UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the matter of:	)	
	)	
Cycle Chem, Inc.	)	**Docket No. RCRA-03-2015-0171**
550 Industrial Drive	)	
Lewisberry, PA 17339	)	
	)	
RESPONDENT.	)	**Proceeding Under Section**
	)	**3008(a) and (g) of the**
Cycle Chem, Inc.	)	**Resource Conservation and**
550 Industrial Drive	)	**Recovery Act, as amended,**
Lewisberry, PA 17339	)	**42 U.S.C. § 6928(a) and (g)**
	)	
FACILITY.	)	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Cycle Chem, Inc. ("Respondent"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement and the accompanying Final Order, collectively referred to herein as the "CAFO," simultaneously commences and concludes this administrative proceeding against Respondent.

3. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the "Pennsylvania Hazardous Waste Management Program") *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations ("PaHWR")

were authorized by the U.S. Environmental Protection Agency ("EPA" or "Agency") pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The PaHWR subsequently were revised, and thereafter re-authorized by EPA, on September 26, 2000, January 20, 2004, and April 29, 2009. Such authorized revised PaHWR requirements and provisions became effective on November 27, 2000, March 22, 2004, and June 29, 2009 respectively. The PaHWR incorporate, with certain exceptions, federal hazardous waste management regulations that were in effect as of May 1, 1999 (and as of July 6, 1999 for certain regulations regarding Universal Waste) for the November 27, 2000 PaHWR authorization, June 28, 2001 for the March 22, 2004 PaHWR authorization, and October 12, 2005 for the April 29, 2009 PaHWR authorization. The provisions of Pennsylvania's current authorized revised PaHWR, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a, have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).

4. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), the Pennsylvania Department of Environmental Protection ("PADEP") issued Respondent a Hazardous Waste Management Permit ("RCRA Part B Hazardous Waste Permit" or "RCRA Permit"), No. PAD06709822, for Respondent's hazardous waste storage and treatment facility located at 550 Industrial Drive, Lewisberry, PA, 17339 (hereinafter, the "Facility"). The RCRA Permit became effective on September 26, 2008, and has remained effective at all times herein relevant. The RCRA Permit consists of four Parts and ten Attachments, and covers the following activities at the Facility: (a) storage of hazardous waste in containers located in 13 storage areas; (b) storage / treatment of hazardous wastes in 15 tanks; and (c) storage / treatment of hazardous wastes in three bunkers.

5. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to initiate an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle C, EPA's regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA.

6. This Consent Agreement and the accompanying Final Order address alleged violations by Respondent of Subtitle C of RCRA, 42 U.S.C. §§ 6921–6939g, requirements of Respondent's RCRA Part B Hazardous Waste Permit and of the federally-authorized Pennsylvania Hazardous Waste Management Program requirements, in connection with the operation of Respondent's Facility.

7. Factual allegations and legal conclusions in this Consent Agreement that are based upon the requirements and provisions of the RCRA Permit for the Facility cite to those applicable RCRA Permit conditions as the authority for such violations and conclusions.

8. Factual allegations and legal conclusions in this Consent Agreement that are based on federally-authorized Pennsylvania Hazardous Waste Management Program requirements similarly cite to the relevant and applicable PaHWR provisions in effect at the time of the violations alleged herein as the authority for such violations and conclusions. For

expedience and convenience, all Consent Agreement citations to the federal hazardous waste management regulations set forth at 40 C.F.R. Parts 260 - 279 are to the July 1, 2008 edition of the Code of Federal Regulations.

9. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated March 19, 2014, EPA notified the Commonwealth of Pennsylvania, through Renee Bartholomew, Chief of the Compliance and Information Section at PADEP, of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

II. GENERAL PROVISIONS

10. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

11. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO, except as provided in Paragraph 10, above.

12. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.

13. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

14. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

15. Respondent shall bear its own costs and attorney's fees.

16. This CAFO shall 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 determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, or any regulations promulgated and/or authorized thereunder.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

17. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law.

18. EPA has jurisdiction over this matter pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), and 40 C.F.R. § 22.1(a)(4) and .4(c).

19. Respondent is a New Jersey corporation.

20. Respondent is, and was at the time of the violations alleged herein, a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 25 Pa. Code § 260a.10.

