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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

75 Hawthorne Street  
San Francisco, California 94105

	)	DOCKET NO. UIC-09-2024-0064
	)	
Grove Farm Company, Incorporated	)	
	)	
Respondent.	)	<b>CONSENT AGREEMENT</b>
	)	<b>AND</b>
	)	<b>FINAL ORDER</b>
Proceeding under Section 1423(c) of the	)	
Safe Drinking Water Act,	)	
42 U.S.C. § 300h-2(c).	)	
	)	
	)	

**CONSENT AGREEMENT**

**I. AUTHORITIES AND PARTIES**

1. This is an administrative action commenced and concluded under Section 1423(c)(1) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c)(1), and Sections 22.13(b), 22.18(b)(2) and (3), and 22.45 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 9.

3. Respondent, Grove Farm Company, Inc. is incorporated in the State of Hawaii.

4. Where the Parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CA/FO). See 40 C.F.R. § 22.13(b).

5. The Parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CA/FO, including the assessment of the civil penalty of \$58,716 and the compliance requirements specified below.

## **II. JURISDICTION AND WAIVER OF RIGHT TO JUDICIAL REVIEW AND HEARING**

7. Consistent with 40 C.F.R. § 22.18(b)(2), for the purpose of this proceeding, Respondent: admits the jurisdictional allegations of the CA/FO; neither admits nor denies the specific factual allegations contained in the CA/FO; consents to the assessment of the stated civil penalty, and to all conditions specified in the Consent Agreement; and waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

8. Respondent further waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to this CA/FO including, but not limited to: its right to request a hearing under 40

C.F.R. § 22.15(c) and Section 1423(c)(3) of the SDWA, 42 U.S.C. § 300h-2(c)(3); its right to seek federal judicial review of the CA/FO under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CA/FO; and its right to appeal this CA/FO under Section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6). Respondent also consents to the issuance of this CA/FO without further adjudication.

### **III. STATUTORY AND REGULATORY BACKGROUND**

9. Section 1421 of the SDWA, 42 U.S.C. § 300h, requires that the Administrator of EPA promulgate regulations, which shall include permitting requirements as well as inspection, monitoring, recordkeeping, and reporting requirements, for state underground injection control (UIC) programs to prevent underground injection which endangers drinking water sources.

10. Section 1421(d)(1) of the SDWA, 42 U.S.C. § 300h(d)(1), defines “underground injection” as the subsurface emplacement of fluids by well injection and excludes the underground injection of natural gas for purposes of storage and the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

11. Pursuant to Sections 1421 and 1422 of the SDWA, 42 U.S.C. §§ 300h and 300h-1, respectively, EPA has promulgated UIC regulations at 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

12. 40 C.F.R. § 144.1(g) provides that the UIC program regulate underground injection by six (6) classes of wells, and all owners or operators of these injection wells must be authorized either by permit or rule.

13. Section 1401(6) of the SDWA, 42 U.S.C. § 300f(6), and 40 C.F.R. § 144.3 define “contaminant” as any physical, chemical, biological, or radiological substance or matter in water.
14. 40 C.F.R. § 144.3 defines “fluid” as any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.
15. 40 C.F.R. § 144.3 defines “well injection” to mean the subsurface emplacement of fluids through a well.
16. 40 C.F.R. § 144.3 defines “well” to mean, in relevant part, a dug hole whose depth is greater than the largest surface dimension.
17. 40 C.F.R. § 144.3 defines a “cesspool” as a “drywell,” which in turn is a “well.”
18. 40 C.F.R. § 144.81(2) defines “large capacity cesspools” (“LCCs”) to be a cesspool that includes “multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes perforated sides,” but excludes single-family residential cesspools or non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day.
19. 40 C.F.R. §§ 144.80(e) and 144.81(2) classify LCCs as Class V UIC injection wells.
20. 40 C.F.R. § 144.3 defines Class V UIC injection wells as a “facility or activity” subject to regulation under the UIC program.
21. Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), defines “person” as an individual, corporation, company, association, partnership, State, municipality, or

Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency). See *also* 40 C.F.R. § 144.3.

22. 40 C.F.R. § 144.3 defines “owner or operator” to mean the owner or operator of any “facility or activity” subject to regulation under the UIC program.

23. Pursuant to 40 C.F.R. § 144.82, the “owner or operator” of a Class V UIC injection well “must comply with Federal UIC requirements in 40 C.F.R. Parts 144 through 147,” and must also “comply with any other measures required by States or an EPA Regional Office UIC Program to protect [underground sources of drinking water].”

