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7 Attorneys for Complainant

8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION IX**

75 Hawthorne Street
10 San Francisco, California 94105

11 IN THE MATTER OF:) DOCKET NO. UIC-09-2018-0002
)

12 Dole Food Company, Inc.)
)

13 Respondent.)

CONSENT AGREEMENT
AND

14 Proceedings under Sections 1423(c) of the)
15 Safe Drinking Water Act,)
16 42 U.S.C. §§ 300h-2(c).)
17)
18)

[PROPOSED] FINAL ORDER

19 **CONSENT AGREEMENT**

20 **I. AUTHORITIES AND PARTIES**

21 1. The United States Environmental Protection Agency Region IX (“EPA”) and
22 Dole Food Company, Inc. (“Respondent”) (collectively the “Parties”) agree to settle this matter
23 and consent to the entry of this Consent Agreement and Final Order (“CA/FO”), which
24 commences this proceeding in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b).
25

In re Dole Food Company, Inc.

1 Pursuant to 40 C.F.R. § 22.18(b)(3), this proceeding will conclude upon the issuance of a final
2 order by the Regional Judicial Officer.

3 2. This is a civil administrative action instituted by EPA against Respondent
4 pursuant to Section 1423(c) of the Safe Drinking Water Act (“SDWA” or “the Act”), 42 U.S.C.
5 § 300h-2(c), for violations of the SDWA and the Underground Injection Control (“UIC”)
6 requirements set forth at 40 C.F.R. Part 144.

7 3. Complainant is the Director of the Enforcement Division, EPA Region IX. The
8 Administrator of the EPA has delegated to the Regional Administrator of EPA Region IX the
9 authority to initiate and settle this action under the SDWA. The Regional Administrator of EPA
10 Region IX has further delegated the authority to enter into a consent agreement settling this
11 action under SDWA to the EPA Region IX Director of the Enforcement Division.

12 4. Respondent is a North Carolina corporation headquartered at 1 Dole Drive,
13 Westlake Village, California, 91362.

14 II. APPLICABLE STATUTES AND REGULATIONS

15 5. Pursuant to Part C of the SDWA, 42 U.S.C. §§ 300h to 300h-8, EPA has
16 promulgated regulations establishing minimum requirements for UIC programs to prevent
17 underground injection that endangers drinking water sources, codified at 40 C.F.R. Part 144.
18

19 6. Per Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R.
20 § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists
21 of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

22 7. “Underground injection” means the subsurface emplacement of fluids by well
23 injection. 42 U.S.C. § 300h(d)(1); 40 C.F.R. § 144.3.

24 8. “Well injection” means the subsurface emplacement of fluids through a well. 40
25 C.F.R. § 144.3.

1 9. “Well” means, in relevant part, a dug hole whose depth is greater than the largest
2 surface dimension. 40 C.F.R. § 144.3.

3 10. A “cesspool” is a “drywell,” which in turn is a “well,” as those terms are defined
4 in 40 C.F.R. § 144.3.

5 11. “Large capacity cesspools” (“LCCs”) include “multiple dwelling, community or
6 regional cesspools, or other devices that receive sanitary wastes containing human excreta, which
7 have an open bottom and sometimes perforated sides.” 40 C.F.R. § 144.81(2). LCCs do not
8 include single-family residential cesspools or non-residential cesspools that receive solely
9 sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

10 12. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.
11 § 144.80(e).

12 13. Class V UIC injection wells are considered a “facility or activity” subject to
13 regulation under the UIC program. 40 C.F.R. § 144.3.

14 14. “Owner or operator” means the owner or operator of any “facility or activity”
15 subject to regulation under the UIC program. 40 C.F.R. § 144.3.

16 15. The “owner or operator” of a Class V UIC well “must comply with federal UIC
17 requirements set forth at 40 C.F.R. Parts 144 through 147,” and must also “comply with any
18 other measures required by States or an EPA Regional Office UIC Program to protect
19 [underground sources of drinking water].” 40 C.F.R. § 144.82.

20 16. Owners or operators of existing LCCs were required to close those LCCs no later
21 than April 5, 2005. 40 C.F.R. §§ 144.84(b)(2) and 144.88.

22 17. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40
23 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more
24 than \$22,363 per day per violation up to a maximum of \$279,536, or requiring compliance, or
25

1 both, against any person who violates the SDWA or any requirement of an applicable UIC
2 program.

3 III. ALLEGATIONS

4 18. Respondent is a corporation and thus qualifies as a “person” within the meaning
5 of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

6 19. Since at least April 5, 2005, Respondent has owned and operated the Puuiki
7 Beach Park (“the Property”), located at 67-467 Waialua Beach Road, Waialua, Hawaii, 96791.
8 The Property is a private park for Dole employees. There is a Caretaker Home and a Beach
9 Pavilion, which contribute wastewater to one cesspool, and a Ballpark Pavilion which
10 contributes wastewater to another cesspool.