21. Respondent is and was, at all times relevant to the allegations set forth in this CAFO, the "owner" and "operator" of a "facility" located at 550 Industrial Drive, Lewisberry, Pennsylvania (i.e., the Facility), as the two former terms are defined in 40 C.F.R. § 260.10, and incorporated by reference in 25 Pa. Code § 260a.1, and as the latter term is defined in 25 Pa. Code § 260a.10.

22. Respondent's Facility treats and stores hazardous and non-hazardous waste prior to shipment off-site for final disposal.

23. At all times relevant to this CAFO, and as described below, Respondent was engaged in the "transportation," "treatment," and "storage" of "solid waste" and "hazardous waste" in "containers" and "tanks" at the Facility, as the terms "transportation," "treatment," and "storage" are defined in 25 Pa. Code § 260a.10, and as the remaining terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.

24. Respondent's Facility was, at all times relevant to the allegations set forth in this CAFO, a hazardous waste treatment and storage "facility" as that term is defined in 25 Pa. Code § 260a.10.

25. A representative of EPA conducted a Compliance Evaluation Inspection at the Facility on June 10, 2013 ("the Inspection"), to examine the Facility's compliance with its RCRA Permit and the federally-authorized PaHWR requirements. EPA prepared a report summarizing its observations and findings from the Inspection of the Facility (the "EPA Inspection Report").

26. On September 16, 2014, EPA sent a Request to Show Cause and Request for Information ("Show Cause letter") to Respondent advising it of EPA's preliminary findings of RCRA Subtitle C violations at the Facility and offering the Respondent an opportunity to provide such additional information as it believed the Agency should review and consider before reaching any final conclusions as to the Respondent's regulatory and RCRA Permit compliance status at the Facility. In response to the Show Cause letter, Respondent provided additional information to EPA in a letter dated December 12, 2014, in several additional letters and in discussions.

27. On March 30, 2015, EPA issued a formal information request letter ("IRL") to Respondent, pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a). Respondent provided information to EPA in response to the IRL on April 17, 2015.

28. On the basis of the Inspection, and a review of the information provided to EPA by Respondent in response to EPA's Show Cause letter and IRL, and other correspondence, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, and federally authorized PaHWR requirements promulgated thereunder.

COUNT I

(Failure to Properly Label Containers of Universal Waste Batteries and Lamps)

29. The allegations of Paragraphs 1 through 28, above, are incorporated herein by reference as though fully set forth at length.

30. With exceptions not herein relevant, 25 Pa. Code § 266b.1 incorporates by reference 40 C.F.R. Part 273, relating to standards for Universal Waste Management.

31. 40 C.F.R. §§ 273.2(a) and 273.5(a), provide, with exceptions not herein applicable, that the 40 C.F.R. Part 273 Standards for Universal Waste Management apply to batteries and to lamps, respectively, as described in 40 C.F.R. § 273.9.

32. 40 C.F.R. § 273.9 defines the term "battery" to mean "a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed."

33. 40 C.F.R. § 273.9 defines the term "lamp" or "universal waste lamp" to mean "the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps."

34. 40 C.F.R. § 273.9 defines the term "Universal Waste" to include the following hazardous wastes that are subject to the universal waste requirements of 40 C.F.R. Part 273: "Batteries as described in § 273.2;" and "Lamps as described in § 273.5."

35. Pursuant to 40 C.F.R. § 273.9, the term "Universal Waste Handler" means a generator (as defined in to 40 C.F.R. § 273.9) of universal waste; or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

36. 40 C.F.R. § 273.9 defines the term "Small Quantity Handler of Universal Waste" to mean "a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time."

37. At the time of the June 10, 2013 Inspection, Respondent was storing at the Facility "Batteries," as described in 40 C.F.R. § 273.2, and "Lamps," as described in 40 C.F.R. § 273.5.

38. At the time of the June 10, 2013 Inspection, Respondent was storing "Universal Waste," as defined in 40 C.F.R. § 273.9, at the Facility in quantities less than 5,000 kilograms.

39. At all times relevant to this CAFO, Respondent was a "Small Quantity Handler of Universal Waste," as defined in 40 C.F.R. § 273.9, and therefore was subject to the Standards for Small Quantity Handlers of Universal Waste set forth at 40 C.F.R. Part 273, Subpart B.

40. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(a), requires that, for small quantity handlers of universal waste batteries, each universal waste battery or container of such batteries, must be labeled or marked clearly with one of the following phrases: "Universal Waste-Battery(ies)" or "Waste Battery(ies)" or "Used Battery(ies)."

41. At the time of the June 10, 2013 Inspection, Respondent failed to label or mark many containers of universal waste batteries with the phrases "Universal Waste-Battery(ies)" or "Waste Battery(ies)" or "Used Battery(ies)." Instead, Respondent labeled these containers with the words "residual waste" or "non-hazardous waste."

42. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), requires that, for small quantity generators of universal waste lamps, each lamp or container or package containing such lamps, must be clearly marked or labeled with one of the following phrases: "Universal Waste-Lamp(s)" or "Waste Lamp(s)" or "Used Lamp(s)."

43. At the time of the June 10, 2013 Inspection, Respondent failed to label several hundred containers of universal waste lamps with the phrases "Universal Waste-Lamp(s)" or "Waste Lamp(s)" or "Used Lamp(s)." Instead, Respondent labeled these containers with the words "residual waste" or "non-hazardous waste."

44. On June 10, 2013, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(a) and (e), by failing to label or mark containers of universal waste batteries and universal waste lamps with one of the required phrases.

COUNT II
(*Failure to Keep Container of Hazardous Waste Closed During Storage*)

45. The allegations of Paragraphs 1 through 44, above, are incorporated herein by reference as though fully set forth at length.

46. Respondent's RCRA Permit, Part III, Section F, provides that "[t]he Permittee shall manage containers as required by 40 C.F.R. § 264.173 and 25 Pa. Code 264a.173."

47. 40 C.F.R. § 264.173(a), provides, in relevant part and with exceptions not herein applicable, that "[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste."

48. At the time of the June 10, 2013 Inspection, a container of mixed hazardous waste (F039) in a drum storage area at the Facility had an open bung at a time when it was not necessary to add or remove waste from the container.

49. On June 10, 2013, Respondent violated Part III, Section F of its RCRA Permit, which incorporates by reference the requirements of 40 C.F.R. § 264.173(a), by storing hazardous waste in a container that was not kept closed at a time when it was not necessary to add or remove waste.

COUNT III

(Failure to Mark Several Pieces of Equipment Subject to Part 264, Subpart BB)

50. The allegations of Paragraphs 1 through 49, above, are incorporated herein by reference as though fully set forth at length.

51. Part IV, Section R.1, of the Facility RCRA Permit provides that "[t]he Permittee shall manage all hazardous waste placed in tanks in accordance with 40 C.F.R. 264.200, and Attachments 7 and 8."

52. 40 C.F.R. § 264.200 provides that "[t]he owner or operator shall manage all hazardous waste placed in a tank in accordance with the applicable requirements of subparts AA, BB, and CC of this [40 C.F.R.] part [264]."

53. 40 C.F.R. § 264.1050(b) provides, in relevant part and with exceptions and exclusions not herein applicable, that 40 C.F.R. Part 264, Subpart BB "applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in . . . : (1) A unit that is subject to the permitting requirements of 40 CFR part 270 . . ."

54. At all times relevant to the allegations herein, Facility Hazardous Waste Storage Tank # 1 and #2 were each subject to the requirements and provisions of Part IV (Storage/ Treatment in Tanks) of the Facility RCRA Permit, issued pursuant to 25 Pa Code § 270a.1, which incorporates by reference the federal hazardous waste permit program of 40 C.F.R. Part 270 and its appendices.

55. At the time of the June 10, 2013 Inspection, Facility Hazardous Waste Storage Tank # 1 and #2, and their associated piping and equipment, contained or contacted hazardous waste with high organic concentrations exceeding 10% by weight. As a result, the piping and equipment associated with Facility Hazardous Waste Storage Tank # 1 and #2 was then subject to the Subpart BB requirements of 40 C.F.R. Part 264.

56. 40 C.F.R. § 264.1050(d) (of Subpart BB) requires that "each piece of equipment regulated under this subpart [BB] shall be marked in such a manner that it can be distinguished readily from other pieces of equipment."