24. 40 C.F.R. §§ 144.84(b)(2) and 144.88 prohibit construction of new or converted LCCs and required that owners or operators of existing LCCs close those LCCs by no later than April 5, 2005.

25. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. § 147.601, EPA administers the UIC program in the State of Hawaii, and therefore has “primacy” for the program.

26. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), provides that any person found to be in violation of any requirement of an applicable UIC program in a state that does not have primacy may be assessed a civil penalty and be subject to an order requiring compliance pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1).

27. Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$27,894 for each day of

violation, up to a maximum administrative penalty of \$348,671 for violations occurring after November 2, 2015, and where penalties are assessed on or after December 27, 2023, and/or issue an order requiring compliance.

#### **IV. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS**

28. Respondent is a corporation and thus qualifies as a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3. Respondent develops residential, industrial, and commercial land and manages agricultural land licensing activities.

29. Respondent owns the Puhi Building, located at 3-1866 Kaumualii Highway (TMK: 4-3-3-011-006); Kauai Motorsports, located at 3-1878 Kaumualii Highway (TMK: 4-3-3-011-007); and the Hanamaulu Shops, located at 3-4051 Kuhio Highway (TMK: 4-3-8-018-001) (“the Properties”). All of the Properties are located on the Island of Kauai.

##### **The Puhi Building**

30. The Puhi Building, located at 3-1866 Kaumualii Highway (TMK: 4-3-3-011-006), is a two-story multi-tenant commercial office building.

31. The property has one cesspool that collects sanitary wastewater from two restrooms.

32. EPA alleges that the cesspool that services the Puhi Building at 3-1866 Kaumualii Highway meets the regulatory criteria of a LCC, as that term is described at 40 C.F.R. § 144.81(2), in that the cesspool has the capacity to serve twenty (20) or more persons per day.

33. EPA alleges that each day that Respondent failed to close the alleged LCC at the property located at the Puhi Building after April 5, 2005, constitutes a violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

#### Kauai Motorsports

34. Kauai Motorsports, located at 3-1878 Kaumualii Highway (TMK: 4-3-3-011-007) is comprised of two commercial buildings that respectively operate as a Sales, Rental, and Retail Center and a Parts and Service Center.

35. The property has two cesspools that collect sanitary waste from two restrooms.

36. EPA alleges that the two cesspools which service the property at 3-1878 Kaumualii Highway meet the regulatory criteria of a LCC, as that term is described at 40 C.F.R. § 144.81(2), in that the cesspools have the capacity to serve twenty (20) or more persons per day.

37. EPA alleges that each day that Respondent failed to close the alleged LCCs at the property located at 3-1878 Kaumualii Highway after April 5, 2005, constitutes a violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

#### The Hanamaula Shops

38. The Hanamaulu Shops, located at 3-4051 Kuhio Highway (TMK: 4-3-8-018-001) is comprised of four industrial warehouses and three large workshops that house a variety of industrial tenants that include vehicle and marine repair shops, heavy equipment rentals, metal roofing fabrication, and a base yard for a water and wastewater service company.

39. The property has four cesspools that collect sanitary waste from four restrooms.

40. EPA alleges that the four cesspools which service the property at 3-4051 Kuhio Highway meet the regulatory criteria of a LCC, as that term is described at 40 C.F.R. § 144.81(2), in that the cesspools have the capacity to serve twenty (20) or more persons per day.

41. EPA alleges that each day that Respondent failed to close the alleged LCCs at the property located at 3-4051 Kuhio Highway after April 5, 2005 constitutes a violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

## **V. SETTLEMENT TERMS**

### **A. Civil Penalty**

42. Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(4)(B), requires the EPA Administrator to take into account the seriousness of the violation, the economic benefit (if any) resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require, when assessing a civil penalty for violations of the SDWA.

43. Within thirty (30) days of the Effective Date of this CA/FO, Respondent must pay a civil penalty of FIFTY-EIGHT THOUSAND SEVEN HUNDRED SIXTEEN DOLLARS (\$58,716) by sending a check (mail or overnight delivery), wire transfer, automated clearing house, or online payment. Payment instructions are available at: <http://2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:



U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, Missouri 63197-9000

44. Concurrently with payment, Respondent shall provide proof of payment, using the method described in Paragraph 43, to the Regional Hearing Clerk and EPA at the following address:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 9 - Office of Regional Counsel  
r9HearingClerk@epa.gov

Respondent shall also send notice of payment and transmittal letter via email to the EPA Region 9 Enforcement and Compliance Assurance Division's Enforcement Officer and the EPA Region 9 Office of Regional Counsel attorney in accordance with Paragraph 82.

45. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject

Respondents to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfil these obligations, EPA herein requires, and Respondents herein agree, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that their completed IRS Form W-9 include their correct TINs or that Respondents have applied and are waiting for issuance of a TIN;
- c. Respondent shall email their completed Form W-9 to EPA’s Cincinnati Finance Center in Paragraph 43 within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and;
- d. In the event that either Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further: i. notify EPA’s Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date, as defined in Section VIII. below, and ii. provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s issuance and receipt of the TIN.

46. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, in addition to any stipulated penalties due under Section V.C, below, Respondent must pay the following on any

amount overdue under this CA/FO: interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings; a \$15 handling charge fee each month that any portion of the penalty is more than thirty (30) days past due; and 6% per year penalty on any principal amount ninety (90) days past due.

47. If Respondent does not pay timely the civil penalty due under Paragraph 43 and/or any stipulated penalties due under Section V.C, below, EPA may request the United States Department of Justice bring an action to collect any unpaid portion of the penalty with interest, handling charges, non-payment penalties, and the United States' enforcement expenses for the collection action under Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h- 2(c)(7). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

## **B. Compliance Requirements**

### **LCC Closures – the Properties**

48. As required by Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and consistent with the timeframes set forth below, Respondent shall:

a. Within fifteen (15) days after this CA/FO becomes effective, Respondent shall execute contracts with an architect and an engineering firm for the closure of the cesspools at the properties located at 3-1866 Kaumualii Highway (TMK: 4-3-3-011-006); 3-1878 Kaumualii Highway (TMK: 4-3-3-011-007); and 3-4051 Kuhio Highway (TMK: 4-3-8-018-001).

b. Within ninety (90) days after Respondent executes the contracts referenced in Paragraph 49(a), Respondent shall complete the initial design for the closures and retrofits of the cesspools at the Properties and submit complete applications for permits for the installation of a state approved individual wastewater system ("Installation Permits") to the State of Hawaii Department of Health (HDOH).

c. Within one hundred and twenty (120) days after HDOH issues Installation Permits, Respondent shall complete the closure of the cesspools at the Properties and the installation/retrofit of the new wastewater systems, in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), and all other applicable requirements, including all HDOH closure requirements, and shall submit documentation to HDOH requesting final approval.

d. Within thirty (30) days of closure of the last of the cesspools at the Properties, Respondent shall submit to EPA a Final LCC Closure Report describing how each LCC was closed, including copies of any cesspool backfill closure reports for the closure of each cesspool; and

e. If Respondent installs one or more replacement wastewater systems, such as Individual Wastewater Systems ("IWS(s)"), then the design and installation of such systems shall comply with all HDOH requirements.

f. In addition, as part of the Final LCC Closure Report, Respondent shall submit to EPA all approvals for the closure of the LCCs and any replacement systems issued by HDOH, provided that, should HDOH not issue any approval within thirty (30) days of closure of the last cesspool at the Properties, Respondent shall

submit such approval within fourteen (14) days of receipt of the approval by Respondent.

49. Respondent shall inform the EPA in writing if any new information or circumstances cause Respondent to modify any planned actions or schedule for achieving compliance with this CA/FO.

50. If Respondent fails to comply with the requirements set forth in Paragraph 48, above, pursuant to Section 1423(b) of SDWA, 42 U.S.C. § 300h-2(b), EPA may request the United States Department of Justice to bring an action in federal district court seeking an order requiring compliance with this CA/FO and/or penalties for violating this CA/FO.

#### **COMPLIANCE AUDIT**

51. Respondent shall perform a compliance audit ("Audit") in accordance with Paragraphs 53 - 56 below of all its landholdings in the State of Hawaii to identify and close all identified LCCs in accordance with Paragraph 56 below.

52. The Parties agree that for violations reported or otherwise disclosed to EPA and corrected (i.e. cesspool closure) under, and in accordance with, the Audit provisions of this CA/FO, below, and subject to the last sentence of this Paragraph, Respondent shall pay a per-LCC economic benefit payment of \$6,607 (to be paid contemporaneously with Respondent's submission of its Final LCC Closure Report and using the method of payment specified in Paragraph 44) and thereby will receive 100% mitigation of gravity-based penalties for the identified LCCs. The foregoing 100% mitigation of gravity-based penalties is provided on condition that: (i) Respondent audits all of its landholdings in

the State of Hawaii and closes all identified LCCs in accordance with the requirements of this CA/FO.

