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U.S. EPA, REGION IX
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF MAUNA LOA MACADAMIA NUT CO. (a subsidiary of The Hershey Company) Hilo, Hawaii Proceedings under Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c)	DOCKET NO. UIC-09-2007-0001 **CONSENT AGREEMENT** **AND** **[~~PROPOSE~~D] FINAL ORDER**

CONSENT AGREEMENT

1. This Consent Agreement and Final Order ("CA/FO") is issued under the authorities vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 1423(c) and 1445(a) of the Safe Drinking Water Act (the "SDWA" or the "Act"), 42 U.S.C. §§ 300h-2(c),300j-4(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX. The Regional Administrator in turn has delegated these authorities to the Director of the Water Division, EPA Region IX. In accordance with these authorities, and with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice"), the Director of the Water Division, EPA Region IX, hereby issues, and Mauna Loa Macadamia Nut Co., ("Respondent"), hereby agrees to the issuance of, this CA/FO.

2. Respondent and Complainant (the "Parties") agree that settlement of the matters at issue in the attached "Findings and Proposed Administrative Order with Administrative Civil Penalty" ("Complaint"), Docket No. UIC-09-2007-0001, without litigation will save time and resources, is in the public interest, is consistent with the provisions and objectives of the Act and applicable regulations, and that entry of this CA/FO is the most appropriate means of resolving such matters.

PENALTY

3. To account for the violations alleged in the Complaint, Respondent agrees to pay to the United States an administrative civil penalty of **Seventy-Five Thousand dollars ($75,000),** no later than thirty (30) days following the effective date of the Final Order (hereafter referred to as the "due date").

4. The administrative civil penalty referred to in paragraph 3 shall be made payable to the Treasurer, United States of America, in accordance with any acceptable method of payment listed in Attachment A "EPA Region 9 Collection Information," which is incorporated by reference as part of this CA/FO.

5. Concurrent with the payment of the penalty, Respondent shall provide written notice of payment, referencing the title and docket number of this case, via certified mail to each of the following:

Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Brett Moffatt
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

6. If the full penalty payment is not received on or before the due date, interest shall accrue on any overdue amount from the due date through the date of payment, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a late payment handling charge of $15.00 will be assessed for each thirty- (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the due date. Respondent shall tender any interest, handling charges, or late penalty payments in the same manner as described above.

7. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), if Respondent fails to pay by the due date the administrative civil penalty assessed in paragraph 3 of this CA/FO, EPA shall bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. 42 U.S.C. § 300h-2(c)(7).

GENERAL PROVISIONS

8. Respondent waives any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3). Respondent waives any right to contest the allegations contained in the Complaint and this Consent Agreement, or to appeal the CA/FO.

9. Respondent admits the jurisdictional allegations of the Consent Agreement and agrees not to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CA/FO.

10. Respondent neither admits nor denies the non-jurisdictional allegations set forth in the Complaint.

11. Respondent consents to the issuance of this CA/FO and the conditions specified herein, including payment of the administrative civil penalty in accordance with the terms of this CA/FO.

12. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire agreement between the Parties to resolve EPA's civil penalty claim against Respondent for the specific SDWA violations alleged in the Complaint. Full compliance with this CA/FO shall constitute full settlement only of Respondent's liability for federal civil penalties for the SDWA violations specifically alleged in the Complaint.

13. This CA/FO is not a permit or modification of a permit. It shall 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.

14. 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 Respondents to fully perform its obligations under this CA/FO.

15. Issuance of this CA/FO does not in any case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, nor does it affect Respondent's rights to contest any such action by EPA.

16. 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. Violation of this CA/FO shall be deemed a violation of the Act.

17. Except as stated in paragraph 16, each party hereto shall bear its own costs and attorneys fees incurred in this proceeding.

18. Respondent shall not deduct the administrative civil penalty, or any interest, late penalty payments or administrative handling fees provided for in this CA/FO from its federal, state, or local income taxes.

19. The undersigned representative of each party certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement.

EFFECTIVE DATE

20. The effective date of the CA/FO shall be the date that the Final Order is filed.

FOR THE CONSENTING PARTIES:

For Mauna Loa Macadamia Nut Co.:

S M Angele

Date: 5/8/08

Susan Angele
Vice President

For the United States Environmental Protection Agency:

Nancy Wu

Date: 5/15/08

for Alexis Strauss, Director
Water Division

ATTACHMENT A

In the Matter of Mauna Loa Macadamia Nut Co.
Docket No. UIC-09-2007-0001

EPA REGION 9 COLLECTION INFORMATION:

ELECTRONIC FUNDS TRANSFERS

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency "

CHECK PAYMENTS

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

OVERNIGHT MAIL

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

Contact: Natalie Pearson
314-418-4087

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF	DOCKET NO. UIC-09-2007-0001
MAUNA LOA MACADAMIA NUT CO. (a subsidiary of The Hershey Company)	[PROPOSED] **FINAL ORDER**
Hilo, Hawaii	
Proceedings under Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c)	

The United States Environmental Protection Agency Region IX ("EPA"), and Mauna Loa Macadamia Nut Co. ("Respondent"), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the "Findings and Proposed Administrative Order with Administrative Civil Penalty" ("Complaint"), regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2007-0001) be entered; and

2. Respondent shall pay an administrative civil penalty of seventy-five thousand dollars ($75,000) to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.

This Final Order shall become effective on the date that it is filed. This Final Order constitutes full adjudication of the Complaint issued by EPA in this proceeding.

Steven Jawgiel
Presiding Officer
U.S. Environmental Protection Agency
Region 9

Date: 05/15/08

CERTIFICATE OF SERVICE

I hereby certify that the forgoing **Consent Agreement and Final Order** (Docket No. UIC-09-2007-0001) were sent to the following persons by first class mail on the date specified:

Robert Falk, Esq.
Morrison Foerster
425 Market Street
San Francisco, California 94105-2482

Judge William B. Moran
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dated: May 16, 2008 Danielle E. Carr