11 20. Since at least April 5, 2005, there have been two cesspools at the Property,
12 receiving sanitary waste from the Caretaker Home/Beach Pavilion and the Ballpark Pavilion.

13 21. Since at least April 5, 2005, Respondent has been the “owner or operator” of the
14 two cesspools referred to in Paragraph 20 within the meaning of 40 C.F.R. § 144.3.

15 22. Since at least April 5, 2005, each of the two cesspools referred to in Paragraph 20
16 has had the capacity to serve 20 or more persons per day, and thus is considered an LCC
17 pursuant to 40 C.F.R. § 144.81(2).

18 23. Since April 5, 2005, notwithstanding its current and ongoing efforts to do so,
19 Respondent has failed to close the two LCCs referred to in Paragraph 20 in violation of the
20 requirement for owners and operators to close all LCCs by that date, as set forth at 40 C.F.R. §§
21 144.84(b)(2) and 144.88.

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IV. SETTLEMENT TERMS

A. General Provisions

24. Consistent with the requirements of 40 C.F.R. § 22.18(b)(2), for the purposes of this proceeding, Respondent (1) admits the jurisdictional allegations contained in this CA/FO, (2) neither admits nor denies the specific factual allegations contained in this CA/FO, (3) consents to the assessment of the penalty and to the specified compliance obligations contained in this CA/FO, and (4) waives any right to contest the allegations or to appeal the Final Order accompanying this CA/FO.

25. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right to judicial review under the SDWA or the Administrative Procedures Act, 5 U.S.C. §§ 701-706.

26. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire agreement between the Parties to resolve EPA's civil claims against Respondent for the specific SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which includes (1) bringing the two LCCs referenced in Paragraphs 20 into compliance with the UIC requirements in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), and Section IV.B of this CA/FO; and (2) payment of an administrative civil penalty of \$145,000 in accordance with Section IV.C of this CA/FO, shall constitute full settlement of Respondent's liability for federal civil claims for the SDWA violations specifically identified in this CA/FO.

27. 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

1 acting under, through or for Respondent shall not excuse any failure of Respondent to fully
2 perform its obligations under this CA/FO.

3 28. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
4 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
5 except with respect to those civil claims that have been specifically resolved pursuant to
6 Paragraph 27 above.

7 29. This CA/FO is not a permit or modification of a permit, and does not affect
8 Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations,
9 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,
10 satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements
11 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,
12 except as specifically set forth herein.

13 30. EPA reserves any and all legal and equitable remedies available to enforce this
14 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in
15 any actions against Respondent for noncompliance with this CA/FO. Violation of this CA/FO
16 shall be deemed a violation of applicable provisions of the SDWA.

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

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

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

1 B. Compliance Requirements

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

4 a. Within 45 days of the Effective Date of this CA/FO, close the two LCCs
5 located at the Property in accordance with 40 C.F.R. §§ 144.84(b)(2),
6 144.88(a), and 144.89(a), and all other applicable requirements, including all
7 Hawaii Department of Health (“HDOH”) closure, conversion, and/or
8 replacement requirements.

9 b. Within 45 days of the Effective Date of this CA/FO, Respondent shall also
10 install one or more new Individual Wastewater Systems (“IWSs”) at the
11 Property to receive all waste currently received by the LCCs. Installation and
12 operation of the IWS(s) shall comply with all applicable HDOH requirements.

13 c. Within 45 days of the Effective Date of this CA/FO (as defined by Paragraph
14 56), Respondent shall submit to EPA a copy of the Backfill Closure Reports
15 for the cesspool(s), and shall also submit a copy of HDOH’s approval to
16 operate any IWSs that are installed at the Property.

17 C. Penalty

18 35. Respondent agrees to the assessment of a civil penalty in the amount of one-
19 hundred and forty-five thousand dollars (\$145,000).

20 36. Respondent shall pay the assessed penalty no later than thirty (30) days from the
21 Effective Date of this CA/FO.

22 37. Respondent may pay the penalty by check (mail or overnight delivery), wire
23 transfer, automated clearing house, or online payment. Payment instructions are available at:
24 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified
25 check must be payable to the order of “Treasurer, United States of America” and delivered to the
following address:

In re Dole Food Company, Inc.