53. Respondent shall comply with the following Audit requirements:

a. **Choose an Auditor to Conduct LCC Inspections:** No later than one-hundred eighty (180) calendar days after the Effective Date of this CA/FO, Respondent shall notify EPA in writing of Respondent's choice of a proposed Auditor who has a technical or educational background relevant to LCCs and at least five (5) years of experience of conducting inspection and/or working on LCCs. Respondent shall provide to EPA along with its notification under this Paragraph a curriculum vitae and list of past cesspool projects performed by the proposed Auditor. EPA shall have fifteen (15) calendar days from its receipt of Respondent's notice to object to the selection of Respondent's choice of an Auditor, based upon the Auditor not having the requisite educational or technical background or experience. In the event of an objection by EPA, Respondent shall have thirty (30) days in which to provide to EPA with written notification of Respondent's secondary Auditor choice that meets the requirements of this Paragraph, and addresses any additional directions contained in EPA's objection, along with the curriculum vitae and list of past cesspool projects performed by the secondary Auditor. If EPA does not object to Respondent's choice of Auditor within the specified timeframe in this Paragraph, then the Auditor shall be deemed to be "approved" and may proceed to the next step in the Audit. Respondent shall ensure that the Auditor supervises the preparation of and signs the Inspection Completion Reports as required by Paragraph 54 of this CA/FO; and prepares and signs the Final LCC Closure Reports as required under Paragraph 56 of this CA/FO.

i. Recordkeeping: Respondent shall include in its written agreement with the Auditor a provision requiring that the Auditor maintain all records pertaining to the undertaking or oversight of the Audit for a period of at least three (3) years. The Auditor's records of the Audit shall be made available to EPA upon request.

ii. Non-Target Properties: Non-Target Properties include those that: (A) are connected to a sewer system; (B) contain an on-site wastewater treatment facility permitted by the HDOH; (C) contain an HDOH-permitted IWS that is not a cesspool; (D) are residential properties that contain one single-family residence or are non-residential properties that clearly have the capacity to serve fewer than twenty (20) persons per day; or (E) are raw land.

iii. Sufficient Documentation: No later than ninety (90) days of the Effective Date of this CA/FO, Respondent shall submit to EPA a proposed list of Target and Non-Target Properties (which together will encompass all of the Respondents landholdings in the State of Hawaii). This list may be prepared and submitted by Respondent without using its Auditor, but Respondent shall rely on "Sufficient Documentation" that a particular property is a Non-Target Property and does not otherwise contain an LCC. For the purposes of this CA/FO, "Sufficient Documentation" means:

1. For properties connected to a sewer: written confirmation of the connection from the county or private sewer operator; building plans documenting the connection to a county or private sewer system; or a sewer bill from the past year.

2. For properties that contain an on-site wastewater treatment system: an HDOH permit or written documentation from HDOH of approval to operate the wastewater treatment system.

3. For properties that contain a non-cesspool IWS: an IWS permit from HDOH or written documentation from HDOH showing that the IWS is permitted.

4. For properties that contain one (1) single-family residence: a Tax Map Key code showing that the property contains only one single-family residence.

5. For raw land: a "Building Value" of zero according to government tax records as of the Effective Date of this CA/FO.

iv. If EPA approves of the list of Target and Non-Target Properties, then Respondent shall proceed with the next step of the Audit (inspection of Target Properties).

v. If EPA disapproves of a Non-Target Property determination for any property and determines a Property is instead a Target Property that should be inspected, it shall provide a rationale for any Non-Target Property it disapproves. Upon receipt of EPA's written Non-Target Property disapproval, Respondent shall re-examine its Non-Target Property determination and provide EPA with a written response within thirty (30) days of receiving EPA's Non-Target Property disapproval that either confirms EPA's Target Property determination or reaffirms Respondent's initial Non-Target Property determination. If Respondent reaffirms its determination on one or more Properties, EPA shall make the final determination in writing on whether the Property is Target or Non-Target. Upon either Respondent's confirmation of EPA's Target Property



determination or a determination by EPA on a disputed Property, Respondent shall proceed with the next step of the Audit (inspection of Target Properties).

vi. Upon request from EPA, Respondent shall provide copies to EPA of any documentation relied upon for any purposes of this Audit. Respondent shall maintain the relied-upon documentation until at least three (3) years after the Audit is complete, with the exception of information obtained through databases maintained by a government entity. Where Respondent obtains information through databases maintained by a government entity, Respondent shall provide EPA with the name of the database and a certified statement from a representative of Respondent documenting when the information was obtained.

vii. Each list of Target and Non-Target Properties submitted to EPA must be certified by Respondent pursuant to Paragraph 56.

b. **Inspection of the Target Properties:**

i. No later than ninety (90) days after EPA's approval of the list of Target Properties, the Auditor shall inspect each of the Target Properties for the presence of an LCC. Inspections may include, but are not limited to, a review of property records, permits, water use records, and/or other documentation, and interviews with Respondent's employees, occupants, tenants and/or lessees, as needed to confirm the presence (or absence) and location of an LCC. If Respondent cannot confirm the absence or location of an LCC during its records review, then Respondent shall perform an on-site visual inspection of the Target Property.

ii. All work will be conducted in accordance with accepted standards of professional engineering procedures as practiced by members of the local engineering profession currently practicing in Hawaii under similar conditions.

