



1 SUZANNE ANDREWS
Acting Regional Counsel
2
3 EDGAR P. CORAL
Assistant Regional Counsel
U.S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415) 972-3898
6 coral.edgar@epa.gov

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8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10
11 In the matter of:) Docket No. FIFRA-09-2024-0071
12)
Olomana Orchids, Inc.,)
13)
14 Respondent.)
15)

16 I. CONSENT AGREEMENT

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

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 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), and the Worker Protection Standard set forth at 40 C.F.R. Part 170.

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

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

2 3. Respondent is Olomana Orchids, Inc., a Hawaii company with headquarter offices
3 located at 48-464 Kamehameha Highway in Kaneohe, 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. § 170.401(a), before any worker performs any task in a treated
11 area or on an agricultural establishment where within the last 30 days a pesticide product has
12 been used or a restricted-entry interval for such pesticide has been in effect, the agricultural
13 employer must ensure that each worker has been trained in accordance with this section within
14 the last 12 months. Specifically, 40 C.F.R. § 170.401(c)(1) states that, with respect to pesticide
15 safety training programs, the training must be conducted by a person who meets the worker
16 training requirements of paragraph (c)(4) of this section, and who must be present during the
17 entire training program and must respond to workers' questions.

18 7. Pursuant to 40 C.F.R. § 170.317(b), a person who has a duty under 40 C.F.R. Part 170,
19 as referenced on the pesticide label, and who fails to perform that duty, violates Section
20 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and is subject to a civil penalty under Section
21 14 of FIFRA, 7 U.S.C. § 136l.

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

1 C. ALLEGED VIOLATIONS

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

5 10. At all times relevant to this matter, Respondent operated a facility (the “Facility”)
6 located at 48-464 Kamehameha Highway in Kaneohe, Hawaii.

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

9 12. At all times relevant to this matter, the individuals employed by Respondent for the
10 performance of activities directly related to the production of agricultural plants at the Facility
11 were “workers” as that term is defined at 40 C.F.R. § 170.305.

12 13. At all times relevant to this matter, Respondent was an “agricultural employer” as
13 that term is defined at 40 C.F.R. § 170.305.

14 14. Dithane Fungicide (EPA Reg. No. 62719-402) is a registered “pesticide” as that term
15 is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

16 15. The labeling for the registered pesticide, Dithane Fungicide, provides, under the
17 section labeled “Agricultural Use Requirements,” that, with respect to “agricultural workers,”
18 this product must be used “only in accordance with its labeling and with the Worker Protection
19 Standard, 40 C.F.R. Part 170” and its “requirements for training.”

20 16. On or about June 8, 2021, Respondent, as the agricultural employer, failed to ensure
21 that two of its workers had been trained in accordance with 40 C.F.R. Part 170 at the Facility
22 within the last 12 months where an application of the registered pesticide, Dithane Fungicide,
23 had been made in the past 30 days (on May 31, 2021). Specifically, while the two workers had
24 received pesticide safety training within the past 12 months, the training was not conducted by a
25 person who met the worker training requirements of 40 C.F.R § 170.401(c)(4).

26 17. Thus, on or about June 8, 2021, Respondent failed to ensure that two of its workers
27 had been trained in accordance with 40 C.F.R. Part 170 at the Facility within the last 12 months
28 where an application of the registered pesticide, Dithane Fungicide, had been made in the past 30

1 days, as required by 40 C.F.R § 170.401(a).

2 18. Respondent's failure, on or about June 8, 2021, to ensure that two of its workers had
3 been trained in accordance with 40 C.F.R. Part 170 at the Facility within the last 12 months
4 where an application of the registered pesticide, Dithane Fungicide, had been made in the past 30
5 days constitutes "use of a registered pesticide in a manner inconsistent with its labeling" pursuant
6 to 40 C.F.R. § 170.401(a) and is thereby two violations of Section 12(a)(2)(G) of FIFRA, 7
7 U.S.C. § 136j(a)(2)(G).

8 19. Respondent received a Notice of Warning from the State of Hawaii for a previous use
9 violation in October 2020.

