

Sylvia Quast  
Regional Counsel

David H. Kim  
Assistant Regional Counsel (ORC-3)  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3882

**\*\* FILED \*\***  
04FEB2020 - 11:00AM  
U.S.EPA - Region 09

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA

In the Matter of:	)	
	)	
Pool Water Products, Inc.	)	Docket No. FIFRA-09-2020- <u>0014</u>
	)	
	)	CONSENT AGREEMENT AND FINAL
	)	ORDER PURSUANT TO
Respondent.	)	40 C.F.R. §§ 22.13 AND 22.18
_____	)	

**I. CONSENT AGREEMENT**

The United States Environmental Protection Agency, Region IX ("EPA"), and Pool Water Products, Inc. ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

**A. AUTHORITY AND PARTIES**

1. This is a civil administrative action instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C §§ 136 et seq., for the assessment of a civil administrative penalty against Respondent for violations of Section 12 of the Act.

2. Complainant is the Manager of the Toxics Section of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a California corporation whose principal offices are located at 17872 Mitchell North, Suite 250, Irvine, California.

**B. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

4. Section 17(c) of FIFRA and regulations promulgated at 19 C.F.R. Part 12 pursuant to Section 17(e) of FIFRA by the Secretary of the Treasury in consultation with the EPA Administrator govern the importation of pesticides into the United States.
5. 19 C.F.R. § 12.111 provides that “[c]ertain imported pesticides are required to be registered under the provisions of section 3 of the Act . . . before being permitted entry into the United States. . . .”
6. 19 C.F.R. § 12.112 provides that “[a]n importer or the importer’s agent desiring to import pesticides or devices into the United States must submit to the Administrator, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices. . . .”
7. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other living micro-

organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a "pesticide," in part, as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "distribute or sell" to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.
11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136(j)(a)(1)(A), states, "it shall be unlawful for any person in any State to distribute or sell to any person . . . any pesticide that is not registered . . . or whose registration has been suspended or cancelled."
12. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$19,936 for each offense that occurred after November 2, 2015. *See* Section 14(a)(1) of FIFRA, 7 U.S.C. § 136/(a)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 84 Fed. Reg. 2056 (February 6, 2019).

### C. ALLEGATIONS

13. On or about March 28, 2017, Aqua Tri, a California corporation located at 17872 Mitchell North in Irvine, California, registered the pesticide "ALL CLEAR 3" Tablets Jumbo Chlorinating Tablets<sup>2</sup> ("ALL CLEAR 3" Tablets") with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, under EPA Registration Number 9215-11.
14. ALL CLEAR 3" Tablets are used to control or kill bacteria in swimming pools.

15. Bacteria are "pests" within the meaning of Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
16. Therefore, ALL CLEAR 3" Tablets are "pesticides" within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
17. In the statement that Aqua Tri submitted to EPA for the registration of ALL CLEAR 3" Tablets, Aqua Tri stated that the registered ALL CLEAR 3" Tablets would be produced solely in the United States.
18. Respondent is a California corporation that is authorized to do business in the State of Arizona.
19. At all times relevant to this CAFO, Respondent was a corporation and therefore a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
20. Respondent owns and/or operates a facility (the "Facility") located at 20810 N. 25<sup>th</sup> Place, Phoenix, Arizona that stores and distributes and/or sells various pool cleaning products.
21. On or about August 30, 2018, inspectors from the Arizona Department of Agriculture ("ADA") inspected the Facility.
22. During the August 30, 2018 inspection, the ADA inspectors observed 3,204 25-pound pails and 3,453 50-pound pails of the ALL CLEAR 3" Tablets at the Facility that were manufactured by Heze Huayi Chemical Company, Ltd. at its facility in People's Republic of China and imported into the United States.
23. Consequently, the 3,204 25-pound pails and 3,453 50-pound pails of the ALL CLEAR 3" Tablets that the ADA inspectors observed at the Facility on or about August 30, 2018 were unregistered pesticides because Aqua Tri's registration of the ALL CLEAR 3"

Tablets under FIFRA § 3 applies only to ALL CLEAR 3" Tablets produced in the United States.