54. Inspection Completion Reports: No later than one-hundred twenty (120) days after the Inspection Completion Date, the Auditor shall sign and submit an Inspection Completion Report to EPA documenting the findings of the Auditor's Target Properties inspections. The Inspection Completion Report shall include:

a. A description of how the Audit procedures were followed in completing the Audit.

b. The number of LCCs located on Target Properties, a description of each LCC, and a description of how the LCC was identified and/or confirmed.

c. For those Target Properties that were determined not to contain an LCC, a description of how it was determined that the property did not contain an LCC and what, if any, other sewer or wastewater treatment system is being used.

55. LCC Closure and Schedule Plan:

a. With the Inspection Completion Report, Respondent shall also submit for EPA's approval an LCC Closure Plan and Schedule. The LCC Closure Plan and Schedule shall provide a schedule for the closure of any identified LCCs. The proposed schedule for closure of the LCCs should be established to ensure that the identified LCCs are closed as soon as reasonably possible, considering: (i) the time it takes to contract for the work, including Respondent's timely and diligent effort to prepare the competitive bid and award the contract; and (ii) the time it takes to obtain state and local approvals for the work. The LCC Closure Plan and Schedule shall

include any contracts awarded to close the identified cesspools. In no case shall the schedule required for closure extend beyond three (3) years from the date of submission of the LCC Closure Plan and Schedule to EPA.

b. EPA shall have sixty (60) days to disapprove in writing the LCC Closure Plan and Schedule, along with a description of the basis for the disapproval and instructions on how to address any identified concerns. Upon receipt of EPA's disapproval of the LCC Closure Plan and Schedule, Respondent shall submit to EPA within thirty (30) days of receipt of such disapproval a revised LCC Closure Plan and Schedule that addresses any concerns identified by EPA. Any LCC Closure Plan and Schedule not disapproved by EPA within sixty (60) days shall be deemed "approved" by EPA.

c. Within three months of EPA's actual or deemed approval—pursuant to Paragraph 55(b)—of the LCC Closure Plan and Schedule, Respondent shall submit either construction plans for an IWS to HDOH for approval or apply for a sewer connection for each LCC targeted for closure, irrespective of the final approved closure date.

d. LCCs shall be closed in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), and all applicable federal, state, and local closure requirements.

56. Final Audit LCC Closure Reports: Within thirty (30) days of closure of each LCC identified through this Audit, Respondent shall submit to EPA a Final Audit LCC Closure Report that includes the certification and signature by the Auditor for that particular LCC

and that briefly describes and documents completion of the LCC closure steps that includes, at a minimum, the following:

- a. A copy of the HDOH permit to operate an IWS or a copy of the approval to connect to sewer; and
- b. A copy of any closure backfill reports for the closure activity.

57. The Audit shall not affect EPA's right to bring a claim or cause of action other than those specified in this CA/FO, including a claim or cause of action for an LCC violation that could have been, but was not, reported and closed as part of the Audit or was identified and closed inconsistent with the process and procedures set forth in this CA/FO.

58. Respondent shall bear all costs associated with the Audit.

#### **Supplemental Environmental Project**

59. In response to the alleged violations of the SDWA and in settlement of this matter, although not required by the SDWA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project ("SEP"), as described below in Paragraphs 60 - 66.

60. Respondent shall complete a SEP consisting of connecting the six (6) small capacity cesspools ("SCCs") associated with the following six single-family homes adjacent to the Puhi Building to the Puhi Sewer and Water Company (TMK- 3-3-011-005): 1815 Kikowaena St. Lihue, HI 96766; 1839 Kikowaena St. Lihue, HI 96766; 1827 Kikowaena St. Lihue, HI 96766; 1801 Kikowaena St. Lihue, HI 96766; 1841 Kikowaena St. Lihue, HI 96766; and 1833 Kikowaena St. Lihue, HI 96766.

61. Respondent shall spend no less than NINETY-SIX THOUSAND DOLLARS (\$96,000) implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

62. Respondent shall complete the sewer connection of the small capacity cesspools referenced in Paragraph 60 no later than 180 days following receipt of approvals by HDOH, the County, or any other agency related to the closure of the SCCs and any replacement wastewater systems.