1 U.S. Environmental Protection Agency
2 Fines and Penalties
3 Cincinnati Finance Center
4 P.O. Box 979077
5 St. Louis, Missouri 63197-9000

6 38. Respondent must provide a letter with evidence of the payment made pursuant to
7 Paragraphs 35 above, accompanied by the title and docket number of this action, to the EPA
8 Region IX Regional Hearing Clerk, the EPA Region IX Enforcement Division Compliance
9 Officer, and the EPA Region IX Office of Regional Counsel attorney, via United States mail, at
10 the following addresses:

11 Regional Hearing Clerk
12 U.S. Environmental Protection Agency
13 Region IX - Office of Regional Counsel
14 75 Hawthorne Street (ORC-1)
15 San Francisco, CA 94105

16 Chris Chen, Compliance Officer
17 U.S. Environmental Protection Agency
18 Enforcement Division - SDWA/FIFRA Section
19 300 Ala Moana Blvd., #5-152
20 Honolulu, HI 96850

21 Julia Jackson, Assistant Regional Counsel
22 U.S. Environmental Protection Agency
23 Region IX – Office of Regional Counsel
24 75 Hawthorne Street (ORC-2-4)
25 San Francisco, CA 94105

39. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13,
interest, penalty charges, and administrative costs will be assessed against the outstanding
amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative
penalty by the deadline specified in Paragraph 36.

- a. Interest on delinquent penalties will be assessed per 40 C.F.R. § 13.11(a)(1) at an
annual rate that is equal to the rate of current value of funds to the United States
Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published

1 by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal
2 Requirements Manual Bulletins.

3 b. A penalty charge will be assessed on all debts delinquent beyond ninety days. The
4 penalty charge will be at a rate of 6% per annum and will be assessed monthly per
5 40 C.F.R. § 13.11(c).

6 c. In addition, administrative costs for handling and collecting Respondent's
7 overdue debt will be based on either actual or average cost incurred, and will
8 include both direct and indirect costs, as provided in 40 C.F.R. § 13.11(b).

9 40. Failure to pay any civil administrative penalty by the deadline may also lead to
10 any or all of the following actions:

11 a. The debt being referred to a credit reporting agency, a collection agency, or to the
12 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. In any such
14 collection action, the validity, amount, and appropriateness of the assessed
15 penalty and of this CA/FO shall not be subject to review.

16 b. The department or agency to which this matter is referred (e.g., the Department of
17 Justice, the Internal Revenue Service) may assess administrative costs for
18 handling and collecting Respondent's overdue debt in addition to EPA's
19 administrative costs.

20 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii)
21 suspend or disqualify Respondent from doing business with EPA or engaging in
22 programs EPA sponsors or funds. 40 C.F.R. § 13.17.

23 41. Respondent shall tender any interest, handling charges, late penalty payments, and
24 stipulated penalties in the same manner as described in Paragraphs 37 and 38.
25

1 D. Stipulated Penalties

2 42. Respondent shall pay stipulated penalties in accordance with this Section for any
3 violations of this CA/FO.

4 43. If Respondent fails to meet the LCC closure requirements set forth in Paragraph
5 34, Respondent agrees to pay the following amounts for each cesspool that it fails to properly
6 close on time:

7 a. \$100 for each and every day for the first 90 days that Respondent fails to properly
8 close the cesspool;

9 b. \$200 for each and every day from days 91 through 365 that Respondent fails to
10 properly close the cesspool; and

11 c. \$300 for each and every day from day 366 and afterwards that Respondent fails to
12 properly close the cesspool.

13 44. If Respondent fails to pay the assessed civil administrative penalty specified in
14 Paragraph 35 by the deadline specified in Paragraph 36, Respondent agrees to pay a stipulated
15 penalty of \$250 per day for each day the assessed penalty is late, in addition to the assessed
16 penalty.

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

20 46. Respondent agrees to pay any stipulated penalties within thirty (30) days of
21 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the
22 first date of noncompliance, and shall continue to accrue through the date of completion of the
23 delinquent CA/FO requirement. Respondent will use the method of payment specified in
24 Paragraphs 37 and 38, and agrees to pay interest, handling charges and penalties that accrue for
25 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 43 through
45.

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

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

7 E. Force Majeure

8 49. Respondent shall exercise its best efforts to avoid or minimize any delay and any
9 effects of a delay. If any event occurs which causes or may cause delays meeting the deadlines
10 set forth in this CA/FO, Respondent or its attorney shall, within forty-eight (48) hours of the
11 delay or within forty-eight (48) hours of Respondent's knowledge of the anticipated delay,
12 whichever is earlier, notify EPA in writing, by email or overnight mail. Within fifteen (15) days
13 thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration
14 of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable
15 by which those measures will be implemented. Failure to comply with the notice requirement of
16 this paragraph shall preclude Respondent from asserting any claim of force majeure.

17 50. If EPA agrees in writing that the delay or anticipated delay in compliance with
18 this CA/FO has been or will be caused by circumstances entirely beyond the control of
19 Respondent, the time for performance may be extended for a period of no longer than the delay
20 resulting from the circumstances causing the delay. In such event, EPA will grant, in writing an
21 extension of time. Respondent may seek relief under the provisions of this paragraph for any
22 delay in performance resulting from a failure to obtain, or a delay in obtaining, any permit,
23 approval, or easement required to fulfill Respondent's obligations under this CA/FO, provided
24 that Respondent has submitted a timely and complete application and has taken all other actions
25 necessary to obtain such permit or approval. An extension of the time for performing an

1 obligation granted by EPA pursuant to this paragraph shall not, of itself, extend the time for
2 performing a subsequent obligation.

