

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

-----X
: :
In the Matter of : :
: :
ComStar International, Inc. : :
: :
Respondent. : :
: :
Proceeding under the Federal : :
Insecticide, Fungicide and : :
Rodenticide Act, as amended. : :
-----X

CONSENT AGREEMENT AND
FINAL ORDER

Docket No.
FIFRA-02-2016-5203

U.S. Environmental
Protection Agency, Region 2
2016 SEP 30 PM 12:20
REGIONAL HEARING
CLERK

This administrative proceeding for the assessment of a civil penalty was commenced pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (“FIFRA” or the “Act”). On April 14, 2016, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency (“EPA” or “Agency”), Region 2, issued a Complaint and Notice of Opportunity for Hearing, bearing docket number FIFRA-02-2016-5203, to Respondent, ComStar International, Inc. The Complaint alleges two separate counts against Respondent: (a) the distribution and sale of a misbranded pesticide, and (b) the submission of false and erroneous information to EPA, with the violations alleged to have occurred during 2011 and 2012.

Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2.

This Consent Agreement and Final Order (“CA/FO”) is being entered into by the parties pursuant to 40 C.F.R. § 22.18(b) following their May 20, 2016 settlement conference. No formal findings of fact or conclusions of law have been made in or by an administrative or judicial tribunal. The following constitute EPA’s findings of fact and conclusions of law as alleged in the complaint, and Respondent neither admits nor denies such findings or conclusions.

EPA FINDINGS OF FACT

1. Respondent is ComStar International, Inc., a for-profit New York corporation in

existence since 1990, that has been commercially manufacturing, receiving, re-packaging and/or re-labeling industrial chemicals, including refrigerants, sealants for air conditioning systems, hornet/wasp killer sprays and other pesticides, all of which Respondent commercially distributes and sells nationwide to wholesale and retail establishments.

2. Respondent owns and operates a facility located in Queens County, in New York, the address of which is 20-45 128th Street in College Point, New York. Through such facility, Respondent conducts its business, which includes Respondent, as a producer and distributor/seller of pesticides, holding at its facility pesticides for distribution/sale.

3. Respondent's facility has been registered under Section 7 of FIFRA, 7 U.S.C. § 136e, with EPA having assigned it EPA Establishment Number 055279-NY-001.

4. On August 7, 2013, representatives of EPA conducted an inspection of Respondent's facility pursuant to Section 9(a)(1) of FIFRA, 7 U.S.C. § 136g(a)(1).

5. Prior to 2010, Respondent from time to time purchased from a third party a plant regulator known as Triangle Brand Copper Sulfate Crystal ("TBCSC") in order to re-package it, and then to distribute/sell it, from its facility. The TBCSC, with an active ingredient of copper sulfate pentahydrate, is a pesticide that was registered sometime prior to 2010 with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, and bore EPA Registration Number 1278-8.

6. Prior to 2010, Respondent entered into, pursuant to 40 C.F.R. § 152.132, a supplemental distribution agreement in order that it might distribute/sell the TBCSC under the brand name "Root Gobbler." Respondent subsequently re-packaged, and then distributed/sold "Root Gobbler," with the accompanying labels bearing supplemental EPA Registration Number 1278-8-55279.

7. On or about July 10, 2010, EPA canceled, at the request of the base registrant, the registration of the TBCSC, thereby nullifying and rendering nugatory EPA Registration Number 1278-8.

8. The July 10, 2010 EPA cancellation of the EPA registration of the TBCSC cancelled Respondent's supplemental EPA Registration Number (1278-8-55279) for the "Root Gobbler" product.

9. Beginning sometime in 2010, Respondent from time to time purchased from a third party a pesticide known as Quimag Quimicos Aguila Copper Sulfate Crystal ("QQA"), the active ingredient of which is copper sulfate pentahydrate. The QQA has since 2009 been registered with EPA under registration number 73385-1.