63. The SEP is consistent with applicable EPA policy and guidelines regarding SEPs, including EPA's 2015 Update to the 1988 Supplemental Environmental Projects Policy (March 10, 2015).<sup>1</sup> The SEP advances at least one of the objectives of the SDWA and the UIC regulations cited above by reducing the potential for releases of untreated sanitary waste to groundwater, which can serve as an underground source of drinking water. The SEP is not inconsistent with any provision of the SDWA. The SEP relates to the violations alleged in Section IV of this CA/FO, in that it is designed to reduce the adverse impact and overall risk to public health and/or the environment to which these violations contribute. The SEP and the violations relate to the same contaminants (untreated sanitary waste), the same media (groundwater), the same potential human health exposure pathways (ingestion of impacted groundwater or contact with surface or coastal waters impacted via groundwater). The small capacity cesspools are located in the same geographic area as the violation (the Island of Kauai), and the reduction in pollutant loading from closing the small capacity cesspools is to the same types of ecosystems that may have been impacted by the violations,

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<sup>1</sup> See, <https://www.epa.gov/sites/default/files/2015-04/documents/sepupdatedpolicy15.pdf>.

namely the nearshore aquatic ecosystems of the Hawaiian Islands, and specifically the Island of Kauai. Respondent certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is a minimum of NINETY-SIX THOUSAND DOLLARS (\$96,000);

b. That Respondent will not include administrative costs for employee oversight of the implementation of the SEP in its project costs;

c. That, as of the date of executing this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

d. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CA/FO;

e. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;

f. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;

g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 60; and

h. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

64. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP from the Effective Date of this CA/FO shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Safe Drinking Water Act.”

65. As part of this SEP, Respondent shall submit the following information and/or reports to EPA:

a. Within one (1) month of the connection of the sixth home to sewer, Respondent shall submit to EPA a SEP completion report (“SEP Completion Report”), accompanied by certification from a responsible corporate official. The SEP Completion Report must include the following information:

- i. A detailed description of the SEP as implemented;
- ii. A description of any problems encountered and the solutions thereto;
- iii. Itemized costs;
- iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO;
- v. A description of the environmental and public health benefits resulting from implementation of the SEP;

- vi. Photographic evidence of construction and completion of the closure and replacement of each SCC;
  - vii. Identification of the contractor(s) providing the services;
  - viii. A copy of the cesspool backfill closure report for each closure; and
- b. A copy of all approvals related to the closure of the SCCs and any replacement wastewater systems, such as an IWS or sewer connection, issued by HDOH, the County, or any other agency. Should the applicable agency issue its approval after the SEP Completion Report is due, Respondent shall note the pending status and submit the approval to EPA within fourteen (14) days of Respondent's receipt of the approval.

66. EPA acceptance of SEP Completion Report.

- a. After receipt of the SEP Completion Report described in Paragraph 65 above, EPA will, in writing to the Respondent, either:
- i. Identify any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
  - ii. Indicate that EPA concludes that the project has been completed satisfactorily; or
  - iii. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 67(b) herein.
- b. If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of completion of the SEP itself, Respondent may object in writing to the



notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent.

67. Stipulated Penalties

a. Except as provided in subparagraphs (b) and (c) below, if Respondent fails to satisfactorily complete the requirements regarding the SEP specified in Paragraph 60 by the deadline in Paragraphs 62, Respondent agrees to pay, in addition to the civil penalty in Paragraph 43, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:

- i. \$250 per day for days 1-30
- ii. \$300 per day for days 31– 60
- iii. \$400 per day after day 61

b. If Respondent fails to timely submit any SEP reports, such as those referred to in Paragraph 65, in accordance with the timelines set forth in this CAFO, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:

- i. \$100 per day for days 1-30
- ii. \$150 per day for days 31 – 60
- iii. \$300 per day after day 61

c. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in Paragraph 63 above, Respondent shall pay a stipulated penalty to the United States in the amount of \$105,600. "Satisfactory completion" of the SEP is defined as Respondent spending no less than \$96,000 to close 6 small capacity cesspools on the Island of Kauai within 180 days of receipt of approvals by HDOH, the County, or any other agency related to the closure of the SCCs and any replacement wastewater systems. The determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

68. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.

69. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 43 above. Interest and late charges shall be paid as stated in Paragraph 46.

70. The SEP will be deemed to be satisfactorily completed only when Respondent has (a) connected the six SCCs to the Puhi Sewer and Water Company; (b) expended the minimum amount identified in Paragraph 63; and (c) submitted the SEP Completion Report to EPA. Respondent agrees that failure to submit the SEP Completion Report or any periodic report required by Paragraph 65 below shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 74 below.

