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

COPY

5C1

NJD002200046

JUN 29 2011

CERTIFIED MAIL– RETURN RECEIPT REQUESTED
Article number:

Michael Persico, President
CycleChem Inc.
217 South First Street
Elizabeth, NJ 07206

Re: **In the Matter of CycleChem Inc.**
Docket Number RCRA-02-2011-7101

Dear Mr. Persico:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within ***thirty (30)*** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference ***does not*** substitute for a written Answer, affect what you may choose to say in an

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference ***does not*** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources"and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and the nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of	:	
	:	**COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING**
Cycle Chem Inc.	:	
	:	
Respondent	:	
	:	Docket Number RCRA-02-2011-7101
Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended.	:	

COMPLAINT

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 ("HSWA"), 42 U.S.C. §§ 6901 et seq. (referred to collectively as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260 - 273 and 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of the United States Environmental Protection Agency's ("EPA") preliminary determination that Cycle Chem Inc. ("Cycle Chem" or "Respondent") has violated provisions of RCRA and the federally authorized New Jersey regulations concerning the management of hazardous waste at its Elizabeth, New Jersey Facility.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA to conduct a hazardous waste program (the "authorized State Program"). 64 Fed. Reg. 41823 (August 2, 1999). There were later changes in the scope of the authorized State Program as a result of EPA's authorization of New Jersey's regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (December 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some minor modifications, the federal program at 40 Code of Federal Regulations (C.F.R.) Parts 124, 260-266, 268 and 270, as set forth in the 1993 edition. As of February 14, 2003, the authorized State Program, with some minor modifications, essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey's authorized regulations comprising the original State Program, authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (October 21, 1996). The regulations authorized in 2003 can be found at 31 N.J.R. 166 (January 19, 1999). New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA is authorized to enforce the

provisions of the authorized State program and retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA- Region 2, has been duly delegated the authority to institute this action. Complainant hereby alleges:

Jurisdiction

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

2. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given the State of New Jersey prior notice of this action.

Respondent's Background

3. The Respondent is Cycle Chem.

4. Respondent is a corporation.

5. Respondent owns and operates a hazardous waste Treatment, Storage and Disposal facility ("TSD") situated at 217 South First Street, Elizabeth, New Jersey (the "Elizabeth facility").

6. Respondent is involved in the acceptance, storage and treatment of hazardous waste from off-site facilities.

7. Respondent is a "person," as that term is defined in § 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)).

8. The Elizabeth facility is a "facility" as that term is defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)).

9. Respondent is the "owner" of the Elizabeth facility as that term is defined in 40 C.F.R. § 260.10(1993)(N.J.A.C. 7:26G-4.1(a)).

10. Respondent is the "operator" of the Elizabeth facility as that term is defined in 40 C.F.R. § 260.10(1993)(N.J.A.C. 7:26G-4.1(a)).

Notification of Hazardous Waste Generation

11. On or about August 8, 1980, the Respondent (then known as Perk Chemical

Company, Incorporated) notified the EPA that it conducted activities involving the generation of hazardous waste at its facility.

12. In response to the Notification described in paragraph "11", above, EPA, provided the Respondent (then known as Perk Chemical Company, Incorporated), pursuant to 40 C.F.R. § 262.11, with EPA identification number NJD002200046.

Permitting Matters

13. The Respondent (then known as Perk Chemical Company, Incorporated), submitted a Part A permit application to EPA pursuant to 40 C.F.R. § 270.10 on or about November 1980, for its Elizabeth facility.

14. The Respondent (then known as Perk Chemical Company, Incorporated), pursuant to 40 C.F.R. § 270.10, submitted a Part B permit application to EPA, on or about January 1986, for its Elizabeth facility.

15. The State of New Jersey, having received from EPA Final Authorization for its Hazardous Waste Program, issued a RCRA permit (No. 2004EHP 01) to the Respondent for the operation of a TSD facility at its Elizabeth facility because it would treat, store and transfer the hazardous waste it received.

16. 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").

17. 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.

18. 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.

Respondent's Generation of Hazardous Waste

19. The hazardous wastes generated at the Elizabeth facility from its treatment of hazardous waste have included, without limitation, characteristic wastes ("D wastes"), wastes from nonspecific sources ("F wastes"), and discarded commercial chemical products including manufacturing chemical intermediates ("U wastes") as defined within 40 C.F.R. § 261 Subpart C (1993)(N.J.A.C. 7:26G-5.1(a)).

