

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	)	Docket No. FIFRA-03-2022-0047
)	
CDG Environmental, LLC)	
361 W. Cedar Street	)	Proceeding Under Section 14(a) of the
Allentown, Pennsylvania 18102	)	Federal Insecticide, Fungicide and
	)	Rodenticide Act, as amended, 7 U.S.C.
RESPONDENT.	)	§ 136l(a)

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and CDG Environmental, LLC (hereinafter “Respondent,” “CDGE,” or the “Company”) pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, *as amended* (“FIFRA”), 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“*Consolidated Rules of Practice*”), 40 C.F.R. Part 22.

2. Sections 9(c) and 14 of FIFRA, 7 U.S.C. §§ 136g(c) and 136l, authorize the Administrator of the U.S. Environmental Protection Agency (“Administrator”) to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under FIFRA (or the “Act”) for the violations alleged herein.

3. The violations cited herein pertain to the Respondent’s alleged commission of unlawful acts that are: (a) in contravention of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), by its sale and/or distribution of registered pesticides whose composition differed at the time of their distribution or sale from the composition described in each respective pesticide’s Confidential Statement of Formula, Form 8570-4, that Respondent filed in connection with their registrations under FIFRA Section 3, 7 U.S.C. § 136a; and (b) in contravention of FIFRA Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E), and the labeling requirements of 40 C.F.R. § 156.10(a)(1), through its sale and/or distribution of a supplementally registered pesticide that was misbranded, with product labels that did not have the name and address of the producer or

person for whom this pesticidal product was produced and which failed to clearly identify the final Establishment at which this pesticidal product was produced.

4. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant hereby simultaneously commences and resolves this administrative proceeding through this Consent Agreement and Final Order.

II. JURISDICTION

5. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter as described in Paragraph 1, above, and pursuant to 40 C.F.R. §§ 22.1(a)(1) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, immediately above, the Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement and Final Order.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Respondent is a limited liability company formed under Delaware law in 2009 and registered in Pennsylvania the same year, and is a “person,” within the meaning and definition of Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

14. Respondent, which has a registered business address of 205 Webster Street Bethlehem, Pennsylvania 18015, specializes in the delivery and precise application of chlorine dioxide, used by a number of industries and with agricultural, food processing, waste disposal, industrial cleaning, disinfection and potable waste treatment applications, and formulates and packages certain EPA-registered pesticide products at its production facility located at 361 W. Cedar Street, Allentown, Pennsylvania 18102 (the “Facility”).
15. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term “pesticide,” means “(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 321(w) of title 21, that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 321(x) of title 21 bearing or containing a new animal drug.”
16. Pursuant to 40 C.F.R. § 152.3, the term “pesticidal product” means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.
17. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), the term “producer” means “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide[;]” and the term “produce” means “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”
18. Pursuant to Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), the term “establishment” means “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.”
19. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term “distribute or sell” means “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.”
20. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides, with exceptions not herein applicable, that “no person in any State may distribute or sell to any person any pesticide that is not registered [with EPA]” and that “[t]o the extent necessary to prevent unreasonable adverse effects on the environment, the Administrator may by regulation limit the distribution, sale, or use in any State of any pesticide that is not registered [with EPA].”