71. The determination of whether the SEP has been satisfactorily completed (i.e., pursuant to the terms of this agreement) shall be reserved to the sole discretion of EPA.

72. For a period of five (5) years following the Effective Date of this CA/FO, Respondent shall maintain legible copies of all documentation relevant to the SEP or reports submitted to EPA pursuant to this CA/FO and shall provide such documentation or reports to EPA not more than seven (7) days after a request for such information.

### **C. Stipulated Penalties**

73. Respondent shall pay stipulated penalties in accordance with this Section C for any violations of this CA/FO.

74. If Respondent fails to make the payment specified in Section V.A of this CA/FO, or fails to meet the compliance deadline for closure of any of the LCCs at the Properties by the deadline specified in Section V.B of this CA/FO or fails to meet any compliance deadlines related to the Audit outlined in Paragraphs 53 - 56, Respondent agrees to pay in addition to the assessed penalty, a stipulated penalty of \$300 per day for each day the Respondent is late in making the penalty payment, meeting the closure deadline for the LCCs or meet any compliance deadlines related to the Audit.

75. If Respondent fails to timely submit any reports required by this CA/FO, in accordance with the timelines set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of \$100 for each day after the report was due until it submits the report in its entirety.

76. Respondent agrees to pay any stipulated penalties within thirty (30) days of receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the first date of noncompliance and shall continue to accrue through the date of completion of the delinquent CA/FO requirement. Respondent will use the method of payment specified in Paragraph 43 and agrees to pay interest, handling charges and

penalties that accrue for late payment of the stipulated penalty in the same manner as set forth in Paragraph 46.

77. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent of its obligation to comply with any requirement of this CA/FO or modifies or waives any deadlines set forth in this CA/FO.

78. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other administrative or judicial remedies in addition to or in lieu of assessing stipulated penalties and/or reduce or waive stipulated penalties due under this CA/FO.

#### **D. Force Majeure**

79. For purposes of this CA/FO, Force Majeure is defined as any event arising from causes that are beyond the control of Respondent or its employees and agents, any entity controlled by Respondent, or Respondent's consultants or contractors, which delays or prevents the performance of any obligation under this CA/FO despite Respondent's reasonable best efforts to fulfil the obligation. The requirement that Respondent exercise "reasonable best efforts to fulfil the obligation" includes using reasonable best efforts to anticipate any potential Force Majeure event and reasonable best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Examples of Force Majeure events include, but are not limited to: unforeseen environmental, geological, or archaeological conditions; or pandemics, epidemics, or disease. Examples of events that are not Force Majeure include but are not limited to: increased costs or expenses of any work to be performed under this CA/FO; or normal inclement weather.

80. Respondent shall exercise its best efforts to avoid or minimize any delay and any effects of a delay. If any event occurs which causes or may cause delays meeting the deadlines set forth in this CA/FO, Respondent or its attorney shall, within two (2) business days of the delay or within three (3) business days of Respondent's knowledge of the anticipated delay, whichever is earlier, notify EPA by email in accordance with Paragraph 89. Within fifteen (15) days thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable by which those measures will be implemented. Failure to comply with the notice requirement of this Paragraph shall preclude Respondent from asserting any claim of Force Majeure.

81. If EPA agrees that the delay or anticipated delay is due to a Force Majeure event as defined in Paragraph 79 above, the time for performance may be extended for the period of the delay resulting from the circumstances causing the delay. In such event, EPA will grant, in writing, an extension of time. An extension of the time for performing an obligation granted by EPA pursuant to this Paragraph shall not, of itself, extend the time for performing a subsequent obligation.

## **VI. SUBMISSIONS REQUIREMENTS**

82. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this CA/FO must be submitted to EPA electronically, to the extent possible. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested). Electronic submissions must be sent to the following addresses: Shareem.Jelani@epa.gov and Jackson.Julia@epa.gov. The

subject line of all email correspondence must include the facility name, docket number, and subject of the deliverable. All electronically submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. Mailed submissions must be sent to the following addresses:

Jelani Shareem  
U.S. Environmental Protection Agency  
Region 9, Enforcement and Compliance Assurance Division  
75 Hawthorne Street (ENF-3-3)  
San Francisco, CA 94105

Julia Jackson, Attorney-Advisor  
U.S. Environmental Protection Agency  
Region 9, Office of Regional Counsel  
75 Hawthorne Street (ORC-2-3)  
San Francisco, CA 94105

83. All reports, notifications, documentation, and submissions must be signed by a duly authorized representative of Respondent and shall include the following statement consistent with 40 C.F.R. § 144.32(d):

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that the qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

84. If Respondent finds at any time after submitting information that any portion of that information is false or incorrect, the signee must notify EPA immediately. Knowingly submitting false information to EPA in response to this CA/FO may subject Respondent

to criminal prosecution under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), as well as 18 U.S.C. §§ 1001 and 1341.