10 D. RESPONDENT'S ADMISSIONS

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

18 E. CIVIL ADMINISTRATIVE PENALTY

19 21. In full and final settlement of the violation specifically alleged in Section I.C of this
20 CAFO, Respondent shall pay a civil administrative penalty of TWO THOUSAND, FIVE
21 HUNDRED, AND FIVE DOLLARS (\$2,505). Respondent shall pay this civil penalty within
22 thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid by remitting a
23 certified or cashier's check, including the name and docket number of this case, for the amount,
24 payable to "Treasurer, United States of America," (or be paid by one of the other methods listed
25 below) and sent as follows:

26 Regular Mail:

27 U.S. Environmental Protection Agency
28 Fines and Penalties
Cincinnati Finance Center

1 PO Box 979077
2 St. Louis, MO 63197-9000

3 Wire Transfers:

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

13 Certified or Overnight Mail:

14 U.S. Bank
15 1005 Convention Plaza
16 Mail Station SL-MO-C2GL
17 ATTN Box 979077
18 St. Louis, MO 63101

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

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

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

26 Physical location of U.S. Treasury facility:

27 5700 Rivertech Court
28 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
methods listed above, including proof of the date payment was made, shall be sent with a

1 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
2 following regular mail or email addresses:

3
4 Regional Hearing Clerk
5 Office of Regional Counsel (ORC-1)
6 U.S. Environmental Protection Agency, Region IX
7 75 Hawthorne Street
8 San Francisco, CA 94105
9 R9HearingClerk@epa.gov

7
8 Brandon Boatman
9 Toxics Section
10 Enforcement and Compliance Assurance Division (ENF-2-3)
11 U.S. Environmental Protection Agency, Region IX
12 75 Hawthorne Street
13 San Francisco, CA 94105
14 boatman.brandon@epa.gov

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

14 23. If Respondent fails to pay the assessed civil administrative penalty of TWO
15 THOUSAND, FIVE HUNDRED, AND FIVE DOLLARS (\$2,505), as identified in Paragraph
16 21, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated penalty to
17 EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the assessed penalty.
18 Stipulated penalties shall accrue until such time as the assessed penalty and all accrued stipulated
19 penalties are paid and shall become due and payable upon EPA's written request. Failure to pay
20 the civil administrative penalty specified in Paragraph 21 by the deadline specified in that
21 Paragraph may also lead to any or all of the following actions:

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

27 (2) The U.S. Government may collect the debt by administrative offset
28 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a

1 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
2 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
3 C.F.R. §§ 13(C) and 13(H).

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

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

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

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

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

23 F. CERTIFICATION OF COMPLIANCE

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

1 imprisonment for knowing submission of such information.

2 G. RETENTION OF RIGHTS

3 25. 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 26. 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 27. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
16 this proceeding.

17 I. EFFECTIVE DATE

18 28. 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 29. 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 30. 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 OLOMANA ORCHIDS, INC.:

Aug 17 2024
DATE



PETER NEIFERT
President/Treasurer
Olomana Orchids, Inc.

FOR COMPLAINANT EPA:

DATE

Morimoto,
Kaoru

Digitally signed by
Morimoto, Kaoru
Date: 2024.06.05 10:34:48
-07'00'

for 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 Olomana Orchids, Inc. having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2024-0071) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of TWO
5 THOUSAND, FIVE HUNDRED, AND FIVE DOLLARS (\$2,505) and comply with the terms
6 and conditions set forth in the Consent Agreement.

7
8
9 _____
10 DATE

11 _____
12 BEATRICE WONG
13 Regional Judicial Officer
14 U.S. Environmental Protection Agency, Region IX
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing Consent Agreement and Final Order in the matter of Olomana
3 Orchids, Inc. (Docket No. FIFRA-09-2024-0071) 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:**

Peter Neifert
President/Treasurer
Olomana Orchids, Inc.
48-464 Kamehameha Hwy.
Kaneohe, HI 96744
Orchidshi@hawaii.rr.com

9 **COMPLAINANTS:**

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

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17 Ponly Tu
18 Regional Hearing Clerk
19 U.S. EPA - Region IX
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