21. Pursuant to 40 C.F.R. § 152.15(a) and (c), respectively, a substance is considered intended for a pesticidal purpose, and thus to be a pesticide requiring registration, under several circumstances including: when the person who distributes or sells the substance claims, states, or implies, by labeling or otherwise, that the substance can or should be used as a pesticide or when the person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.
22. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), provides, in relevant part, that a pesticide is misbranded if “any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon”
23. Pursuant to the labeling requirements of 40 C.F.R. §156.10(a)(1), “[e]very pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently the following: . . . (ii) The name and address of the producer, registrant, or person for whom produced as prescribed in paragraph (c) of this section; [and] . . . (v) The producing establishment number as prescribed in paragraph (f) of this section.”
24. 40 C.F.R. §156.10(c) subsequently provides, with respect to the “[n]ame and address of producer, registrant, or person for whom produced” that “[a]n unqualified name and address given on the label shall be considered as the name and address of the producer. If the registrant's name appears on the label and the registrant is not the producer, or if the name of the person for whom the pesticide was produced appears on the label, it must be qualified by appropriate wording such as “Packed for * * *,” “Distributed by * * *,” or “Sold by * * *” to show that the name is not that of the producer.”
25. The additional labeling requirements of 40 C.F.R. §156.10(f) [entitled *Producing establishment's registration number*] further require, in relevant and applicable part, that: “The producing establishment registration number preceded by the phrase “EPA Est.”, of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container.”
26. With exceptions not herein applicable, Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), makes it unlawful for any person in any State to distribute or sell to any person “any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement in connection with its registration under [7 U.S.C. §] 136a [FIFRA Section 3 – Registration of Pesticides],” *i.e.*, as described in the pesticide’s Confidential Statement of Formula, Form 8570-4 (hereinafter, “CSF”).
27. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any State to distribute or sell to any person “any pesticide which is adulterated or misbranded.”

28. 19 C.F.R. § 12.112(a) specifies that an importer desiring to import pesticides or devices into the United States shall submit to the Administrator of EPA a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540-1, or “Notice of Arrival”), prior to the arrival of the shipment in the United States. Through the Notice of Arrival, the importer reports vital information to EPA such as the major active ingredients, quantity, port of entry, and points of contact, which allows EPA to make informed decisions, before pesticides arrive in the United States, as to whether such importation will pose unreasonable adverse effects on public health and the environment. The Notice of Arrival is a report, required by FIFRA, which must be filed with the Administrator, prior to the arrival of a pesticide shipment in the United States.
29. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, all imported pesticides intended for use in the United States must be registered before being permitted entry into the United States. Pursuant to Section 17 of FIFRA, 7 U.S.C. § 136o, the Secretary of the Treasury, through the U.S. Customs and Border Patrol (“USCBP”), promulgated regulations set forth at 19 C.F.R. §§ 12.110-12.117 that require any importer of a pesticide or device subject to FIFRA to file an EPA Notice of Arrival of Pesticides and Devices with the Administrator.
30. CDGE formulates and packages certain EPA-registered pesticide products, including *Saf-T-Chlor Granular Sodium Chlorite* (EPA Reg. No. 75757-3), *CDG Solution 3000* (EPA Reg. No. 75757- 2) and *ACD-300* (EPA Reg. No. 75757-2-44786), at its 361 W. Cedar Street, Allentown, Pennsylvania Facility and sells and distributes these products from its Facility to various end-use customers.
31. On or about February 13, 2008, CDGE submitted a CSF to EPA for *Saf-T-Chlor Granular Sodium Chlorite*. On or about January 30, 2013, CDGE submitted an updated CSF for *Saf-T-Chlor Granular Sodium Chlorite* to EPA and therein identified “*Pesticide A*” as that product’s active ingredient. In the same January 30, 2013 CSF, CDGE further identified *Pesticide A* as an EPA-registered pesticide and listed the Company’s specific foreign source of *Pesticide A*.
32. *CDG Solution 3000* is a liquid, ready-to-use, antimicrobial pesticide formulation containing chlorine dioxide (dissolved gas) as the active ingredient. On or about July 12, 2006, CDGE submitted a CSF to EPA for *CDG Solution 3000* and therein identified *Pesticide A* as a registered source material for generating the chlorine dioxide (active ingredient) in *CDG Solution 3000*. In the same July 12, 2006 CSF, CDGE further identified *Pesticide A* as an EPA-registered pesticide and listed the Company’s specific foreign source of *Pesticide A*.
33. In accordance with the “supplemental distribution” provisions of 40 C.F.R. § 152.132, CDGE also sells and distributes its *CDG Solution 3000* under names and addresses other than its own. On July 7, 2017, International Chemtex Corporation (EPA Company No. 44786) of Lakeville, Minnesota (hereinafter, “ICC”) became a sub-registrant and “distributor” of *CDG Solution 3000* under the product name *ACD-300* (EPA Reg. No. 75757-2-44786). Pursuant to an

agreement with ICC, CDGE sells and distributes the “distributor product” ACD-300 from its Allentown, Pennsylvania Facility.