85. Submissions required by this CA/FO shall be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.

86. EPA may use any information submitted in accordance with this CA/FO in support of an administrative, civil, or criminal action against Respondent.

87. The information required to be submitted pursuant to this CA/FO is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

## **VII. GENERAL PROVISIONS**

88. Full payment of the penalty as described in Paragraph 43 for the LCCs at the Properties identified in Paragraph 29 and full compliance with this CA/FO shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this CA/FO regarding those three locations. For those LCCs identified and closed in accordance with the Audit provisions of this CA/FO, Respondent's potential liability for federal civil penalties for LCC violations are resolved to the extent that Respondent complies with the conditions set forth in Paragraphs 53 - 56. Violation of this CA/FO shall be deemed a violation of the SDWA for purposes of Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b).

89. The Parties consent to service of this CA/FO by e-mail at the following valid e-mail addresses: [Shareem.Jelani@epa.gov](mailto:Shareem.Jelani@epa.gov) (for Complainant) and both

[DGB@caselombardi.com](mailto:DGB@caselombardi.com) and [dhorne@grovefarm.com](mailto:dhorne@grovefarm.com) and [dhinazumi@grovefarm.com](mailto:dhinazumi@grovefarm.com) (for Respondent).

90. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire agreement between the Parties.

91. The provisions of this CA/FO shall apply to and be binding upon Respondent, its officers, directors, agents, servants, authorized representatives, employees, and successors or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO except for extensions of time to complete such obligations provided by EPA pursuant to Paragraph 81 above.

92. Full compliance with this CA/FO does not in any manner affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, except with respect to: (i) the claims described in Section IV for cesspools at the Properties identified in Paragraph 29 which Respondent has closed in full compliance with this CA/FO and has paid both gravity-based and economic benefit penalties as part of the civil penalty required by this CA/FO; and (ii) any claims for SDWA violations at any LCC identified and closed by Respondent pursuant to the Audit provision of this CA/FO to the extent resolved by Respondent's payment of economic benefit as set forth in Paragraph 52.

93. This CA/FO is not a permit or modification of a permit and does not affect Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations, permits, and orders. Issuance of, or compliance with, this CA/FO does not



waive, extinguish, satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder, except as specifically set forth herein.

94. Respondent certifies that it is complying with the SDWA and its implementing regulations.

95. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in any actions against Respondent for noncompliance with this CA/FO.

96. Unless otherwise specified, the Parties shall each bear their own costs and attorneys' fees incurred in this proceeding.

97. This CA/FO may be executed and transmitted by facsimile, e-mail or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute an instrument. If any portion of this CA/FO is determined to be unenforceable by a competent court or tribunal, the Parties agree that the remaining portions shall remain in full force and effect.

98. The undersigned representative of each party certifies that he or she is duly and fully authorized to enter into and ratify this CA/FO.

99. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section V.B (Compliance Requirements) is restitution or required to come into compliance with law.

### **VIII. EFFECTIVE DATE**

100. Pursuant to 40 C.F.R. § 22.45, this CA/FO will be subject to public notice and comment at least forty (40) days prior to it becoming effective through the issuance of the Final Order by the Regional Judicial Officer.

101. The Parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 C.F.R. § 22.45(c)(4), which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

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

103. This CA/FO will terminate after Respondent has complied with all the terms of the CA/FO throughout its duration.

**Consent Agreement and Final Order**

**In the Matter of: Grove Farm Company Incorporated, Docket No. UIC-09-2024-0064**

GROVE FARM COMPANY  
INCORPORATED:

Donald Horner “/s/”  
Donald Horner  
President & CEO

Date: February 9, 2025

David Hinazumi “/s/”  
David Hinazumi  
Senior Vice-President

Date: February 9, 2025

**Consent Agreement and Final Order**

**In the Matter of: Grove Farm Company, Incorporated, Docket No. UIC-09-2024-0064**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Amy C. Miller-Bowen

Amy C. Miller-Bowen, Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 9

Date: May 26, 2025

**Consent Agreement and Final Order**

**In the Matter of: Grove Farm Company, Incorporated, Docket No. EPA-R9-UIC-2024-0064**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the Parties, shall become effective on the date that it is filed with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18, 22.31, and 22.45.

IT IS SO ORDERED.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Beatrice Wong  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency  
Region 9