57. 40 C.F.R. § 264.1051 provides, in relevant and applicable part that, "[a]s used in [40 C.F.R. Part 264, Subpart BB], all terms shall have the meaning given them in [40 C.F.R.]

§ 264.1031 . . . [,]" which section therein defines the term "*equipment*" to mean and include "each valve, pump . . . open ended valve or line, or flange or other connector . . ."

58. At the time of the June 10, 2013 Inspection, numerous pieces of equipment, including valves, open ended valves and lines, and connectors, attached to Facility Hazardous Waste Storage Tank # 1 and #2 piping were subject to the requirements of Subpart BB, but were not marked or labeled.

59. On June 10, 2013, Respondent violated Part IV, Section R.1, of the Facility RCRA Permit, which incorporates by reference the requirements of 40 C.F.R. Part 264, Subpart BB, by failing to mark pieces of equipment (i.e., valves, open ended valves and lines, and connectors) associated with Facility Hazardous Waste Storage Tank # 1 and #2 in a manner such that they could be distinguished readily from other pieces of equipment, pursuant to the applicable Subpart BB requirements of 40 C.F.R. § 264.1050(d).

COUNT IV
(Failure to Plug Open-Ended Valves)

60. The allegations of Paragraphs 1 through 59, above, are incorporated herein by reference as though fully set forth at length.

61. Part IV, Section R.1, of the Facility's RCRA Permit incorporates the air emission standards provisions of 40 C.F.R. § 264.200 and its requirement to manage all hazardous waste placed in a Facility tank in accordance with the applicable requirements of subparts AA, BB, and CC of 40 C.F.R. Part 264.

62. The Subpart BB provisions of 40 C.F.R. § 264.1056(a) require that: "(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve [;] and (2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line."

63. At the time of the June 10, 2013 Inspection, at least 12 open-ended valves and lines associated with Facility Hazardous Waste Storage Tank # 1 and #2 and subject to Part IV, Section R.1, RCRA Permit requirements were not equipped with a cap, blind flange, plug, or a second valve that could seal the open end of each of those valves and lines at all times other than during operations requiring hazardous waste stream flow through each such open-ended valve and line.

64. On June 10, 2013, Respondent violated the requirements of Part IV, Section R.1, of the Facility's RCRA Permit, which incorporates by reference 40 C.F.R. § 264.1056(a)(1) and (2), by failing to equip each open-ended valve and line subject to 40 C.F.R. Part 264, Subpart BB, requirements with a cap, blind flange, plug or a second valve that could seal the open end of each of those valves and lines at all times other than during operations requiring hazardous waste stream flow through each such open-ended valve and line.

COUNT V
(Failure to Update Financial Assurance Annually)

65. The allegations of Paragraphs 1 through 64, above, are incorporated herein by reference as though fully set forth at length.

66. Part II, Section J.1, of the Facility RCRA Permit provides that "[t]he Permittee shall adjust the closure cost estimate for inflation within 30 days after each anniversary of the date on which the first cost estimate was made as required by 40 CFR 264.144(b)."

67. Part I, Section G.5, of the Facility RCRA Permit provides that "[t]he Permittee shall maintain at the facility, until closure is completed and certified by an independent registered professional engineer, the following documents and amendments, revisions and modifications to these documents: . . . Annually-adjusted cost estimate(s) for facility closure required by 40 CFR 264.142 and 264.144 and this permit."

68. 40 C.F.R. § 264.142(b) requires that "[d]uring the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the date of the establishment of the financial assurance instrument(s) used to comply with § 264.143."

69. 40 C.F.R. § 264.143 requires the owner or operator of a hazardous waste facility to establish financial assurance for the closure of the facility.

70. In a Notice of Violation, dated November 13, 2008 (Docket Number R3-09-NOV-RCRA-03), EPA previously provided Respondent with notice of its failure to annually update its closure cost estimate for the Facility.

71. Respondent failed to update its Facility closure cost estimate for inflation in the years 2010 and 2011.

72. Respondent violated the requirements of Part II, Section J.1 and Part I, Section G.5, of the Facility RCRA Permit, which incorporate by reference 40 C.F.R. § 264.142(b), by failing to update its closure cost estimate for inflation in the years 2010 and 2011, and by failing to maintain the updated closure cost estimates for these years at the Facility.