10. Although Respondent never entered into a supplemental distribution agreement to distribute/sell the QQA under a different name, Respondent, beginning in 2010, re-packaged and re-labeled the QQA as "Root Gobbler." Respondent then distributed/sold the QQA with

labels bearing the EPA registration number [1278-8-55279] under which it had previously distributed/sold the TBCSC.

11. On or about each of the following dates, Respondent distributed/sold the QQA in containers with labeling identifying the contents thereof as "Root Gobbler" and bearing EPA Registration Number 1278-8-55279 to a customer in Memphis, Tennessee: (a) June 20, 2011; (b) August 12, 2011; (c) December 7, 2011; (d) February 28, 2012; (e) April 13, 2012; (f) July 13, 2012; (g) September 28, 2012; and (h) December 28, 2012.

12. Each of the aforementioned distributions/sales of the QQA to a customer in Memphis, Tennessee, constituted the distribution/sale of a misbranded pesticide.

13. For each of calendar years 2011 and 2012, Respondent reported to EPA the production of "Root Gobbler," indicating EPA registration number 1278-8-55279 therefor, on the annual pesticide-producing establishment reports it submitted pursuant to Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and 40 C.F.R. § 167.85.

14. Because the aforementioned reporting listed a canceled EPA registration number [1278-8-55279; as previously noted in paragraph 8, above, said number having been canceled in July 2010], Respondent's reporting of production of the "Root Gobbler" for calendar years 2011 and 2012 was false and erroneous.

EPA CONCLUSIONS OF LAW

1. Respondent has been since March 1990, and continues to be, a "person" (as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s)).

2. As a consequence of and in connection with Respondent's commercial activities in distributing/selling pesticides, Respondent is, and has been for all relevant times, a "registrant," "wholesaler," "dealer," and/or "other distributor" of pesticides within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), thus rendering Respondent subject to the requirements and prohibitions of FIFRA, 7 U.S.C. § 136 *et seq.*, and the regulations promulgated thereto, including those codified at 40 C.F.R. Parts 152 and 167.

3. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), any "wholesaler," "dealer," "retailer," or "other distributor" who violates any provision of subchapter II of FIFRA, 7 U.S.C. §§ 136 - 136y, is subject to a civil penalty to be assessed by the Administrator of EPA.

4. Any distribution/sale of a pesticide that has been misbranded is made unlawful by (*i.e.* constitutes a prohibited act under) Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and thus constitutes a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

5. A violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), constitutes

a violation of a provision of subchapter II of FIFRA, 7 U.S.C. §§ 136-136y.

6. Each of Respondent's distributions/sales of a misbranded pesticide (paragraphs 11 and 12 of the EPA Findings of Fact, above) constitutes an unlawful, and thus prohibited, act pursuant to and in accordance with Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

7. Respondent's submission of false and erroneous information to EPA for each of calendar years 2011 and 2012 (paragraphs 13 and 14 of the EPA Findings of Fact, above) is made unlawful (*i.e.* is prohibited) by: (a) Section 7 of FIFRA, 7 U.S.C. § 136(e), and (b) 40 C.F.R. § 167.85.

8. A violation of each of the following provisions constitutes a violation of subchapter II of FIFRA, 7 U.S.C. §§ 136-136y: (a) Section 7 of FIFRA, 7 U.S.C. § 136(e), and (b) 40 C.F.R. § 167.85.

9. Respondent's submission of false and erroneous information to EPA for each of calendar years 2011 and 2012 (paragraphs 13 and 14 of the EPA Findings of Fact, above) constitutes a violation of each of the following provisions of subchapter II of FIFRA, 7 U.S.C. §§ 136-136y: (a) Section 7 of FIFRA, 7 U.S.C. § 136(e), and (b) 40 C.F.R. § 167.85.

AGREEMENT ON CONSENT

Based upon the foregoing, and pursuant to Section 14(a) FIFRA, as amended, 7 U.S.C. § 136l(a), and 40 C.F.R. § 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22," it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Respondent: (a) admits EPA, Region 2, has jurisdiction under FIFRA to prosecute this proceeding; (b) neither admits nor denies the "EPA Findings of Fact" or "EPA Conclusions of Law" as set forth in this document; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order accompanying this Consent Agreement; and (e) waives its right to seek or obtain judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order ("CA/FO") shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the "effective date").