20. At all times mentioned below in this Complaint and subsequent thereto, Respondent has been a "generator" of "hazardous waste" as those terms are defined in 40 C.F.R.§ 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)) at its facility.

21. At least for three years prior to the October 2008 inspection, Respondent has generated, and continues to generate, at least 1,000 kilograms ("kg") of hazardous waste in each calendar month at its Elizabeth facility.

Prior Investigations

22. On or about April 3, 2008, the New Jersey Department of Environmental Protection ("DEP") conducted a Brief Compliance Inspection ("BCI") of Cycle Chem's Elizabeth facility. At the conclusion of the Inspection, Cycle Chem was informed that "fluorescent light bulbs that have been crushed intentionally are considered hazardous waste and, therefore, cannot be received, managed or shipped from the site as universal waste."

23. Supreme Asset Management and Recovery, Inc., also known as Supreme Asset Management, Inc. (collectively referred to as "Supreme"), is a commercial facility that is presently engaged in the recycling of electronics, light bulbs and batteries at its solid waste and universal waste recycling facility situated at 1950 Rutgers University Boulevard in Lakewood, New Jersey.

24. Supreme Computer and Electronic Recyclers (hereinafter "SCER"), a corporation organized in 1998 pursuant to the laws of the State of New Jersey, initially operated the solid waste and universal waste recycling facility referenced in paragraph "23", above.

25. In October 2005, EPA provided SCER with EPA identification number NJR000054783 for handling universal wastes including batteries, mercury containing equipment and lamps.

26. In June 2008, SCER and a second corporation, Ecoglass Recycling, Inc. (hereinafter "Ecoglass"), consolidated and became Supreme.

27. SCER and Supreme have never received an EPA identification number as a hazardous waste transporter pursuant to 40 C.F.R. § 263.11(1993)(N.J.A.C. 7:26G-7.1(a)).

28. SCER and Supreme are not, and have never been, authorized either by the DEP or the EPA to operate as a transporter of hazardous waste.

29. The Lakewood facility has never received an EPA identification number as a

hazardous waste TSD facility pursuant to either 40 C.F.R. § 264.11(1993) (N.J.A.C. 7:26G-8.1(a)) or 40 C.F.R. § 265.11(1993)(N.J.A.C. 7:26G-9.1(a)).

30 The Lakewood facility is not, and has never been authorized either by the DEP or the EPA to operate as a hazardous waste Treatment, Storage and Disposal Facility.

EPA investigative activities

31. On or about October 27 & 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 Respondent's facility.

32. At the time of the October Inspection, Respondent stated that it took in hazardous waste (crushed light bulbs) from generators.

33. At the time of October Inspection, Respondent stated that it sent some of its hazardous waste (crushed light bulbs) to Supreme's facility in Lakewood, New Jersey.

NOV, Information Request and Response

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

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

36. 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 hazardous waste (crushed light bulbs) and its shipment off-site of crushed light bulbs.

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

38. In its December Response, Respondent stated "CCI [Cycle Chem] does not analyze lamps so no analysis is available."

39. In its December Response, Respondent stated *"[c]opies of manifests for crushed*

bulbs taken in as hazardous waste from Oct. 27, 2005 to present {Nov. 30, 2008} are in Attachment II. Copies of outgoing manifests/BOL for crushed bulbs taken in as hazardous waste from Oct. 27, 2005 to present {Nov. 30, 2008} are in Attachment III. (emphasis supplied).

40. In Attachment II of its December Response, Respondent provided, *inter alia*, 44 Uniform Hazardous Waste Manifests, indicating, at times, that Respondent received hazardous waste (crushed broken bulbs) from a number of facilities.

41. In Attachment III of its December Response, Respondent admitted that it shipped hazardous waste (crushed bulbs) on at least four occasions from May 2007 to April 2008 to SCER's Lakewood facility using SCER as the transporter.

42. In Attachment III of its December Response, Respondent admitted that it shipped hazardous waste (crushed bulbs) on at least three occasions from March 2006 to January 2007 to Onyx Special Services facility in Stoughton, Massachusetts using Onyx Environmental Services as the transporter.

Count 1 –Failure to offer hazardous waste to a transporter that has received an EPA Identification Number

43. Complainant re-alleges each allegation contained in paragraphs"1" through "42", inclusive, as if fully set forth herein.

44. Pursuant to 40 C.F.R§ 262.12(c)(1993)(N.J.A.C.7:26G-6.1(a)), a generator must not offer its hazardous waste to a transporter that has not received an EPA identification number.