34. In a July 10, 2018 Federal Register Notice publication, EPA made it publicly known that it had received a voluntary request from the registrant of *Pesticide A* (*i.e.*, CDGE’s specific foreign source of *Pesticide A*) seeking to have EPA cancel and amend *Pesticide A*’s pesticide product registration status in order to terminate *Pesticide A*’s EPA registration and associated EPA-registered uses of that pesticide product.
35. In a subsequent May 19, 2019 Federal Register Notice publication, EPA publicly issued an order implementing the cancellation of *Pesticide A*’s registration and an amendment to terminate its pesticidal uses. Upon the cancellation of *Pesticide A*’s pesticide registration with EPA, that product was no longer an EPA-registered pesticide product and, except for quantities of that cancelled pesticide product that existed in the United States at the time of EPA’s March 19, 2019 cancellation order, *Pesticide A* was no longer available for pesticidal uses and any subsequent distribution, sale, or use of “*Cancelled Pesticide A*” in a manner inconsistent with the disposition of existing stock (*i.e.*, those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action and for a 1-year period only) would be a violation of FIFRA.
36. On or about May 24, 2019, CDGE sought to import into the United States a shipment of 160 drums of the above-referenced *Cancelled Pesticide A* and electronically filed a Notice of Arrival for that proposed pesticide import shipment with EPA. On that same date, EPA Region II issued a “Hold Intact” on this pesticide shipment to the USCBP, seeking to prevent the goods from entering United States commerce based upon missing product information (*i.e.*, product label missing required language in the storage and disposal section) and suspicion of misbranding. Despite the EPA-issued “Hold Intact,” USCBP initially cleared this pesticide shipment for entry into the United States (Entry Number J21-00789051) on May 24, 2019.
37. On May 26, 2019, CDGE’s customs broker transmitted EPA’s “Hold Intact” instruction to CDGE. Nevertheless, USCBP again cleared this shipment of *Cancelled Pesticide A* for import into the United States and CDGE took possession of this shipment and transported it to the Facility.
38. Between May 26, 2019 and September 4, 2019, CDGE: (i) resold 10 of the imported drums of *Cancelled Pesticide A* to a single pesticide producer; (ii) itself consumed 140 of the imported drums of *Cancelled Pesticide A* in the production of its two EPA-registered pesticide products (*i.e.*, *Saf-T-Chlor Granular Sodium Chlorite* and *CDG Solution 3000*); and (iii) sold the majority of those pesticide products to various end-use customers.

