

1 SYLVIA A.QUAST  
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-09-2023-0087  
12 )  
Native Farms LLC, )  
13 )  
Respondent. )  
14 )  
15

16 I. CONSENT AGREEMENT

17 The United States Environmental Protection Agency (“EPA”), Region IX, and Native  
18 Farms LLC (“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 Native Farms LLC, a Hawaii limited liability company with  
3 headquarter offices located at 200 Keawe Street, Bay 65, in Honolulu, Hawaii.

4 B. STATUTORY AND REGULATORY BASIS

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

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

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

13 7. Pursuant to 40 C.F.R. § 170.9(b), a person who has a duty under 40 C.F.R. Part 170,  
14 as referenced on the pesticide label, and who fails to perform that duty, violates Section  
15 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and is subject to a civil penalty under Section  
16 14 of FIFRA, 7 U.S.C. § 136l.

17 8. Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), 40 C.F.R. Part 19, and the Civil  
18 Monetary Penalty Inflation Adjustment Rule at 88 Fed. Reg. 986 (January 6, 2023) provide that,  
19 for any offense that occurred after November 2, 2015, where penalties are assessed on or after  
20 January 6, 2023, any private applicator or other person not included in Section 14(a)(1) who  
21 violates any provision of FIFRA subsequent to receiving a written notice from the Administrator  
22 or following a citation for a prior violation, may be assessed a civil penalty by the Administrator  
23 of up to \$3,446 for each offense.

24 C. ALLEGED VIOLATION

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

28 10. At all times relevant to this matter, Respondent operated a facility (the “Facility”)

1 located at 41-732 Kakaina Street in Waimanalo, Hawaii.

2 11. This Facility is a “nursery” and therefore an “agricultural establishment” as those  
3 terms are defined at 40 C.F.R. § 170.3.

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

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

9 14. Banrot Broad Spectrum Fungicide (EPA Reg. No. 58185-10) is a registered  
10 “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

11 15. The labeling for the registered pesticide, Banrot Broad Spectrum Fungicide, provides,  
12 under the section labeled “Personal Protective Equipment (PPE),” that “mixers, loaders,  
13 applicators, and handlers must wear . . . chemical-resistant footwear plus socks.”

14 16. On or about May 6, 2023, a handler applied the registered pesticide, Banrot Broad  
15 Spectrum Fungicide, at the Facility and Respondent, as the handler employer, failed to provide  
16 chemical resistant footwear to the handler for the handler’s application of the pesticide.

17 17. Thus, on or about May 6, 2023, Respondent failed to provide the handler with  
18 personal protective equipment for application specified by the labeling of the registered pesticide,  
19 Banrot Broad Spectrum Fungicide, as required by 40 C.F.R § 170.240(c).

20 18. Respondent’s failure to provide the handler with chemical resistant footwear for the  
21 application of the registered pesticide, Banrot Broad Spectrum Fungicide, at the Facility  
22 constitutes “use of a registered pesticide in a manner inconsistent with its labeling” pursuant to  
23 40 C.F.R. § 170.9(b) and is thus a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §  
24 136j(a)(2)(G).

25 19. Respondent received a Notice of Warning from the State of Hawaii for a previous use  
26 violation in May 2022.

27 **D. RESPONDENT’S ADMISSIONS**

28 20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,

1 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
2 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section  
3 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the  
4 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any  
5 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the  
6 proposed Final Order contained in this CAFO.

