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Regional Counsel

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4 U.S. Environmental Protection Agency  
5 Region IX  
6 75 Hawthorne Street  
7 San Francisco, CA 94105  
8 (415) 972-3898

9  
10 UNITED STATES  
11 ENVIRONMENTAL PROTECTION AGENCY  
12 REGION IX

13 In the matter of:

) Docket No. FIFRA-09-2016-0009

14 PoolRx Worldwide Inc.,

)  
)  
) CONSENT AGREEMENT  
) AND FINAL ORDER  
) pursuant to 40 C.F.R. §§ 22.13(b),  
) 22.18(b)(2), and 22.18(b)(3)  
)

Respondent.

15  
16 I. CONSENT AGREEMENT

17 The United States Environmental Protection Agency ("EPA"), Region IX, and PoolRx  
18 Worldwide Inc. ("Respondent") agree to settle this matter and consent to the entry of this  
19 Consent Agreement and Final Order ("CAFO"). This CAFO simultaneously initiates and  
20 concludes this 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)(1) of the Federal  
23 Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a)(1), for the assessment  
24 of a civil administrative penalty against Respondent for (1) the sale and/or distribution of a  
25 misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and  
26 (2) the production of a pesticide in an unregistered establishment in violation of Section  
27 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

28 2. Complainant is the Director of the Enforcement Division, EPA Region IX, who has  
been duly delegated to commence and settle an enforcement action in this matter.



1           3. Respondent is PoolRx Worldwide Inc., a California corporation with headquarter  
2 offices located at 60 Post in Irvine. California, 92618.

3   B. STATUTORY AND REGULATORY BASIS

4           4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a “person” means any  
5 individual, partnership, association, corporation, or any organized group of persons whether  
6 incorporated or not.

7           5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), provides, in part, that a “pesticide” means  
8 any substance or mixture of substances intended for preventing, destroying, repelling, or  
9 mitigating any pest.

10          6. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), provides that the term “to distribute or  
11 sell” means to distribute, sell, offer for sale, hold for distribution, hold fo sale, hold for shipment,  
12 ship, deliver for shipment, release for shipment, or receive (and having so received) deliver or  
13 offer to deliver.

14          7. Section 2(q)(1)(A) of FIFRA. 7 U.S.C. § 136(q)(1)(A), provides that a pesticide is  
15 “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto  
16 or to its ingredients which is false or misleading in any particular.

17          8. Pursuant to 40 C.F.R. § 156.10(b)(2)(ii), which sets forth general labeling  
18 requirements, no name, brand, or trademark under which the pesticide product is sold may appear  
19 on the label unless this name, brand, or trademark has been approved by the Administrator  
20 through registration or supplemental registration as an additional name pursuant to 40 C.F.R. §  
21 152.132.

22          9. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any  
23 person to distribute or sell to any person any pesticide that is adulterated or misbranded.

24          10. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), provides that a “producer” means the  
25 person who manufactures, prepares, compounds, propagates, or processes any pesticide or device  
26 or active ingredient used in producing a pesticide.

1 11. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), provides that an “establishment” means  
2 any place where a pesticide or device or active ingredient used in producing a pesticide is  
3 produced, or held, for distribution or sale.

4 12. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), provides that no person shall produce a  
5 pesticide subject to FIFRA in any State unless the establishment in which it is produced is  
6 registered with the EPA.

7 13. Pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), each producer operating  
8 a pesticide producing establishment is required to submit a pesticide production report to EPA  
9 annually. This report must cover the production of the producer’s pesticide(s) for the previous  
10 calendar year and the anticipated production for the current year.

11 14. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any  
12 person who is a producer to violate any provision of Section 7 of FIFRA, 7 U.S.C. § 136e.

13 C. ALLEGED VIOLATIONS

14 15. Respondent is a corporation and therefore a “person,” as that term is defined by  
15 Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

16 16. At all times relevant to this CAFO, Respondent produced and “distributed or sold”  
17 the product, “PoolRx,” as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

18 17. “PoolRx” (EPA Reg. No. 79817-3) is a “pesticide,” as that term is defined in  
19 Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3.

20 18. At all times relevant to this CAFO, the master label assigned pursuant to the EPA  
21 registration for the pesticide, “PoolRx,” included only one approved product name (“PoolRx”)  
22 and no alternate brand names approved by the Administrator through registration or supplemental  
23 registration as an additional name pursuant to 40 C.F.R. § 152.132.

24 19. On or about August 4, 2015, Respondent “distributed or sold,” as that term is defined  
25 by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide, “PoolRx,” by holding and offering  
26 it for sale on the internet.