39. On August 30, 2019, EPA Region II issued a Notice of Warning and Notice of Detention and Hearing (“NOWD”) to CDGE for importing a misbranded pesticide (*i.e.*, *Cancelled Pesticide A*). CDGE received the NOWD on or about September 6, 2019.
40. In response to the NOWD, CDGE: (i) immediately placed its remaining 10-drum inventory of *Cancelled Pesticide A*, and its remaining stock of *Saf-T-Chlor Granular Sodium Chlorite* and *CDG Solution 3000* that was formulated and produced using *Cancelled Pesticide A*, into quarantine at the Facility; and (ii) on September 18, 2019 contacted EPA Region II, confirmed the above events and agreed on steps that CDGE would take to properly dispose of its remaining and quarantined inventory of *Cancelled Pesticide A* and its remaining stock of the *Saf-T-Chlor Granular Sodium Chlorite* and *CDG Solution 3000* pesticide products that were formulated and produced using *Cancelled Pesticide A*.
41. On October 18, 2019, legal counsel representing CDGE corresponded by e-mail with EPA Region II representatives and attached to his e-mail transmission copies of CDGE-prepared worksheets that included sales/distribution records for the *Saf-T-Chlor Granular Sodium Chlorite* and the *CDG Solution 3000* products that CDGE had formulated and produced using *Cancelled Pesticide A*.
42. The records that CDGE’s legal counsel provided to EPA Region II on October 18, 2019 included: (i) information identifying product shipment dates, customer names, ship to states and zip codes, number of containers, drum size, net weight and production lot numbers; (ii) records documenting CDGE’s sale/distribution of six (6) shipments of *Saf-T-Chlor Granular Sodium Chlorite*, that were formulated using *Cancelled Pesticide A*, to end-use customers from August 8, 2019 to August 29, 2019; and (iii) records further documenting CDGE’s sale/distribution of two hundred and two (202) shipments of *CDG Solution 3000*, that were formulated using *Cancelled Pesticide A*, to end-use customers from July 29, 2019 to September 4, 2019.
43. In that same October 18, 2019 email to EPA Region II, CDGE’s legal counsel further expressed CDGE’s correct understanding that: (i) EPA cancelled the FIFRA registration of *Pesticide A* effective March 19, 2019 and that the existing stocks provisions of EPA’s March 19, 2019 *Federal Register* cancellation order covered only quantities of *Pesticide A* product that existed in the United States on March 19, 2019 and did not cover any quantity of the *Cancelled Pesticide A* product imported into the United States after March 19, 2019; (ii) for that reason, FIFRA prohibited the importation of *Cancelled Pesticide A* into the United States for use in this Country after March 19, 2019; and (iii) CDGE’s May 26, 2019 import shipment of *Cancelled Pesticide A* was impermissible under FIFRA.
44. On November 11, 2019, a duly-authorized EPA Region III inspector conducted a follow-up producer establishment inspection (“PEI”) at the CDGE Facility in Allentown, Pennsylvania.

45. During the course of that November 11, 2019 Facility PEI, the EPA inspector collected a product label for the pesticide *ACD-300* (EPA Reg. No. 75757-2-44786), which CDGE produces at the Facility and sells/distributes to end-use customers on behalf of, and pursuant to, an agreement with ICC.
46. The *ACD-300* product label that the EPA inspector collected at the Facility during the November 11, 2019 PEI did not include the name or the address of the producer or person for whom this *ACD-300* product was produced. The collected *ACD-300* product label also contained two (2) different EPA Establishment Numbers, but did not identify or otherwise indicate which Establishment Number corresponded to the final establishment at which this *ACD-300* product was produced.
47. During the November 11, 2019 Facility PEI, the EPA inspector also requested that CDGE submit its sales and distribution records for *ACD-300* to the EPA Region III offices for review. CDGE subsequently mailed the requested records to the EPA Region III office. Those records, which were received by the EPA Region III FIFRA document control officer and provided to the EPA inspector on or about December 5, 2019, indicated that during the time period extending from December 18, 2018 through October 29, 2019, CDGE made twelve (12) sales/distributions of the EPA supplementally registered pesticide *ACD-300* (EPA Reg. No. 75757-2-44786) bearing product labels that: (a) did not have the name and address of the producer or person for whom this pesticide product was produced; and (b) listed two (2) different EPA Establishment Numbers, but failed to identify, or show clearly, which of these Establishment Numbers corresponded to the final establishment at which the product was produced.

V. VIOLATIONS ALLEGED

COUNTS 1 - 208

Violations of Section 12(a)(1)(C) of FIFRA

(Selling / Distributing Pesticides with a Composition that Differed from that Described in Registration Statements)

48. The allegations contained in each of the preceding Paragraphs of this Consent Agreement are incorporated by reference herein, as though fully set forth at length.
49. Based upon the records and information collected from Respondent during the course of EPA's investigation, Respondent made:

