipulated penalty will
24 be TWO THOUSAND, NINE HUNDRED, AND SEVENTY DOLLARS (\$2,970) and will be
25 immediately due and payable upon EPA's written request, together with the initially assessed
26 civil administrative penalty of TWENTY-SIX THOUSAND, SEVEN HUNDRED, AND
27 THIRTY DOLLARS (\$26,730), resulting in a total penalty due of TWENTY-NINE
28 THOUSAND AND SEVEN HUNDRED DOLLARS (\$29,700). Failure to pay the civil
administrative penalty specified in Paragraph 51 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

1 collection proceeding.

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

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

10 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
11 Government may assess interest, administrative handling charges, and nonpayment penalties
12 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
13 civil administrative penalty specified in Paragraph 51 by the deadline specified in that Paragraph.

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

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

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

26 F. CERTIFICATION OF COMPLIANCE

27 54. In executing this CAFO, Respondent certifies that (1) it is no longer using any
28 registered pesticides in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and

1 (2) it is currently in compliance with all other FIFRA requirements for all its ongoing operations.

2 G. RETENTION OF RIGHTS

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

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

14 H. ATTORNEYS’ FEES AND COSTS

15 57. Each party shall bear its own attorneys’ fees, costs, and disbursements incurred in
16 this proceeding.

17 I. EFFECTIVE DATE

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

21 J. BINDING EFFECT

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

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

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FOR RESPONDENT WONDER FARM INC.:

5/2/2017
DATE

Xiao Qing Wang
XIAO QING WANG
President
Wonder Farm Inc.
86-151 Kuwale Road
Waianac, HI 96792-2705

FOR COMPLAINANT EPA:


5/8/17
DATE

Kathleen H. Johnson
KATHLEEN H. JOHNSON
Director
Enforcement Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Wonder Farm Inc. having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2017-0005) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount TWENTY-SIX
5 THOUSAND, SEVEN HUNDRED, AND THIRTY DOLLARS (\$26,730), and comply with the
6 terms and conditions set forth in the Consent Agreement.

7
8
9 05/09/17
DATE

10 
STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2017-0005) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

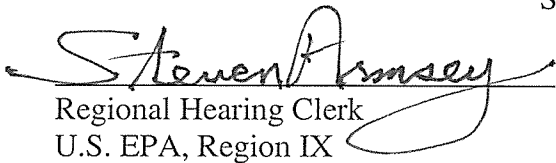
A copy was mailed via CERTIFIED MAIL to:

Xiao Qing Wang, President
Wonder Farm Inc.
86-151 Kuwale Road
Waianae, Hawaii 96792-2705

CERTIFIED MAIL NUMBER: 7015 3010 0000 3883 4317

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Edgar P. Coral
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Regional Hearing Clerk
U.S. EPA, Region IX

May 10, 2017
Date