

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

-----	X	
In the Matter of:	:	
	:	<b>CONSENT AGREEMENT</b>
Fleurchem, Inc.,	:	<b>AND</b>
	:	<b>FINAL ORDER</b>
Respondent.	:	
	:	Docket No. RCRA-02-2025-7101
Proceeding under Section 3008(a) of the	:	
Solid Waste Disposal Act, as amended	:	
-----	X	

**PRELIMINARY STATEMENT**

This is a civil administrative enforcement proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes 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 the “Act” or “RCRA”).

The United States Environmental Protection Agency (“EPA”) has promulgated regulations governing the handling and management of hazardous waste at Title 40 of the Code of Federal Regulations (“C.F.R.”) Parts 260-273 and 279. Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA’s Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New York has been authorized by EPA to conduct a hazardous waste program.

Pursuant to 40 C.F.R. § 22.13(b), where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding is simultaneously being commenced and concluded pursuant to said provisions.

EPA has given notice of this action to the State of New York.

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

Complainant

1. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 2, who has the authority to institute this action pursuant to EPA delegations of authority.

Respondent

2. Respondent is Fleurchem, Inc., a corporation registered in and authorized to operate under the laws of New York.

3. Respondent is, and at all relevant times has been, the "owner" and "operator," within the meaning of Title 6 of New York Codes, Rules and Regulations ("6 NYCRR") § 370.2(b), of a "facility," as that term is defined in 6 NYCRR § 370.2(b), located at 33 Sprague Avenue, Middletown, New York 10940.

Respondent's Generation and Management of Hazardous Waste

4. Respondent is the owner and operator of a facility that manufactures precursors to flavorings used in the food and beverage industries.

5. Respondent, in carrying out its manufacturing activities and in the course of conducting normal building maintenance operations, has been generating, and continues to generate, "solid waste," as defined in 6 NYCRR Part 371.

6. Respondent, in carrying out its manufacturing activities and in the course of normal building maintenance, has been generating, and continues to generate, "hazardous waste," as defined in 6 NYCRR Part 371.

7. In addition, Respondent, in carrying out its manufacturing activities and in the course of normal building maintenance, has been generating, and continues to generate, "universal waste," as defined at 6 NYCRR § 374-3.1(h)(11).

8. Respondent has been generating 1000 kilograms or more of non-acute hazardous waste in a calendar month and as a result is considered to be a large quantity generator of hazardous waste.

9. Respondent is a universal waste handler (defined in 6 NYCRR § 374-3.1(i)(9) and (12) as including, *inter alia*, generators of universal waste) which does not accumulate 5,000 kilograms or more total of universal waste at any time, and as a result, is classified as a small quantity handler of universal waste.

EPA Inspection and Summary of Conditions at the Facility

10. On or about June 27, 2023, a duly designated representative of EPA conducted an inspection of the facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, to determine Respondent's compliance with Subtitle C of RCRA and its implementing regulations.

11. Upon information and belief, Respondent had notified EPA of its status as a federal Large Quantity Generator (LQG) of hazardous waste in or around 2011.

12. At the time of the inspection, Respondent had not sought or received "interim status" or a permit to treat, store or dispose of hazardous waste at its facility.

13. As of the date of the inspection, a twenty (20) gallon container of pyruvic acid was located in the facility's receiving area central storage area. The facility had not made a hazardous waste determination as to the pyruvic acid.

14. At the time of the inspection, Respondent was storing one 4-foot container, one 8-foot container, and one 25-foot container of universal waste lamps. EPA's duly designated representative observed that:

- a. The 4-foot container and 8-foot container were not closed;
- b. None of the three containers were labeled; and
- c. None of the three containers were dated.

15. As of the date of the inspection, Respondent had failed to mark certain containers holding hazardous waste with the words "Hazardous Waste" and with other words identifying their contents or to mark the date when the period of accumulation of hazardous waste in the containers began, or had marked a date which indicated that hazardous waste had been accumulating in the container beyond the allowable ninety (90) day storage period.

16. As of the date of the inspection, the satellite accumulation container for spent hazardous waste used for the GC Spec and located in the Quality Control Laboratory was not labeled.