3 51. Any time period covered by an extension of time granted by EPA pursuant to
4 Paragraph 50 to complete any tasks or items required by this CA/FO shall be excluded by EPA
5 in its determination of whether to assess stipulated penalties or how much in stipulated penalties
6 to assess.

7 F. Notices

8 52. Respondent must send any written communications and/or submittals, including
9 any requests for extensions of time to meet the compliance deadlines, to the following:

10 Christopher Chen, Compliance Officer
11 U.S. Environmental Protection Agency
12 Enforcement Division - SDWA/FIFRA Section
13 300 Ala Moana Blvd., #5-152
14 Honolulu, HI 96850
15 Chen.christopher@epa.gov

16 Julia Jackson, Assistant Regional Counsel
17 U.S. Environmental Protection Agency
18 Region IX – Office of Regional Counsel
19 75 Hawthorne Street (ORC-2-4)
20 San Francisco, CA 94105
21 Jackson.julia@epa.gov

22 For each written communication and/or submittal, Respondent shall identify the case name, the
23 case Docket Number, and the paragraph and/or requirement of this CA/FO under which the
24 submission is being made.

25 53. Respondent shall include the following signed certification made in accordance
with 40 C.F.R. § 144.32(b) and (d) with all written communications required by this CA/FO:

*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 qualified personnel properly gather
and evaluate the information submitted. Based on my inquiry of the*

1 *person or persons who manage the system, or those persons directly*
2 *responsible for gathering the information, the information submitted*
3 *is, to the best of my knowledge and belief, true, accurate, and*
4 *complete. I am aware that there are significant penalties for*
5 *submitting false information, including the possibility of fines and*
6 *imprisonment for knowing violations.*

7 54. EPA must send any written communications to the following addresses:

8 Jared Gale
9 Vice President & General Counsel
10 Dole Food Company, Inc.
11 One Dole Drive
12 Westlake Village, CA 91362-7300

13 **IV. EFFECTIVE DATE**

14 55. Pursuant to 40 C.F.R. § 22.45, the proposed CA/FO will be subject to public
15 notice and comment at least 40 days prior to it becoming effective through the issuance of the
16 Final Order by the Regional Judicial Officer.

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

21 57. This CA/FO shall terminate only after Respondent has complied with all
22 requirements of the CA/FO, including payment of any interest and late fees, and after EPA has
23 issued a written notice of termination.

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25 FOR THE CONSENTING PARTIES:

In re Dole Food Company, Inc.

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DOLE FOOD COMPANY, INC.:

_____/s/_____
Jared Gale
Vice President, General Counsel, Corporate Secretary

Date: _____

_____/s/_____
Gail Mun
Assistant Secretary

Date: _____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

_____/s/_____
Kathleen H. Johnson
Director, Enforcement Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: _____3/16/2018_____

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION IX**

3 75 Hawthorne Street
San Francisco, California 94105

4 IN THE MATTER OF:) DOCKET NO. UIC-09-2018-0002
5)
6 Dole Food Company, Inc.)
7 Respondent.) **CONSENT AGREEMENT AND**
8) **[PROPOSED] FINAL ORDER**
9 Proceedings under Sections 1423(c) of the)
10 Safe Drinking Water Act,)
11 42 U.S.C. §§ 300h-2(c).)
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13 **FINAL ORDER**

14 The United States Environmental Protection Agency Region IX (“EPA”), and Dole Food
15 Company, Inc. (“Respondent”), having entered into the foregoing Consent Agreement, and EPA
16 having duly publicly noticed the Stipulations and Findings and proposed Final Order regarding
17 the matters alleged therein,
18

19 **IT IS HEREBY ORDERED THAT:**

- 20 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-
21 2018-0002) be entered;
22
23 2. Respondent pay an administrative civil penalty of \$145,000 dollars to the
24 Treasurer of the United States of America in accordance with the terms set forth in the Consent
25 Agreement;

In re Dole Food Company, Inc.

1 3. Respondent close two LCCs in accordance with the terms set forth in Paragraph
2 34 of the Consent Agreement;

3 5. Respondent comply with all other requirements of the Consent Agreement.
4 This Final Order is effective on the date that it is filed. This Final Order constitutes full
5 adjudication of the allegations in the Consent Agreement entered into by the Parties in this
6 proceeding.
7

8
9 _____ Date: _____

10 Steven L. Jawgiel
11 Regional Judicial Officer
12 U.S. EPA, Region IX
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