45. During 2007, SCER, on at least three occasions, transported hazardous waste (crushed light bulbs) from Respondent's Elizabeth facility to SCER's Lakewood facility.

46. During 2008, SCER, on at least one occasion, transported hazardous waste (crushed light bulbs) from Respondent's Elizabeth facility to SCER's Lakewood facility.

47. SCER has never received an EPA identification number to operate as a transporter consistent with 40 C.F.R. § 263.11(1993)(N.J.A.C. 7:26G-7.1(a)).

48. Respondent's offering of its hazardous waste to a transporter that had not received an EPA identification number is a violation of 40 C.F.R.§ 262.12(c)(1993) (N.J.A.C. 7:26G-6.1(a)).

Count 2-Failure to offer hazardous waste to a TSD facility that has received an EPA Identification Number

49. Complainant re-alleges each allegation contained in paragraphs"1" through "42", inclusive, as if fully set forth herein.

50. Pursuant to 40 C.F.R.§ 262.12(c)(1993)(N.J.A.C. 7:26G-6.1(a)), a generator must not offer its hazardous waste to a hazardous waste TSD facility that has not received an EPA identification number.

51. During 2007, Respondent shipped hazardous waste (crushed bulbs) on at least three occasions to SCER's Lakewood facility.

52. During 2008, Respondent shipped hazardous waste (crushed bulbs) on at least one occasion to SCER's Lakewood facility.

53. SCER has never received an EPA identification number to operate as a hazardous waste TSD facility consistent with 40 C.F.R. § 264.11(1993)(N.J.A.C. 7:26G-8.1(a)) or 40 C.F.R. § 265.11(1993)(N.J.A.C. 7:26G-9.1(a)).

54. Respondent's offering of its hazardous waste to a hazardous waste TSD facility that had not received an EPA identification number is a violation of 40 C.F.R.§ 262.12(c)(1993)(N.J.A.C. 7:26G-6.1(a)).

Count 3-Failure to use a manifest when offering hazardous waste for transport

55. Complainant re-alleges each allegation contained in paragraphs "1" through "42", inclusive, as if fully set forth herein.

56. Pursuant to 40 C.F.R. § 262.20(a)(1)(1993)(N.J.A.C. 7:26G-6.1(a)), a generator who transports, or offers for transport hazardous waste for off-site treatment, storage or disposal must prepare a manifest according to the instructions included in the appendix to Part 262.

57. From May 2007 to April 2008, Respondent offered for transport hazardous waste (crushed bulbs) to SCER on at least four occasions without preparing a uniform hazardous waste manifest.

58. Respondent's failure to prepare a uniform hazardous manifest when offering for transport hazardous waste as alleged in paragraph "57", above, is a violation of 40 C.F.R. 262.20(a)(1)(1993)(N.J.A.C. 7:26G-6.1(a)),

Count 4-Failure to use a manifest when offering hazardous waste for transport

59. Complainant re-alleges each allegation contained in paragraphs "1" through "42", inclusive, as if fully set forth herein.

60. Pursuant to 40 C.F.R. § 262.20(a)(1)(1993)(N.J.A.C. 7:26G-6.1(a)), a generator who transports, or offers for transport hazardous waste for off-site treatment, storage or disposal must prepare a manifest according to the instructions included in the appendix to Part 262.

61. From March 2006 to January 2007, Respondent offered for transport hazardous waste (crushed bulbs) to Onyx Environmental Services on at least three occasions without preparing a manifest.

62. Respondent's failure to prepare a uniform hazardous waste manifest when offering for transport hazardous waste as alleged in paragraph "61" is a violation of 40 C.F.R. § 262.20(a)(1)(1993)(N.J.A.C. 7:26G-6.1(a)).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: ***http: //www. epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf***. The penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect the inflation adjustments. The adjustments relevant to the time period of the alleged violations were made pursuant to the following: the September 21, 2004 document entitled "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (pursuant to Debt Collection Improvement Act of 1996, effective October 1, 2004)"and the January 11, 2005 document entitled "Revised Penalty Matrices for the RCRA Civil Penalty Policy." The RCRA Civil Penalty policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations occurring between March 15, 2004 and January 12, 2009 is $ 32,500 per day of violation. 40 C.F.R. Part 19.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the civil penalty as set out below for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II, and III, below.

