COPY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

NJD 002 200 046

MAR 2 3 2012

CERTIFIED MAIL/RETURN RECEIPT

Mark C. Kelly, Esq.
Kelly & Hazen
122 East 42nd Street
New York, New York 10168

Re: Cycle Chem Inc.
Docket No. RCRA-02-2011-7101

Dear Mr. Kelly:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above referenced proceeding signed by the Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2.

Please note that payment is due within forty-five (45) days of signature of the Final Order by the Regional Judicial Officer. Please arrange for payment of this penalty according to the instructions given in that Order.

If you have any questions, please contact the undersigned at 212-637-3195.

Very truly yours,

Gary H. Nurkin
Assistant Regional Counsel
Waste & Toxic Substances Branch

Enclosure

cc: Michael Hastry, NJDEP

bcc: Hanna Maciejko, 2DEPP-RPB
John J. Martin, 2PAD-POB
George Meyer, 2DECA-RCB
Blake Edwards, CFC
Abdool Jabar, 2DECA-RCB
Leonard Voo, 2DECA-RCB
Wilkie Sawyer, 2ORC-WTS
Gary Nurkin, 2ORC-WTS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In The Matter of: **Cycle Chem Inc.** Respondent. Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended.	CONSENT AGREEMENT AND FINAL ORDER Docket Number: RCRA-02-2011-7101

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901, *et seq*. (referred to collectively as "RCRA" or the "Act").

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. Complainant in these proceedings, the Director of the Division of Enforcement and Compliance Assistance ("DECA"), the United States Environmental Protection Agency ("EPA") Region 2, issued a "Complaint and Notice of Opportunity for Hearing" on June 29, 2011 to Respondent Cycle Chem Inc., ("Cycle Chem"), which owns and operates a facility at 201 South First Street, Elizabeth, New Jersey 07206 ("Elizabeth facility"). The Complaint alleged that Respondent violated certain requirements of RCRA and regulations concerning the management of hazardous waste at its Elizabeth facility.

EPA and Respondent have subsequently engaged in settlement discussions with respect to the violations alleged in the aforementioned Complaint. Respondent, in these discussions, has vigorously denied the allegations and believes it acted in good faith in the context of what it believes was a technical and confusing regulatory scheme. Nevertheless, both EPA and Respondent have agreed that entering into this Consent Agreement/Final Order ("CA/FO") is an appropriate means of resolving the alleged noncompliance with the RCRA requirements that EPA believes existed at the Elizabeth facility without further litigation or other administrative action.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made. Respondent neither admits nor denies EPA's Findings of Fact and Conclusions of Law set forth below.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is Cycle Chem.

2. Respondent is a corporation.

3. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10(1993) (N.J.A.C. 7:26G-4.1(a)).

4. At all times relevant hereto, Respondent has owned and operated a hazardous waste Treatment, Storage and Disposal facility ("TSD") situated at 201 South First Street, Elizabeth, New Jersey 07206 (the "Elizabeth facility").

5. On or about October 15, 1996, the State of New Jersey pursuant to N.J.S.A. 13:1E-1 et seq. issued a RCRA permit (No.2004EHP 07) to Respondent for continued operation of a TSD facility at its Elizabeth facility (the "1996 permit").

6. The 1996 permit which was reissued on December 3, 1997 (the "reissued permit"), became effective on January 3, 1998, and was scheduled to expire in November 2006.

7. The reissued permit was in effect at the time of EPA's inspection in October 2008 due to the fact that Cycle Chem submitted a timely application for permit renewal and no new permit had been issued.

8. Respondent at its Elizabeth facility is involved in the acceptance, storage and treatment of hazardous waste from off- site facilities.

9. Respondent has been and remains the "owner" and has been and remains the "operator" of the Elizabeth facility as those terms are defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)).

10. On or about October 27 and 29, 2008, duly designated representatives of EPA, pursuant to Section 3007 of the Act, 42 U.S.C. § 6927, conducted a Compliance Evaluation Inspection ("October Inspection") of the Elizabeth facility.

11. On or about December 1, 2008, EPA issued to Respondent a combined Notice of Violation ("NOV") and Request for Information ("IRL").

12. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed Respondent that EPA had identified a number of potential RCRA violations and requested Respondent to provide a description and documentation of the actions Respondent had taken to correct the violations identified by EPA in that NOV. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought, in part,

information and documentation relating to Respondent's handling of hazardous waste at its Elizabeth facility including its receipt of crushed fluorescent light bulbs identified as hazardous waste and its shipment off-site of these crushed fluorescent light bulbs.

13. On or about December 22, 2008, Respondent submitted its response to the combined NOV and IRL ("October Response").

14. Based upon the Inspection and Respondent's responses to the joint NOV/IRL, EPA issued a Complaint to Respondent on June 29, 2011, alleging that Respondent failed to: (1) offer crushed fluorescent light bulbs determined to be hazardous waste by generators and New Jersey to a transporter that had received an EPA Hazardous Waste Identification Number, (2) offer the crushed fluorescent light bulbs to a TSD facility that had received an EPA Hazardous Waste Identification Number, and (3) use a manifest when it offered the crushed fluorescent light bulbs for transport (two separate counts).