IV. CIVIL PENALTIES

73. Respondent agrees to pay a civil penalty in the amount of **FORTY FIVE THOUSAND DOLLARS ($45,000.00)**, in full and final settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations and facts alleged and set forth in Section III ("EPA Findings of Fact and Conclusions of Law") of this Consent Agreement. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

74. The civil penalty settlement amount set forth in Paragraph 73, immediately above, was determined after consideration of the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g). Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, and the November 16, 2009 Memorandum by EPA Waste and Chemical Enforcement Division Director Rosemarie A. Kelley, entitled *Adjusted Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule* ("Kelley Memorandum"). The settlement in this proceeding is consistent with the provisions and objectives of Section 3008 of RCRA, and its implementing regulations.

75. The civil penalty of **FORTY FIVE THOUSAND DOLLARS ($45,000.00)** set forth in Paragraph 73, above, may be paid in three (3) installments with interest at the rate of one per cent (1%) per annum on the outstanding principal balance in accordance with the following schedule:

a. 1st Payment: The first payment, in the amount of **$15,000** (consisting of a principal payment of $15,000 and an interest payment of $0.00), shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent;

b. 2nd Payment: The second payment, in the amount of **$15,050.83** (consisting of a principal payment of $15,000 and an interest payment of $50.83), shall be paid within sixty (60) days of the date on which this CAFO is mailed or hand-delivered to Respondent; and

c. 3rd Payment: The third payment, in the amount of **$15,012.92** (consisting of a principal payment of $15,000 and an interest payment of $12.92), shall be paid within ninety (90) days of the date on which this CAFO is mailed or hand-delivered to Respondent.

76. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 75, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraphs 78 through 82 below, in the event of any such failure or default.

77. Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

78. Payment of the civil penalty set forth in Paragraph 73, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 79 through 82, below, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this Consent Agreement, *i.e.*, RCRA-03-2015-0171;

b. All checks shall be made payable to "**United States Treasury**;"

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Customer service contact: 513-487-2091

d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

US Treasury Contact Information
Joseph Schmid: 202-874-7026
Remittance Express (REX): 1-866-234-5681

h. On-Line Payment Option: WWW.PAY.GOV/paygov/

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www2.epa.gov/financial/makepayment

or by contacting Craig Steffen at 513-487-2091

j. At the time of each payment, Respondent shall send a notice of such payment, including a copy of the check or electronic fund transfer, as applicable, to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029;

and

Natalie Katz, Sr. Assistant Regional Counsel (3RC30)
Eric Greenwood, Enforcement Officer (3LC70)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

79. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

80. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

81. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

82. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

83. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

V. OPERATIONAL CHANGES

84. By its signature below, Respondent hereby certifies that it has made the following permanent changes to its operating procedures.

85. Respondent has changed its universal waste labelling system at the Facility so that it labels or marks each universal waste battery that it handles, or each container or tank in which the batteries are contained, with the words "Waste Battery (ies)".

86. Respondent has changed its universal waste labelling system so that it labels or marks each universal waste lamp that it handles, or each container or package in which such lamps are contained, with the words "Waste Lamp(s)".

87. Respondent has marked each piece of Facility equipment subject to 40 C.F.R. Part 264, Subpart BB, requirements with tags and in such a manner that each piece of equipment can be readily distinguished from other pieces of equipment.

88. Respondent has equipped 12 open-ended valves and lines with a cap or a double valve and in accordance with applicable 40 C.F.R. § 264.1056(a) requirements.

89. Respondent has obtained a revised detailed written estimate, in current dollars, of the cost of closing the Facility, in accordance with the Facility RCRA Permit and 40 C.F.R. § 264.142 requirements ("Closure Cost Estimate"). The revised Closure Cost Estimate was prepared, certified and sealed by a registered professional engineer associated with RT Environmental Services of King of Prussia, Pennsylvania, and is dated August 12, 2015.

90. On August 13, 2015, Respondent submitted the revised Closure Cost Estimate, identified in Paragraph 89, to PADEP for approval at the following address, in accordance with the Facility RCRA Permit and 40 C.F.R. § 264.142 requirements, with copies to Natalie Katz and Eric Greenwood of EPA at the address provided in Paragraph 78.