27 20. The pesticide, “PoolRx,” that Respondent “distributed or sold” on or about August 4,  
28 2015, was held and offered for sale under the product name, “PoolRx,” as well as under six

1 alternate brand names (PoolRx Blue, PoolRx Black, PoolRx Booster, Sundance Spa Unit,  
2 PoolRx Unit Small Spa, PoolRx Unit Large Spa).

3 21. The six alternate brand names under which Respondent distributed or sold on or  
4 about August 4, 2015, the pesticide, "PoolRx," included the appearance on the labeling of six  
5 alternate brand names of which none had been approved by the Administrator through  
6 registration or supplemental registration as an additional name pursuant to 40 C.F.R. § 152.132.

7 22. Respondent's inclusion on the labeling of six unapproved alternate brand names  
8 under which Respondent distributed or sold on or about August 4, 2015, the pesticide, "PoolRx,"  
9 violated 40 C.F.R. § 156.10(b)(2)(ii) and thus constitutes "misbranding," as that term is defined  
10 at Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

11 23. By distributing or selling the misbranded pesticide, "PoolRx," on or about August 4,  
12 2015, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

13 24. In calendar year 2014, Respondent manufactured the registered pesticide, "PoolRx,"  
14 at a facility located at 60 Post in Irvine, California (the "Facility") (and subsequently submitted to  
15 EPA in March 2015 a pesticide production report admitting such manufacture) and is therefore a  
16 "producer" as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

17 25. At all times relevant to this CAFO, Respondent, by manufacturing "PoolRx at the  
18 Facility, operated a pesticide-producing facility that is an "establishment" as that term is defined  
19 by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

20 26. At all times relevant to this CAFO, Respondent's pesticide-producing establishment  
21 known as the Facility did not have an EPA pesticide production establishment number required  
22 pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136c(a).

23 27. By failing to register with EPA the pesticide production establishment known as the  
24 Facility in which the pesticide, "PoolRx," was manufactured, Respondent violated Section 7(a)  
25 of FIFRA, 7 U.S.C. § 136e(a).

26 28. By violating Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), Respondent violated Section  
27 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

28 29. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), as amended by the Civil Monetary

1 Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, and the FIFRA Enforcement Response  
2 Policy dated December 2009 provide for a penalty of up to \$7,500 for each violation.

3 D. RESPONDENT'S ADMISSIONS

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

11 E. CIVIL ADMINISTRATIVE PENALTY

12 31. In final settlement of the violations of FIFRA specifically alleged in Section I.C of  
13 this CAFO, Respondent shall pay a civil administrative penalty of ELEVEN THOUSAND AND  
14 THREE HUNDRED DOLLARS (\$11,300). Respondent shall pay this civil penalty no later than  
15 thirty (30) calendar days from the effective date of this CAFO. The civil penalty shall be paid by  
16 remitting a certified or cashier's check, including the name and docket number of this case, for  
17 the amount, payable to "Treasurer, United States of America," (or be paid by one of the other  
18 methods listed below) and sent as follows:

19 Regular Mail:  
20 U.S. Environmental Protection Agency  
21 Fines and Penalties  
22 Cincinnati Finance Center  
23 PO Box 979077  
24 St. Louis, MO 63197-9000

25 Wire Transfers:  
26 Wire transfers must be sent directly to the Federal Reserve Bank in New  
27 York City with the following information:  
28 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"

1 Overnight Mail:

2 U.S. Bank  
3 1005 Convention Plaza  
4 Mail Station SL-MO-C2GL  
5 ATTN Box 979077  
6 St. Louis, MO 63101

7 ACH (also known as REX or remittance express):

8 Automated Clearinghouse (ACH) for receiving U.S. currency  
9 PNC Bank  
10 808 17<sup>th</sup> Street, NW  
11 Washington, DC 20074  
12 ABA = 051036706  
13 Transaction Code 22 – checking  
14 Environmental Protection Agency  
15 Account 31006  
16 CTX Format

17 On Line Payment:

18 This payment option can be accessed from the information below:  
19 www.pay.gov  
20 Enter "sfol.1" in the search field  
21 Open form and complete required fields

22 If clarification regarding a particular method of payment remittance is  
23 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

24 Concurrently, a copy of each check, or notification that the payment has been made by one of the  
25 other methods listed above, including proof of the date payment was made, shall be sent with a  
26 transmittal letter, indicating Respondent's name, the case title, and docket number, to the  
27 following addresses:

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

Scott McWhorter  
SDWA/FIFRA Section  
Enforcement Division (ENF-3-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

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

1           32. Respondent shall not use payment of any penalty under this CAFO as a tax deduction  
2 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to  
3 use such payment as a tax deduction.