17. During the inspection, the duly designated representative of EPA ascertained that Respondent had not been conducting weekly container storage area inspections for the Chem Plant Container Storage Area or the Receiving Compounding Area.

#### Information Request, NOV, and Responses

18. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, on or about September 5, 2023, EPA issued Respondent an Information Request Letter ("IRL") and a Notice of Violation ("NOV") regarding its management of hazardous waste at its facility.

19. The NOV and IRL informed Respondent that EPA had identified potential RCRA violations at the facility and requested that Respondent provide a description and documentation of the actions it had taken to correct the violations identified. The NOV-IRL also sought information and documentation relating to Respondent's generation and management of hazardous waste at the facility.

20. On or about October 4, 2023, Respondent submitted its response to the NOV and IRL. In its response, Respondent provided detailed information regarding its efforts to



successfully address the issues raised by EPA regarding the violations identified herein, specifically with respect to the First Violation, set forth in paragraphs 24–27, the Second Violation, set forth in paragraphs 28–32, and the Third Violation, set forth in paragraphs 33–46.

21. On or about June 25, 2024, EPA issued a Notice of Potential Violations and Opportunity to Confer letter to Respondent.

22. EPA and Respondent have engaged in good faith talks to reach settlement which have involved Respondent providing information regarding compliance efforts it undertook and the parties have agreed to settle this matter as provided herein.

#### Violations

23. Complainant hereby states and alleges that Respondent has violated RCRA and the authorized New York State regulations as follows:

##### First Violation

##### Failure to Make Hazardous Waste Determination

24. Pursuant to 6 NYCRR § 372.2(a)(2), a person who generates a solid waste must determine if that waste is a hazardous waste.

25. Pyruvic acid is a solid waste within the meaning of 6 NYCRR § 371.1(c).

26. At the time of the inspection, Respondent had not made a hazardous waste determination on the pyruvic acid that it was generating.

27. Respondent's failure to make a hazardous waste determination on the above-referenced hazardous waste is a violation of 6 NYCRR § 372.2(a)(2).

##### Second Violation

##### Failure to Properly Manage Universal Waste

28. Pursuant to 6 NYCRR § 374-3.2(d)(4)(i), a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

29. Pursuant to 6 NYCRR § 374-3.2(e)(5), each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: Universal Waste-Lamp(s), or Waste Lamp(s), or Used Lamp(s).

30. Pursuant to 6 NYCRR § 374-3.2(f)(3), a small quantity handler of universal waste which accumulates universal waste must be able to demonstrate the length of time that the

universal waste has been accumulated from the date it becomes a waste or is received.

31. At the time of the inspection, one 4-foot container and one 8-foot container of universal waste lamps were not closed, in violation of 6 NYCRR § 374-3.2(d)(4)(i).

32. At the time of the inspection, one 4-foot container, one 8-foot container, and one 25-foot container of universal waste lamps were not labeled or dated, in violation of 6 NYCRR §§ 374-3.2(e)(5) and (f)(3).

Third Violation  
Operating as a Treatment, Storage or Disposal Facility  
Without a RCRA Permit or RCRA Interim Status

33. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 6 NYCRR § 373-1.2(a) require each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste to have a permit or interim status for such activities.

34. At the time of the inspection, Respondent did not have a permit or interim status.

*Generator Requirements*

35. Pursuant to 6 NYCRR § 372.2(a)(8)(ii), a generator who generates at least 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste generated on-site for a period of ninety (90) days or less under the provisions of 6 NYCRR § 373-1.1(d)(1)(iii), (iv), (xix) and (xx). Respondent failed to comply with the following conditions:

*Inspections*

36. The regulation at 6 NYCRR § 373-1.1(d) provides that a hazardous waste generator is exempt from the permitting requirements of that Part if, *inter alia*, the waste is placed in containers and the generator complies with 6 NYCRR § 373-3.9. 6 NYCRR § 373-1.1(d)(iii)(c)(1)(i).