- A. Six (6) sales/distributions of *Saf-T-Chlor Granular Sodium Chlorite* (EPA Reg. No. 75757-3) during the time period extending from August 8, 2019 through August 29, 2019 that were formulated and produced with an active ingredient (*i.e.*, *Cancelled Pesticide A*) that did not match the active ingredient listed on the CSF provided to EPA for this EPA-registered pesticide product; and
- B. Two Hundred and Two (202) sales/distributions of *CDG Solution 3000* (EPA Reg. No. 75757-2) during the time period extending from July 29, 2019 through September 4, 2019 that were formulated and produced with an active ingredient (*i.e.*, *Cancelled Pesticide A*) that did not match the active ingredient listed on the CSF provided to EPA for this EPA-registered pesticide product.
50. At the time of each of the sales/distributions described in the preceding paragraph, the composition of each of the identified *Saf-T-Chlor Granular Sodium Chlorite* and *CDG Solution 3000* products differed from that described in each product's respective CSF that Respondent had submitted to EPA, as identified in Paragraphs 31 and 32, above, in that the Respondent had therein identified the composition of each product to include "*Pesticide A*," which was an EPA-registered pesticide, as its active ingredient when, at the time of each of these identified sales/distributions, each product actually contained the active ingredient "*Cancelled Pesticide A*" which was not an EPA-registered pesticide.
51. Respondent's Six (6) sales/distributions of *Saf-T-Chlor Granular Sodium Chlorite* (EPA Reg. No. 75757-3) during the time period extending from August 8, 2019 through August 29, 2019 and its Two Hundred and Two (202) sales/distributions of *CDG Solution 3000* (EPA Reg. No. 75757-2) during the time period extending from July 29, 2019 through September 4, 2019, as identified in Paragraph 49.A. and B., above, constitute two hundred and eight (208) separate sales and/or distributions of registered pesticides whose composition differed, at the time of sale, from their composition as described by Respondent in the statement required in connection with their registration under Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and therefore two hundred and eight (208) separate unlawful acts under Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNTS 209 – 220

**Violations of Section 12(a)(1)(E) of FIFRA and 40 C.F.R. § 156.10(a)(1)
*(Selling /Distributing Misbranded Pesticides)***

52. The allegations contained in each of the preceding Paragraphs of this Consent Agreement are incorporated by reference herein, as though fully set forth at length.

53. Based upon the records and information collected from the Respondent during and subsequent to the November 11, 2019 Facility PEI, during the time period extending from December 18, 2018 through October 29, 2019, Respondent made twelve (12) sales/distributions of the EPA supplementally registered pesticide *ACD-300* (EPA Reg. No. 75757-2-44786) bearing product labels that: (a) did not have the name and address of the producer or person for whom this pesticide product was produced, as required by 40 C.F.R. §156.10(a)(1)(ii) and prescribed by 40 C.F.R. §156.10(c); and (b) failed to identify, or show clearly, which of two (2) different Establishment Numbers corresponded to the “final establishment at which the product was produced,” as required by 40 C.F.R. §156.10(a)(1)(v) and prescribed by 40 C.F.R. §156.10(f).
54. Respondent’s twelve (12) distributions and/or sales of its *ACD-300* (EPA Reg. No. 75757-2-44786) pesticide product, as identified in Paragraph 53, immediately above, constitute twelve (12) separate violations of the misbranding prohibitions of Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), and of the labeling requirements of 40 C.F.R. §156.10(a)(1).
55. Respondent’s twelve (12) distributions and/or sales of its *ACD-300* (EPA Reg. No. 75757-2-44786) pesticide product, as identified in Paragraph 53, above, also constitute twelve (12) unlawful acts, in contravention of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

VI. CIVIL PENALTY

56. In settlement of EPA’s claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **ONE HUNDRED AND THIRTY THOUSAND SEVEN HUNDRED AND FIFTY-TWO DOLLARS (\$130,752.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
57. The civil penalty is based upon EPA’s consideration of a number of factors, including the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent’s business, the effect of the penalty on the Respondent’s ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s *FIFRA Enforcement Response Policy*, dated December 2009 (“*ERP*”), which reflects the statutory penalty criteria and factors set forth at Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.
58. The extended civil penalty payment provisions of this Consent Agreement are based upon Respondent’s signed, certified statement of its current financial condition, which articulates the basis for its contention that it cannot pay the full civil penalty dollar amount set forth in Paragraph 56, above, within thirty (30) days of the effective date of this Consent Agreement without

experiencing an undue financial hardship.