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall, commencing on the date of the execution of the Final Order accompanying this Consent Agreement, maintain compliance with all applicable statutory provisions of FIFRA, 7 U.S.C. § 136 *et seq.* and its implementing regulations.

2. Respondent shall pay a civil penalty to EPA in the amount of **THIRTY-TWO THOUSAND FIVE HUNDRED (\$32,500.00) DOLLARS**, to be paid in four installments within one year of the date the Regional Judicial Officer of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (the "due date"), as follows:

The first installment of EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE (\$8,125.00) DOLLARS is to be received forty-five (45) days¹ from the due date;

The second installment of EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE (\$8,125.00) DOLLAR is to be received one hundred sixty-five (165) days from the due date;

The third installment of EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE (\$8,125.00) DOLLARS is to be received two hundred eighty-five (285) days from the due date; and

The fourth installment and final installment of EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE (\$8,125.00) DOLLARS is to be received four hundred five (405) days from the due date.

Each payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier's checks, certified checks or by electronic fund transfer (EFT). If payments are made by cashier's checks or by certified checks, each such check shall be made payable to the "Treasurer, United States of America," and shall be identified with a notation thereon listing the following: *In re ComStar International, Inc., Docket Number FIFRA-02-2016-5203*. If payments are made by either form of check, such payment shall be mailed to the following address:

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

Alternatively, if Respondent chooses to make payments by EFT, Respondent shall then provide the following information to its remitter bank when each such payment in accordance with this paragraph is being made:

¹ For purposes of this CA/FO, days shall mean calendar days.

- a. Amount of Payment
- b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
- c. Account Code for Federal Reserve Bank of New York receiving payment:
68010727
- d. Federal Reserve Bank of New York ABA routing number: **021030004**
- e. Field Tag 4200 of the Fedwire message should read: **D 68010727**
Environmental Protection Agency
- f. Name of Respondent: **ComStar International, Inc.**
- g. Case docket number: **FIFRA-02-2016-5203**

3. Payment instructions:

- a. Each payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes payments by cashier's check or certified check, then each such check shall be *received* at the above-listed address on or before the date specified. If Respondent makes payments by the EFT method, then each such EFT shall be *received* on or before the date specified.
- b. Whether Respondent makes payments by cashier's checks, certified checks or by the EFT method, Respondent shall, promptly after each installment payment has been made, furnish reasonable proof that the required payment has been made, and each such proof shall be furnished to both:

Lee A. Spielmann
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

- c. Failure to pay the specified amounts in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- d. Furthermore, if any required payment is not received on or before the date when such payment is made due under the terms of this document, interest therefor shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date such payment was to have been made through the date such payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty

(30) day period or any portion thereof, following the date any such payment was to have been received, in which payment of the amount(s) remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the date for which such payment was required hereto to have been made.

4. The civil penalty provided for in this section constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

5. In addition to any late fees as set forth above, if Respondent fails to make any payment as required and in accordance with the schedule set forth above, Respondent shall pay stipulated penalties for each day that a required payment is late, and such stipulated penalties shall be as follows: (a) \$200 for each day a required payment is late, and this shall apply from the first to the thirtieth (30th) day that Respondent has failed to make such payment(s); (b) \$300 for each day thereafter that a required payment is late, and this shall apply from the thirty-first (31st) to the ninetieth (90th) that Respondent has failed to make such payment(s); and \$500 for each day thereafter that a required payment is late, and this shall apply to every day after the ninetieth (90th) day that Respondent has failed to make such payment(s).

6. All stipulated penalties for failure to pay a penalty installment on time are due and payable within thirty (30) calendar days of Respondent's receipt from EPA of a written demand for payment of the penalties. Stipulated penalties shall accrue as provided above, and subject to the same interest and handling charges set out in paragraph 3, above, regardless of whether EPA has notified Respondent of the violation or has made a demand for payment, but need only be paid upon demand. Respondent shall utilize the same procedures as set forth above to pay any stipulated penalty(ies) that becomes due pursuant to the provisions set forth above. EPA in its sole discretion may reduce or eliminate any stipulated penalty(ies) otherwise due.