37. The regulation at 6 NYCRR § 373-3.9(e) states that at least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

38. At the time of the inspection, the facility did not conduct weekly container storage area inspections for the Chem Plant Container Storage Area or the Receiving Compounding Area.

*Satellite Accumulation*

39. The regulation at 6 NYCRR § 373-1.1(d) exempts accumulation areas from



permitting requirements provided that they are used to accumulate waste in accordance with the requirements of 6 NYCRR § 372.2(a)(8)(i). 6 NYCRR § 373-1.1(d)(xiv).

40. The regulation at 6 NYCRR § 372.2(a)(8)(i)(a)(2) states that a generator may accumulate up to fifty-five (55) gallons of hazardous waste or one quart of acutely hazardous waste listed in 6 NYCRR 371.4(b), (c) and (d)(5) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subparagraph (ii) of this paragraph, provided the generator fulfills certain conditions, including labelling the containers with the words "hazardous waste" and with other words that identify the contents of the containers.

41. At the time of the inspection, the inspector observed a satellite accumulation container near the GC Spec in the Quality Control Laboratory that was not properly labeled with words identifying its contents.

#### *Labelling and Marking of Containers*

42. The regulation at 6 NYCRR § 373-1.1(d) provides that a hazardous waste generator is exempt from the permitting requirements of that Part if, inter alia, the waste is placed in containers and the generator complies with 6 NYCRR § 373-3.9. 6 NYCRR § 373-1.1(d)(iii)(c)(1)(i).

43. The regulation at 6 NYCRR § 373-3.9(d)(3) states that containers holding hazardous waste must be marked with the words "Hazardous Waste" and with other words identifying their contents.

44. The regulation at 6 NYCRR § 372.2(a)(8)(ii) states that a generator may accumulate hazardous waste onsite for a period of ninety (90) days or less if certain requirements are satisfied, including that the date upon which each period of hazardous waste accumulation begins is clearly marked and visible for inspection on all containers, tanks or storage areas.

45. At the time of the inspection, the containers described in paragraph 14 had the deficiencies in marking, labeling, and/or dating as set forth in the table in that paragraph.

46. Because Respondent failed to comply with the generator requirements as set forth in paragraphs 35 through 45 above, Respondent was not authorized to accumulate hazardous waste at its facility without a permit for any length of time, and as a result of its storage of hazardous waste at the facility, Respondent was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and NYCRR § 373-1.2(a).

#### **CONSENT AGREEMENT**

47. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, 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: (a) admits the jurisdictional basis for EPA prosecuting this case; (b) neither admits nor denies EPA's Findings of Fact and Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and waives its right to contest or appeal that Final Order.

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

49. Respondent shall hereinafter comply with RCRA and all applicable federally-authorized New York hazardous waste regulations relating to the generation, storage, and management of hazardous waste at the facility, including the requirements to:

- a. Make hazardous waste determinations pursuant to 6 NYCRR § 372.2(a)(2);
- b. Close containers of universal waste lamps pursuant to 6 NYCRR § 374-3.2(d)(4)(i) and properly mark them pursuant to 6 NYCRR §§ 374-3.2(e)(5) and (f)(3);
- c. At least weekly, inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors, pursuant to 6 NYCRR § 373-3.9(e);
- d. Label hazardous waste containers in satellite accumulation areas with the words "hazardous waste" and with other words that identify the contents of the containers pursuant to 6 NYCRR § 372.2(a)(8)(i)(a)(2); and
- e. Mark and label containers of hazardous waste with the date accumulation commenced, the words "Hazardous Waste," and other words identifying their contents pursuant to 6 NYCRR § 373-3.9(d)(3) and 6 NYCRR § 372.2(a)(8)(ii).

50. Respondent hereby certifies that, as of the date of its signature of this Consent Agreement and to the best of its knowledge and belief, it is in compliance at the facility with applicable RCRA requirements, especially but not limited to the requirements referenced in the EPA's Findings of Facts and Conclusions of Law section of this CAFO.

51. This CAFO 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 relating to any generation, management, treatment, storage, transport or offering for transport, or disposal of hazardous waste by Respondent.