24. On October 23, 2018, EPA issued a Stop Sale, Use, or Removal Order (the "Order") pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k, that ordered Respondent to immediately stop the sale, use or removal of ALL CLEAR 3" Tablets under its ownership, control or custody.
25. Based on the information received from Respondent under the Order, EPA determined that Respondent distributed or sold ALL CLEAR 3" Tablets from the Facility to numerous customers throughout the United States in 1,361 separate transactions from August 30, 2018 through October 10, 2018.
26. Respondent's distributions or sales of ALL CLEAR 3" Tablets in 1,361 separate transactions from August 30, 2018 through October 10, 2018, constitute 1,361 separate violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136(j)(a)(1)(A).

#### D. RESPONDENT'S ADMISSIONS

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

**E. CIVIL ADMINISTRATIVE PENALTY**

28. Respondent agrees to the assessment of a penalty in the amount of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section LC of the CAFO.
29. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. **Regular:**

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

b. **Wire Transfers:**

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Beneficiary: U.S. Environmental Protection Agency

c. **Certified Mail or Overnight Mail:**

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

d. ACH (also known as REX or remittance express):

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

U.S. Treasury REX/Cashlink ACH Receiver  
ABA = 051036706  
Account = 310006, Environmental Protection Agency  
CTX Format Transaction Code 22- checking

Physical Location of U.S. Treasury facility:

5700 Rivertech Court  
Riverdale, MD 20737  
Remittance Express (REX) = (866) 234-5681

e. On Line Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)  
Enter "sfo 1.1" in the search field  
Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to the following addresses:

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  
Enforcement and Compliance Assurance Division (ENF-4-1)

U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

30. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
31. If Respondent fails to pay the assessed civil administrative penalty as specified in Paragraph 29, then Respondent shall pay to EPA the stipulated penalty of ONE THOUSAND DOLLARS (\$1,000.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 29 may lead to any or all of the following actions:
- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
  - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
  - c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.



- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties 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 29. Interest will be assessed 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 by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### F. CERTIFICATION OF COMPLIANCE

32. In executing this CAFO, Respondent certifies that, to its knowledge, it is currently in compliance with any FIFRA requirements that may apply to its ongoing operations.

#### G. RETENTION OF RIGHTS

33. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any

civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of the CAFO.

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

#### H. ATTORNEY'S FEES AND COSTS

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

#### I. EFFECTIVE DATE

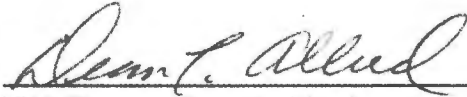
36. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

#### J. BINDING EFFECT

37. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
38. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, POOL WATER PRODUCTS, INC.

12/31/2019  
DATE

  
NAME: Dean C. Allred  
TITLE: President  
Pool Water Products, Inc.  
17872 Mitchell, Suite 250  
Irvine, CA 92614

FOR COMPLAINANT, EPA REGION IX:

1.24.2020  
DATE

  
Matt Salazar  
Manager  
Toxics Section  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX

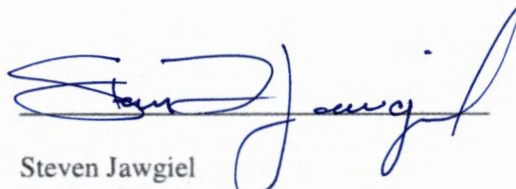
**II. FINAL ORDER**

Complainant and Respondent, Pool Water Products, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2020-<sup>0014</sup>) be entered, and that Respondent shall pay a civil administrative penalty in the amount of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) and comply with the terms and conditions set forth in the Consent Agreement.

02/03/20

DATE



Steven 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-09-2020-0014) 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:

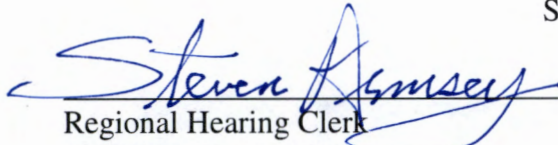
A copy was mailed via CERTIFIED MAIL to:

Dean Allred, President  
Pool Water Products, Inc.  
17872 Mitchell Ste 250  
Irvine, CA 92614

**CERTIFIED MAIL NUMBER:**

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

David H. Kim  
Assistant Regional Counsel (ORC-3)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
Regional Hearing Clerk  
U.S. EPA, Region IX

Feb. 4, 2020  
Date