7. Respondent hereby certifies that its commercial operations and activities that involve the packaging, labeling, distributing and/or selling of pesticides are in compliance with the requirements and prohibitions of FIFRA and its implementing regulations.

8. Respondent hereby certifies that it has requested of EPA that payment of the \$32,500 civil penalty be in installments because of the financial condition of Respondent, *viz.* a one-time payment of said amount would constitute a hardship for Respondent because of its cash flow and the overall financial circumstances of Respondent at the time of execution of the consent agreement.

9. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed consent agreement and accompanying executed final order, and Respondent consents to service upon such representative by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2: James J. Periconi, Esq./PERICONI LLC/260 Madison Avenue, 15th floor/New York, New York 10016.

10. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement. Respondent further consents to making payment of the entire amount of the civil penalty in accordance with the terms and schedule set forth above.

11. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local law and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit.

12. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve the administrative claims herein set forth in the "EPA Findings of Fact" and the "EPA Conclusions of Law" upon Respondent making full payment of the penalty amount set forth above. Notwithstanding the above, nothing herein shall affect the authority of the EPA (or the United States on behalf of EPA) to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation(s) of law resulting from or pertaining to, *inter alia*, Respondent's distribution/sale of pesticides.

13. Respondent hereby waives its right to seek or to obtain any hearing on the administrative claims set forth in the "EPA Findings of Fact" and the "EPA Conclusions of Law" of this document, and on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or on the EPA Findings of Fact or EPA Conclusions of Law, above.

14. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action, suit or proceeding brought by the United States on behalf of EPA: (a) to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order, and may subject Respondent to a civil judicial action by the United State to enforce the provisions of this Consent Agreement and Final Order.

15. Respondent waives any right it might possess to seek or obtain judicial review of the Final Order incorporating this Consent Agreement pursuant to Section 10(c) of the Administrative Procedure Act, 5 U.S.C. § 704, and/or under any other applicable law.

16. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

17. Each party shall bear its own costs and fees in connection with this proceeding.

In re ComStar International, Inc.
Docket Number FIFRA-02-2016-5203

RESPONDENT:

BY: 
(Signature)

NAME: S.P. Mella
(Please Print)

TITLE: GM

DATE: 9/29/16

COMPLAINANT:

Plant

Dore F. LaPosta, Director
Division of Enforcement
and Compliance Assistance
U.S. Environmental Protection Agency - Region 2

DATE: 9/29/16

18. The undersigned signatories hereto certify that they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement.

[Faint handwritten signature]

[Faint handwritten signature]

In re ComStar International, Inc.
Docket Number FIFRA-02-2016-5203

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of ComStar International, Inc.*, bearing Docket Number FIFRA-02-2016-5203. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b) (3).

DATED: September 30, 2016
New York, New York



HELEN FERRARA
Regional Judicial Officer
United States Environmental Protection Agency –
Region 2

In re ComStar International, Inc.
Docket No. FIFRA-02-2015-5203

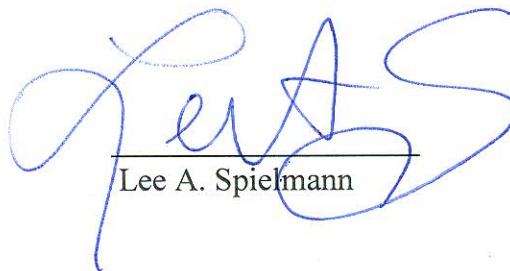
CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "CONSENT AGREEMENT AND FINAL ORDER," said Final Order having been executed by the Region Judicial Officer of the United States Environmental Protection Agency, Region 2, on September 30, 2016, in the above-referenced administrative enforcement proceeding in the following manner to the addressee listed below:

Original and One Copy
By Inter-Office Mail:

Office of Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Dated: September 30, 2016
New York, New York



Lee A. Spielmann