59. Based upon the information provided in Respondent's signed, certified statement of its current financial condition, it is Complainant's conclusion that the Respondent has established that it is unable to pay the full amount of the civil penalty identified and set forth in Paragraph 56, above, within thirty (30) days of the effective date of this Consent Agreement and that a payment plan of the nature and duration set forth below is necessary and appropriate.
60. Pursuant to the provisions of this Consent Agreement, Respondent will remit a total civil penalty (principal) of **ONE HUNDRED AND THIRTY THOUSAND SEVEN HUNDRED AND FIFTY-TWO DOLLARS (\$130,752.00)** and interest (calculated at the rate of 2% per annum on the outstanding principal balance) in the amount of Two Hundred and Thirty-Five Dollars and Fifty-Two Cents (\$235.52), in accordance with the installment payment schedule set forth in the chart, immediately below:

Payment No.	Principal Amount	Interest	Date Payment Due (From Effective Date of CAFO)	Payment Amount Due
1	50,000.00	\$ 0.00	Within 30 Days	\$ 50,000.00
2	40,359.18	\$ 134.58	Within 90 Days	\$ 40,493.76
3	40,392.82	\$ 100.94	Within 180 Days	\$ 40,493.76
Total:	130,752.00	\$ 235.52		\$ 130,987.52

61. If Respondent fails to make timely payment of any one of the required installment payments in accordance with the installment payment schedule set forth in the Paragraph immediately above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, applicable interest, administrative handling charges and late payment penalty charges as described in Paragraphs 66 through 68, below, in the event of any such failure or default.
62. Respondent may, at any time after commencement of payments under the installment payment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
63. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, ***Docket No. FIFRA-03-2022-0047***;
- b. All checks shall be made payable to the "United States Treasury";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check(s) or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by e-mail to:

A.J. D'Angelo, Esq.
Sr. Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
e-mail: dangelo.aj@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
e-mail: R3_Hearing_Clerk@epa.gov.

64. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
65. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the

Consent Agreement and Final Order were filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

66. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
67. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
68. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
69. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

VII. GENERAL SETTLEMENT CONDITIONS

70. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order do not contain any confidential business information or personally identifiable information from Respondent.
71. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of

action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

VIII. CERTIFICATION OF COMPLIANCE

72. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

IX. OTHER APPLICABLE LAWS

73. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order do not constitute a waiver, suspension or modification of the requirements of FIFRA, or any regulations promulgated thereunder.

X. RESERVATION OF RIGHTS

74. This Consent Agreement and Final Order resolve only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after their effective date.

XI. EXECUTION /PARTIES BOUND

75. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.


XII. EFFECTIVE DATE

76. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

77. This Consent Agreement and Final Order constitute the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent:

Date: January 5, 2022 By: 
Mr. Peter Dent, President
CDG Environmental, LLC.

In the Matter of:
CDG Environmental, LLC

Consent Agreement
Docket No. FIFRA-03-2022-0047

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____ By: _____
Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____ By: _____
A.J. D’Angelo, Esq.
Sr. Assistant Regional Counsel
Air & Toxics Branch (3RC30)
U.S. EPA – Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	)	Docket No. FIFRA-03-2022-0047
)	
CDG Environmental, LLC)	
361 W. Cedar Street	)	Proceeding Under Section 14(a) of the
Allentown, Pennsylvania 18102	)	Federal Insecticide, Fungicide and
	)	Rodenticide Act, as amended, 7 U.S.C.
RESPONDENT.	)	§ 136l(a)

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (“EPA” or the “Agency”), Region III, and Respondent, CDG Environmental, LLC have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“*Consolidated Rules of Practice*”), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory factors set forth in Section 14(a)(4) of the Federal Insecticide, Fungicide and Rodenticide Act, *as amended* (“FIFRA”), 7 U.S.C. § 136l(a)(4), EPA’s *FIFRA Enforcement Response Policy*, dated December 2009, the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and applicable implementing guidance.

NOW, THEREFORE, pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and Section 22.18(b)(3) of the *Consolidated Rules of Practice*, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **ONE HUNDRED AND THIRTY THOUSAND SEVEN HUNDRED AND FIFTY-TWO DOLLARS (\$130,752.00)**, plus applicable interest, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: _____

Joseph J. Lisa
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III