15. Respondent filed an Answer contesting and denying the allegations contained in EPA's Complaint. Respondent has asserted that it did not initially have adequate notice from EPA and New Jersey that the crushed fluorescent light bulbs were to be handled as a hazardous waste rather than as a universal waste under state regulations.

16. Respondent has informed EPA that it is now handling crushed fluorescent light bulbs as a hazardous waste consistent with regulations and guidance provided by the New Jersey Department of Environmental Protection and is now sending them off-site using hazardous waste transporters and uniform hazardous waste manifests (unless Respondent treats the incoming crushed bulbs and determines they are no longer characteristic hazardous waste).

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, 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 and knowingly accepted by Respondent, that Respondent for purposes of this Consent Agreement: (a) admits that EPA has jurisdiction over this matter as stated in the Preliminary Statement of the CA/FO; (b) neither admits nor denies the Findings of Fact and Conclusions of Law stated above; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

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

1. Respondent shall hereinafter maintain compliance at its Elizabeth facility with all applicable hazardous waste regulations set forth at 40 C.F.R. Part 262 (1993)(N.J.A.C. 7:26G-6.1(a)) or in later authorized versions of those regulations.

2. Alternatively, so long as EPA has an enforcement discretion policy that is applicable to facilities complying with a state's unauthorized universal waste program, Respondent may comply with New Jersey's universal waste rules and policies including its guidance on the classification and handling of crushed fluorescent light bulbs rather than comply with the EPA authorized RCRA regulations that currently apply to universal wastes.

3. Respondent hereby certifies, as of the time of its signature to this document, that, to the best of its knowledge and belief, it is in compliance with New Jersey rules and guidance for the management of wastes subject to New Jersey's universal waste rules and that it is otherwise in compliance with all of the applicable authorized hazardous waste regulatory requirements with respect to management of hazardous waste (including the handling of crushed fluorescent light bulbs) at its Elizabeth facility.

4. 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 laws and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste.

5. Respondent shall pay a civil penalty to EPA in the total amount of **TWENTY THOUSAND DOLLARS ($20,000)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the **"Treasurer, United States of America,"** and shall be mailed to:

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

   The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF CYCLE CHEM INC.*, and shall bear thereon the Docket Number *RCRA-02-2011-7101*. Payment of the penalty must be *received* at the above address on or before forty-five (45) calendar days after the Effective Date of this CA/FO (the "Due Date").

   If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

   1) Amount of Payment.
   2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.

3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
4) Federal Reserve Bank of New York ABA routing number: 021030004.
5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
6) Name of Respondent: Cycle Chem Inc.
7) Case Number: RCRA-02-2011-7101.

Such EFT must be received on or before forty-five (45) calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Gary H. Nurkin, Esq.
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, Room 1623
New York, New York 10007-1866

and

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

a. Failure to pay the amount 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.

b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment 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 said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of $15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount 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) calendar days of the date for which the payment was required hereto to have been made.

c. The civil penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal taxes.

6. This Consent Agreement is being voluntarily entered into by the parties in full and final settlement of the civil liabilities that attach or might have attached under the Act to Respondent as a result of the violations alleged in the Complaint bearing Docket Number RCRA-02-2011-7101. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

7. The provisions of this Consent Agreement shall be binding upon both Complainant and Respondent along with their authorized representatives and successors or assigns.

8. Respondent waives its right to request or to seek any Hearing on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or the Findings of Fact/Conclusions of Law, above.

9. Respondent waives any rights it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with, and to reply to any memorandum or communication addressed to, the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

10. The undersigned signatory for Respondent certifies that he\she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

11. Respondent consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

12. The Effective Date of this Consent Agreement and Final Order shall be the date that it is filed with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York. Complainant's counsel will endeavor to provide notice to Respondent's counsel of the filing of the Consent Agreement and Final Order with the Regional Hearing Clerk on or close to the date of such filing.

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

RESPONDENT: **CYCLE CHEM INC.**

BY: _____
Authorized Signature

NAME: Michael Persico
(PLEASE PRINT)

TITLE: President

DATE: 3/1/12

COMPLAINANT:

_____
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

DATE: March 23, 2012

In the Matter of Cycle Chem Inc.
Docket No. RCRA-02-2011-7101

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Cycle Chem Inc.*, bearing Docket No. RCRA-02-2011-7101. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued as this Final Order, which shall become effective 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) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

DATED: March 26, 2012
New York, New York

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency-Region 2
290 Broadway
New York, New York 10007-1866

In the Matter of Cycle Chem. Inc.
Docket No. RCRA-02-2011-7101

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
By Hand:

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

Copy by Certified Mail,
Return Receipt Requested:

Mark C. Kelly, Esq.
Kelly & Hazen
122 East 42nd Street
New York, New York 10168
Attorneys for Respondent, Cycle Chem Inc.

Smildred N. Bez

Dated: MAR 2 8 2012,
New York, New York