

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. Environmental  
Protection Agency-Reg 2

2014 SEP -4 AM 9: 10

REGIONAL HEARING  
CLERK

In the Matter of

WR Neumann Company Inc. d/b/a  
Miracle Chemical Company,

Respondent.

Proceeding under the Federal  
Insecticide, Fungicide and Rodenticide  
Act, as amended.

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. FIFRA-02-2015-5102

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (hereinafter referred to as “FIFRA” or the “Act”), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter “CROP”). Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (“EPA”). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.18(b)(3). Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant

to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

**EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is William R. Neumann Company Inc. d/b/a/ Miracle Chemical Company ("Miracle").
2. Respondent is located at 1151 Highway 33, Suite B, Farmingdale, NJ 07727.
3. Respondent is a New Jersey corporation.
4. Respondent is a "person" as that term is defined in FIFRA § 2(s), 7 U.S.C. § 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.
5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a "pest" as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism.
7. At its New Jersey facility, Respondent manufactures (repacks) and distributes sodium hypochlorite solution, a pesticide, procured from registered sources.
8. At all times relevant, Respondent's facility has been a registered pesticide producing establishment, EPA Est. No. 039229-NJ-001.

9. “To distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as “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.”

10. Respondent is a “distributor or seller” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

11. Since November 2012, Respondent has manufactured (repacked) and distributed sodium hypochlorite solution as EPA Reg. No. 39229-2.

12. Prior to registering EPA Reg. No. 39229-2, Respondent manufactured (repacked) and distributed sodium hypochlorite solution as EPA Reg. No. 30229-1.

13. EPA Reg. No. 30229-1 was canceled by EPA on October 10, 1989 because of Respondent’s failure to pay the annual pesticide registration maintenance fee.

14. Despite the 1989 cancellation order, Respondent continued to produce and distribute the pesticide registered as EPA Reg. No. 30229-1, and to file with EPA annual reports of its production, from 1989 through 2012.

15. Respondent asserts that it did not learn of the 1989 cancellation order until 2012, at which time it sought advice from EPA Headquarters and re-registered EPA Reg. No. 30229-1 as EPA Reg. No. 30229-2.

16. On or about August 15, 2013, an EPA inspector conducted an inspection of Respondent’s facility (“Inspection”).

17. In the course of the Inspection, the EPA inspector collected product labels, purchase orders, sales invoices, and other documentary evidence of Respondent's production and distribution of pesticides.

18. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide whose registration has been canceled or suspended.

19. Respondent's sales or distributions of a canceled pesticide, described in Paragraph 14, above, constitute unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

#### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Sections 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.13(b), it is hereby agreed that:

1. Respondent shall hereafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. § 136 et seq., and its implementing regulations.

2. Respondent certifies that it is currently in compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. § 136 et seq., and its implementing regulations with regard to the manufacture and distribution of EPA Reg. No. 30229-2.

3. Respondent shall pay, by cashier's or certified check, or by electronic fund transfer, a civil penalty in the amount of **fifty-eight thousand dollars (\$58,000)** according to the following schedule:

- a. \$23,200 due on or before forty-five (45) days after the date of signature of the Final Order at the end of this document;
  - b. \$11,600 due on or before one hundred and thirty-five (135) days after the date of signature of the Final Order at the end of this document;
  - c. \$11,600 due on or before two hundred and twenty-five (225) days after the date of signature of the Final Order at the end of this document;
  - d. \$11,600 due on or before three hundred and fifteen (315) days after the date of signature of the Final Order at the end of this document.
4. Payments must be received at the address listed in Paragraph 6, below, or the EFT must be received by the Federal Reserve Bank of New York, on or before the due dates specified above (the date by which each payment must be received shall hereafter be referred to as the “due date”).
- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.
  - b. Furthermore, if a payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of its due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

5. If Respondent fails to make timely payment of any of the installment payments described in Paragraph 3, above, then Respondent shall also pay a stipulated penalty of \$5000 for each such failure. Payment of stipulated payments shall be made in the same manner as prescribed in Paragraph 6, below, for payment of the civil penalty installments. EPA, in its sole discretion, may reduce or eliminate any stipulated penalty due under this paragraph.

6. If payment is made by cashier's or certified check, such payment shall be payable to the "Treasurer, United States of America." The check shall be identified with the notation of the name and docket number of this case as follows: **In the Matter of WR Neumann Company Inc. d/b/a Miracle Chemical Company, Docket No. FIFRA-02-2015-5102.**

A check shall be mailed to:

United States Environmental Protection Agency  
Fines & Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

If Respondent chooses to pay by electronic fund transfer ("EFT"), Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address:  
**FRNYUS33**  
**33 Liberty Street**  
**New York, NY 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: **In the Matter of WR Neumann Company Inc.**  
**d/b/a Miracle Chemical Company**
- g. Case Docket Number: **FIFRA-02-2015-5102**

Respondent shall also send proof of payment, whether by check or EFT, to:

Naomi Shapiro  
Assistant Regional Counsel  
Office of Regional Counsel

and

Office of the Regional Hearing Clerk

*both located at:*

U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

7. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

8. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent admits that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l(a), to commence a civil administrative proceeding for the violations set out

*In the Matter of WR Neumann Company Inc. dba Miracle Chemical Company, FIFRA-02-2015-5102*

in the EPA's Findings of Fact and Conclusions of Law section above and admits the facts set out therein.

9. The civil penalties and any stipulated penalties provided for herein are "penalt[ies]" within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

10. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty herein, and the accuracy of the Respondent's certification in this proceeding) the civil and administrative claims described above in EPA's Findings of Fact and Conclusions of Law. Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

11. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the civil penalty in accordance with the terms of this Consent Agreement.

12. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein or on the accompanying Final Order.

13. The Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO, or b) to enforce a judgment relating to this CA/FO. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject



Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

14. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.

15. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

16. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.

17. The signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and Final Order and all the terms and conditions set forth in this Consent Agreement and Final Order.

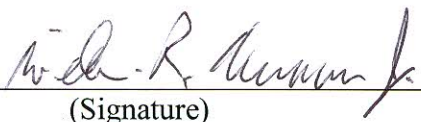
18. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, its officers/officials, agents, authorized representatives and successors or assigns.

19. Each party hereto agrees to bear its own costs and fees in this matter.

20. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

WR Neumann Company Inc. d/b/a Miracle Chemical Company

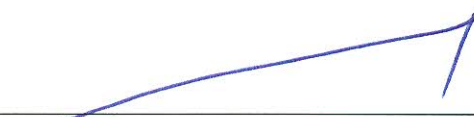
BY:   
(Signature)

NAME: William R. Neumann Jr.  
(Please Print)

TITLE: President

DATE: August 31, 2015

COMPLAINANT:




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

DATE: SEPTEMBER 3, 2015

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency for Region 2 ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to 40 C.F.R. § 22.18. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2. 40 C.F.R. § 22.31(b)

  
Judith Enck  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 26<sup>th</sup> Floor  
New York, NY 10007

DATE: 9/3/15

## CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing docket number FIFRA-02-2015-5102, in the following manner to the respective addressees listed below:

Original and Copy  
By Hand Delivery:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Certified Mail/  
Return Receipt Requested:

William R. Neumann, Jr., President  
WR Neumann Company Inc. d/b/a Miracle  
Chemical Company  
1151 Highway 33, Suite B  
Farmingdale, NJ 07727

Dated: 9/3, 2015  
New York, NY