In view of the above-cited violations, and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), taking into account the seriousness of the violations, and any good faith efforts by the Respondent to comply with applicable requirements, and using the RCRA Civil Penalty Policy, the Complainant herewith proposes the assessment of a civil penalty in the total amount of sixty seven thousand four hundred thirty eight dollars ($67,438) against the Respondent as follows:

Count/ Counts	Citation	Violation	Amount
One Two	40 C.F.R.§ 262.12 (c)(1993)(N.J.A.C. 7:26G-6.1(a))	Failure to offer hazardous waste to a transporter that received an EPA identification number (SCER)/ Failure to offer hazardous waste to a TSD that has received an EPA Identification number (SCER).	$67,438
Three	40 C.F.R.§ 262.20 (a)(1993))(N.J.A.C. 7:26G-6.1(a))	Failure to prepare a manifest when offering hazardous waste for transport to SCER.	
Four	40 C.F.R.§ 262.20 (a)(1993))(N.J.A.C. 7:26G-6.1(a))	Failure to prepare a manifest when offering hazardous waste for transport to Onyx Environmental Services.	
Total			$ 67,438

III. COMPLIANCE ORDER

The Respondent shall, to the extent it has not already done so, immediately upon the effective date of this Order come into compliance and shall thereafter maintain such compliance at its Elizabeth, New Jersey facility with all the 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 versions of those regulations that apply to shipments of hazardous waste from Cycle Chem's Elizabeth facility.

This Compliance Order shall take effect with respect to the Respondent within thirty (30) days of date of service of the Order, unless by that date the Respondent has requested a hearing pursuant to 40 C.F.R. Section 22.15. See 42 U.S.C. Section 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

Any responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Abdool Jabar, Environmental Engineer
Hazardous Waste Compliance Section
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violations at its facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at its facility.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order that has taken effect is liable for a civil penalty of up to $37,500 for each day of continued noncompliance which occurs after January 12, 2009. 40 C.F.R. Part 19. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by EPA or the State of New Jersey.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing."

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the thirty (30) day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

VI. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Gary H. Nurkin Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1623
New York, New York 10007-1866
212-637-3195

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal

settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Complainant:

DLaPl

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

Date 6/29/11

To: Michael Persico, President

Cycle Chem Inc.
217 South First Street
Elizabeth, NJ 07206

cc: Michael Hastry, Chief
Bureau of Hazardous Waste Compliance and Enforcement
Central Field Office
New Jersey Department of Environmental Protection
300 Horizon Center
Trenton, NJ 08625-0407

CERTIFICATE OF SERVICE

This is to certify that on the day of JUL 1 2, 2011, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2011-7101, together with Attachments I and II (collectively henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested to: Michael Persico, President, Cycle Chem Inc., 217 South First Street, Elizabeth, NJ 07206. I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Dated: JUL 1 2 2011,
New York, New York

Mildred N. Baez

PENALTY COMPUTATION WORKSHEET-COUNTS 1-4

Company Name: Cycle Chem Incorporated
217 South First Street
Elizabeth, NJ 07206

Violation:

1. Failure to offer hazardous waste to a transporter that received an EPA identification number (SCER),
2. Failure to offer hazardous waste to a TSD that received an EPA identification number (SCER),
3. Failure to prepare a manifest when offering hazardous waste for transport,
4. Failure to use a manifest when offering hazardous waste for transport to Onyx Environmental Services.