4           33. If Respondent fails to pay the assessed civil administrative penalty of ELEVEN  
5 THOUSAND AND THREE HUNDRED DOLLARS (\$11,300) as identified in Paragraph 31 by  
6 the deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to  
7 EPA upon EPA's written request. The amount of the stipulated penalty will be THREE  
8 THOUSAND AND SEVEN HUNDRED DOLLARS (\$3,700) and will be immediately due and  
9 payable upon EPA's written request, together with the initially assessed civil administrative  
10 penalty of ELEVEN THOUSAND AND THREE HUNDRED DOLLARS (\$11,300), resulting in  
11 a total penalty due of FIFTEEN THOUSAND DOLLARS (\$15,000). Failure to pay the civil  
12 administrative penalty specified in Paragraph 31 by the deadline specified in that Paragraph may  
13 also lead to any or all of the following actions:

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

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

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

27                               (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
28 Government may assess interest, administrative handling charges, and nonpayment penalties



1 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
2 civil administrative penalty specified in Paragraph 31 by the deadline specified in that Paragraph.

3 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §  
4 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
5 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
6 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
7 (30) days of the effective date of this CAFO.

8 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §  
9 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on  
10 either actual or average cost incurred (including both direct and indirect costs), for every month  
11 in which any portion of the assessed penalty is more than thirty (30) days past due.

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

#### 15 F. CERTIFICATION OF COMPLIANCE

16 34. In executing this CAFO, Respondent certifies that: (1) it is no longer selling or  
17 distributing any pesticide that is misbranded in violation of Section 12(a)(1)(E) of FIFRA, 7  
18 U.S.C. § 136j(a)(1)(E); (2) it is no longer producing any pesticide in an unregistered  
19 establishment in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L); and (3) it is  
20 currently in compliance with all other FIFRA requirements for all its ongoing operations.

#### 21 G. RETENTION OF RIGHTS

22 35. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
23 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C  
24 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil  
25 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
26 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal  
27 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
28



1 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address  
2 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

3 36. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's  
4 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,  
5 and permits.

6 H. ATTORNEYS' FEES AND COSTS

7 37. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in  
8 this proceeding.

9 I. EFFECTIVE DATE

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

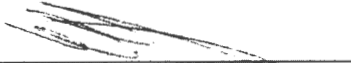
13 J. BINDING EFFECT

14 39. The undersigned representative of Complainant and the undersigned representative of  
15 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions  
16 of this CAFO and to bind the party he or she represents to this CAFO.

17 40. The provisions of this CAFO shall apply to and be binding upon Respondent and its  
18 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,  
19 and assigns.  
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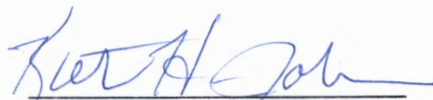
1 FOR RESPONDENT POOLRX WORLDWIDE INC.:

2 2/11/2015  
3 DATE

  
4 DEREK NELLMAPIUS  
5 Chief Executive Officer  
6 PoolRx Worldwide Inc.  
7 60 Post  
8 Irvine, CA 92618

9 FOR COMPLAINANT EPA:

10 2/18/16  
11 DATE

  
12 KATHLEEN H. JOHNSON  
13 Director  
14 Enforcement Division  
15 U.S. Environmental Protection Agency, Region IX  
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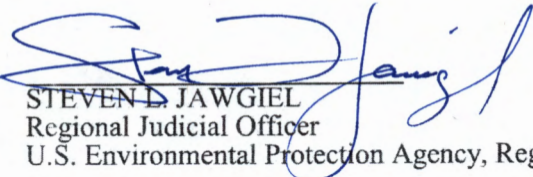
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II. FINAL ORDER

EPA and PoolRx Worldwide Inc. having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2016-0009) be entered, and Respondent shall pay a civil administrative penalty in the amount of ELEVEN THOUSAND AND THREE HUNDRED DOLLARS (\$11,300), and comply with the terms and conditions set forth in the Consent Agreement.

02/09/16  
DATE

  
STEVEN L. JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2016-0009 ) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

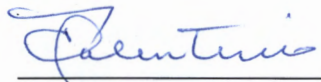
A copy was mailed via CERTIFIED MAIL to:

Derek Nellmapius  
Chief Executive Officer  
PoolRx Worldwide, Inc.  
60 Post  
Irvine, CA 92618

**CERTIFIED MAIL NUMBER:** 7015 0640 0001 1122 0253

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Edgar P. Coral  
Assistant Regional Counsel (ORC-3)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105



*for*  
\_\_\_\_\_  
Regional Hearing Clerk  
U.S. EPA, Region IX



\_\_\_\_\_  
Date