7 E. CIVIL ADMINISTRATIVE PENALTY

8 21. In full and final settlement of the violation specifically alleged in Section I.C of this  
9 CAFO, Respondent shall pay a civil administrative penalty of ONE THOUSAND, TWO  
10 HUNDRED, AND SIXTY-SIX DOLLARS (\$1,266). Respondent shall pay this civil penalty  
11 within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid by  
12 remitting a certified or cashier's check, including the name and docket number of this case, for  
13 the amount, payable to "Treasurer, United States of America," (or be paid by one of the other  
14 methods listed below) and sent as follows:

15 Regular Mail:

16 U.S. Environmental Protection Agency  
17 Fines and Penalties  
18 Cincinnati Finance Center  
19 PO Box 979077  
20 St. Louis, MO 63197-9000

21 Wire Transfers:

22 Wire transfers must be sent directly to the Federal Reserve Bank in New  
23 York City with the following information:  
24 Federal Reserve Bank of New York  
25 ABA = 021030004  
26 Account = 68010727  
27 SWIFT address = FRNYUS33  
28 33 Liberty Street  
New York, NY 10045  
Beneficiary = U.S. Environmental Protection Agency

Certified or Overnight Mail:

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

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ACH (also known as Remittance Express or REX):

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

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

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

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

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

22. Respondent shall not use payment of any penalty under this CAFO as a tax deduction

1 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to  
2 use such payment as a tax deduction.

3 23. If Respondent fails to pay the assessed civil administrative penalty of ONE  
4 THOUSAND, TWO HUNDRED, AND SIXTY-SIX DOLLARS (\$1,266), as identified in  
5 Paragraph 20, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated  
6 penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the assessed  
7 penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all accrued  
8 stipulated penalties are paid and shall become due and payable upon EPA's written request.  
9 Failure to pay the civil administrative penalty specified in Paragraph 20 by the deadline specified  
10 in that Paragraph may also lead to any or all of the following actions:

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

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

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

24 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
25 Government may assess interest, administrative handling charges, and nonpayment penalties  
26 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
27 civil administrative penalty specified in Paragraph 20 by the deadline specified in that Paragraph.

28 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.

1 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
2 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
3 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
4 (30) days of the effective date of this CAFO.

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

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

#### 12 F. CERTIFICATION OF COMPLIANCE

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

#### 19 G. RETENTION OF RIGHTS

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

28 26. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's

1 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,  
2 and permits.

3 H. ATTORNEYS' FEES AND COSTS

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

6 I. EFFECTIVE DATE

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

10 J. BINDING EFFECT

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

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

17  
18 FOR RESPONDENT NATIVE FARMS LLC:

19  
20 9/20/23  
DATE

21   
ANDREW DEDRICK  
Managing Member  
Native Farms LLC

22  
23 FOR COMPLAINANT EPA:

24  
25 KAORU MORIMOTO (for)  
26 MATT SALAZAR, P.E.  
27 Manager, Toxics Section  
28 Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX

Digitally signed by  
KAORU MORIMOTO  
Date: 2023.09.25  
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II. FINAL ORDER

EPA and Native Farms LLC having entered into the foregoing Consent Agreement,  
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2023-0087) be  
entered, and Respondent shall pay a civil administrative penalty in the amount of ONE  
THOUSAND, TWO HUNDRED, AND SIXTY-SIX DOLLARS (\$1,266) and comply with the  
terms and conditions set forth in the Consent Agreement.

**BEATRICE  
WONG**

 Digitally signed by BEATRICE  
WONG  
Date: 2023.09.25 14:38:11  
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Beatrice Wong  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing Consent Agreement and Final Order in the matter of Native  
3 Farms LLC, (Docket No. FIFRA-09-2023-0087) 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:** Dewain A. Dedrick  
7 Managing Member  
8 Native Farms LLC  
9 200 Keawe Street, Bay 65  
10 Honolulu, HI 96813  
11 [Andrew@Nativefarmshawaii.com](mailto:Andrew@Nativefarmshawaii.com)

12 **COMPLAINANTS:** Edgar Coral  
13 Assistant Regional Counsel (ORC-2)  
14 U.S. EPA, Region IX  
15 75 Hawthorne Street  
16 San Francisco, CA 94105  
17 Carol.Edgar@EPA.gov

18 **PONLY TU** Digitally signed by PONLY TU  
Date: 2023.09.25 18:20:46 -07'00'

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20 Ponly Tu Date  
21 Regional Hearing Clerk  
22 U.S. EPA - Region IX  
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