Penalty Payment

52. Respondent agrees to pay a civil penalty of **Forty-Eight Thousand Dollars (\$48,000)** ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this CAFO is filed with the Regional Hearing Clerk ("Filing Date").

53. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

54. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this agreement, RCRA-02-2025-7101,
- b. Concurrently with any payment or within twenty-four (24) hours of any payment, serve proof of such payment to the following person(s):

Karen Maples  
U.S. Environmental Protection Agency, Region 2  
Regional Hearing Clerk  
290 Broadway, 17th Floor  
New York, NY 10007  
**Maples.Karen@epa.gov**

William Chernes  
Enforcement Officer  
Enforcement and Compliance Assurance Division  
RCRA Compliance Branch  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 21st Floor  
New York, NY 10007  
**Chernes.William@epa.gov**

and

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
Via electronic mail to: **CINWD\_AcctsReceivable@epa.gov**



"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

55. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate; any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
- c. Late Payment Penalty. A late payment penalty of 6% per annum will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

56. Late Penalty Actions. In addition to the amounts described in the prior paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this agreement, EPA may take additional actions. The actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

57. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

58. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

*Effect of Settlement and Reservation of Rights*

59. Full payment of the penalty described in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein in paragraphs 24-46. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

60. The provisions of this Consent Agreement shall be binding upon Respondent and its successors or assigns.

61. Respondent waives its right to request or to seek any hearing in this matter including one on the terms and conditions set forth in the Consent Agreement and the accompanying Final Order and/or EPA's Findings of Fact and Conclusions of Law, above.

62. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

63. Nothing in this document is intended or construed to waive, prejudice, or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any

material misrepresentations or has provided materially false information in any document submitted during this proceeding.

64. Each party hereto agrees to bear its own costs and attorney's fees in this matter.

65. Respondent has read this Consent Agreement, understands its terms, and agrees that the provisions herein shall be binding upon Respondent and its successors and assigns. The signatory for Respondent certifies that: (a) they are duly and fully authorized to enter into and ratify this Consent Agreement and to accept the accompanying Final Order and all the terms, provisions, and requirements set forth in this CAFO, and (b) they are duly and fully authorized to bind the party on behalf of which they are entering this CAFO to comply with and abide by all the terms, provisions, and requirements of this CAFO.

66. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via email to designated representative:

John L. Parker  
Sahn Ward Braff Coschignano PLLC  
333 Earle Ovington Boulevard, Suite 601  
Uniondale, NY 11553  
*[jparker@sahnward.com](mailto:jparker@sahnward.com)*

Receipt of the fully executed CAFO by the designated representative shall constitute Respondent's receipt and acceptance of the CAFO. Except as the parties may otherwise agree in writing, EPA shall send any future written communications related to this matter (including any correspondence related to payment of the penalty) by email to this designated representative.



For Respondent, Fleurchem, Inc.:

Patricia Plunk  
Signature

7/14/2025  
Date

Rochele Gluck  
Print Name

CEO  
Title

For Complainant, the U. S. Environmental Protection Agency:

---

Kathleen Anderson  
Director  
Enforcement and Compliance Assurance Division

### **FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Fleurchem, Inc., Docket Number RCRA-02-2025-7101. 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 represents a consent order memorializing a settlement between EPA and the Respondent. The effective date of this Order shall be the date of filing 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 Section 3008(a) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928(a).

---

Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 2



### **CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of Fleurchem, Inc., Docket No. RCRA-02-2025-7101, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Natasha Goss  
U.S. Environmental Protection Agency, Region 2  
Office of Regional Counsel  
290 Broadway, 16th Floor  
New York, NY 10007  
***Goss.Natasha@epa.gov***

Karen Maples  
U.S. Environmental Protection Agency, Region 2  
Regional Hearing Clerk  
290 Broadway, 17th Floor  
New York, NY 10007  
***Maples.Karen@epa.gov***

Copy via Email to Respondent:

John L. Parker  
Sahn Ward Braff Coschignano PLLC  
Attorney for Respondent  
333 Earle Ovington Boulevard, Suite 601  
Uniondale, NY 11553  
***jparker@sahnward.com***

---

Signed