1. Gravity based penalty from matrix ..... $ 32,500
(a) Potential for harm..... MAJOR
(b) Extent of Deviation..... MAJOR

2. Select an amount from the appropriate multi-day matrix cell..... See Narrative

3. Multiply line 2 by number of days minus 1 ..... $34,938

4. Percent increase/decrease for good faith..... N/A

5. Percent increase for willfulness/negligence..... N/A

6. Percent increase for history of noncompliance ..... N/A

7. Total lines 5 through 7..... N/A

8. Multiply line 4 by line 8 ..... N/A

9. Calculated economic benefit.....N/A

10. Total Penalty (rounded off) ..... $ 67,438

*** Additional downward adjustments, where substantiated by reliable information, may be accounted for here.**

NARRATIVE EXPLANATION TO SUPPORT PENALTY COMPUTATION

1. Gravity Based Penalty

(a) Potential for Harm: The potential for harm is deemed to be Major. The facility is a permitted TSD facility that took in crushed and broken light bulbs as hazardous waste on uniform hazardous waste manifests and consolidated such waste. The facility then shipped the waste off-site using a transporter that had not received an EPA identification number to operate as a hazardous waste transporter (SCER) to facility not authorized to receive hazardous waste (SCER). A uniform hazardous waste manifest did not accompany each shipment sent off-site from Respondent's Elizabeth facility to SCER's Lakewood facility. In addition, the facility did not use a hazardous waste manifest to ship these wastes to Onyx Environmental Services in Massachusetts. This increased the risk that waste would be mismanaged during transport and at the destination facilities. The use of: (1) uniform hazardous waste manifests to accompany shipments of hazardous waste, (2) transporters that have received an EPA identification number, and (3) TSDs that have received an EPA identification number are key components of EPA's RCRA cradle-to-grave program. Failure to comply with such basic requirements poses a risk of exposure and may have a substantial adverse effect on the statutory purposes for implementing the RCRA program.

(b) Extent of Deviation: The Extent of Deviation was determined to be Major. As a result of Respondent's improper reclassification of hazardous waste to universal wastes, Respondent violated several core provisions of RCRA by shipping hazardous waste without an accompanying uniform hazardous waste manifest, offering hazardous waste to transporters that had not received an EPA identification number, and offering hazardous waste to an unpermitted facility.

The high end of the matrix ($32,500) was used because the facility is a Permitted TSD facility and conducting due diligence to ensure use of entities authorized to transport and receive hazardous wastes, and to use hazardous waste manifests, should be a routine procedure.

2. Multiple counts:

EPA is using its discretion to collapse the gravity based penalty component since each violation arose out of Cyclechem's singular action of improperly classifying hazardous waste as universal waste. EPA is also using its discretion to apply the multiday penalty matrix for each subsequent violation as described below.

(a) For four (4) shipments of hazardous waste to SCER:
    a. Major harm/Major deviation – High point of range
        i. 4 - 1 = 3 instances
        ii. 3 * $6,488 = $19,464

(b) For three (3) shipments of hazardous waste to Onyx Environmental Services
    a. Major harm/Moderate deviation. Although Onyx is an authorized transporter and

destination facility, without a hazardous waste manifest they would not be fully aware of the potential harm. – High point of range

i. 3 instances

ii. 3 * $5,158 = $15,474

(c) Total = $34,938 ($19,464 + $15,474)

3. <u>Adjustment Factors</u> (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied):

Good faith: EPA at this time has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will then evaluate it and consider making an appropriate adjustment.

Willfulness/Negligence: Not applicable

History of Compliance: Not applicable

Ability to Pay: Not applicable

Environmental Project: Not applicable

Other Unique Factors: Not applicable

3. **<u>Economic Benefit:</u>** The economic benefit derived from all violations was determined to be less than $ 5,000. An economic benefit under this amount is deemed insignificant and is not included in the penalty assessment figure.

4. **<u>Recalculation of Penalty Based on New Information:</u>** N/A

ATTACHMENT II-TABLE I
GRAVITY BASED MATRIX

POTENTIAL FOR HARM	MAJOR	MODERATE	MINOR
MAJOR	$32,500 to 25,791	$25,790 to 19,343	$19,342 to 14,185
MODERATE	$14,184 to 10,316	$10,315 to 6,448	$6,447 to 3,869
MINOR	$3,868 to 1,934	$1,933 TO 645	$644 TO 129

Note: Matrix is from the memo titled Revised Penalty Matrices for the RCRA Civil Penalty Policy dated January 11, 2005. Matrix is applicable to violations occurring between March 15, 2004, and January 12, 2009.

ATTACHMENT II-TABLE II
MULTI-DAY MATRIX

POTENTIAL FOR HARM	EXTENT OF DEVIATION FROM REQUIREMENT		
	MAJOR	MODERATE	MINOR
MAJOR	$6,448 to $1,290	$5,158 to $967	$3,869 to $709
MODERATE	$2,837 to $516	$2,063 to $322	$1,290 to $193
MINOR	$774 to $129	$387 TO $129	$129

Note: Matrix is from the memo titled Revised Penalty Matrices for the RCRA Civil Penalty Policy dated January 11, 2005. Matrix is applicable to violations occurring between March 15, 2004, and January 12, 2009.

bcc: John Martin (2CD-PAT)
Hanna Maciejko (2DEPP-RPB)
George Meyer (2DECA-RCB)
Leonard Voo (2DECA-RCB)
William K. Sawyer (2ORC-WTS)
Gary Nurkin, (2ORC-WTS)