John Oren, P.E., Technical Services Manager
PA Department of Environmental Protection
Southcentral Regional Office
Waste Management Program
909 Elmerton Avenue
Harrisburg, PA 17110

91. The parties anticipate that PADEP will review the revised Closure Cost Estimate and may notify the Respondent, through written correspondence, of any deficiency(ies) in the submission. In the event that EPA or PADEP notifies the Respondent of any deficiency(ies) in any such required submission(s), Respondent shall, within 7 days of its receipt of any such notification, modify the deficient submission(s) to remedy the identified deficiency(ies), therein providing any additional information deemed necessary, and re-submit such modified required submission(s) to EPA and PADEP.

92. Immediately upon receiving PADEP's approval of the revised Closure Cost Estimate, Respondent shall maintain it at the Facility, in accordance with the Facility RCRA Permit and 40 C.F.R. § 264.142(d) requirements.

93. Within 14 days after receipt of PADEP's approval of its revised Closure Cost Estimate, Respondent shall: (a) revise its financial assurance for closure of the Facility, as needed, in accordance with the Facility RCRA Permit and 40 C.F.R. § 264.143 requirements; and (b) submit the revised financial assurance for closure to PADEP at the following addresses, with copies to Natalie Katz and Eric Greenwood of EPA at the address provided in Paragraph 78.

Tammy Jefferson, Administrative Assistant
PA Department of Environmental Protection
Bureau of Office Services
Division of Contracts, Procurement and Bonding
Harrisburg, PA 17105-8473

VI. CERTIFICATIONS

94. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent is in compliance with all relevant provisions of the current, authorized revised PaHWR and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, for which violations are alleged in this Consent Agreement.

VII. OTHER APPLICABLE LAWS

95. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VIII. RESERVATION OF RIGHTS

96. This CAFO resolves only EPA's claims for civil penalties for the specific violations and facts which are alleged in this Consent Agreement. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

IX. FULL AND FINAL SATISFACTION

97. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for the violations alleged in this Consent Agreement.

X. PARTIES BOUND

98. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

XI. EFFECTIVE DATE

99. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

XII. ENTIRE AGREEMENT

100. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent: Cycle Chem, Inc.

Date: 8/13/15 By: _____
Michael Persico
President

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

Date: 8/14/15 By: _____
Natalie L. Katz
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact and Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 8.17.15 By: _____
John A. Armstead, Director
Land and Chemicals Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the matter of:	)	
	)	
Cycle Chem, Inc.	)	**Docket No. RCRA-03-2015-0171**
550 Industrial Drive	)	
Lewisberry, PA 17339	)	
	)	
RESPONDENT.	)	**Proceeding Under Section**
	)	**3008(a) and (g) of the**
Cycle Chem, Inc.	)	**Resource Conservation and**
550 Industrial Drive	)	**Recovery Act, as amended,**
Lewisberry, PA 17339	)	**42 U.S.C. § 6928(a) and (g)**
	)	
FACILITY.	)	

FINAL ORDER

Complainant, the Director, Land and Chemical Division, U.S. Environmental Protection Agency, Region III, and Respondent, Cycle Chem, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. § 22.13(b) and 22.28(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), and the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g) ("RCRA"), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty payment of **FORTY FIVE THOUSAND DOLLARS ($45,000.00)**, in accordance with the payment provisions set forth in of the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk.

8-27-15
Date:

Heather Gray
Regional Judicial Officer
U.S. EPA, Region III

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of	:	
	:	
Cycle Chem, Inc.	:	**Docket No. RCRA-03-2015-0171**
550 Industrial Drive	:	
Lewisberry, PA 17339	:	
	:	
RESPONDENT	:	**Proceeding under Section 3008(a) and**
	:	**(g) of the Resource Conservation and**
	:	**Recovery Act, as amended, 42 U.S.C.**
550 Industrial Drive	:	**§ 6928(a) and (g)**
Lewisberry, PA 17339	:	
	:	
FACILITY	:	

CERTIFICATE OF SERVICE

I hereby certify that I filed and served copies of the attached Consent Agreement and Final Order, as follows:

Original and One Copy filed: (via hand delivery)

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

RECEIVED
2015 AUG 27 AM 10:55
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

Copies to:
(via Overnight Mail)

Mark Kelly, Esq.
122 E. 42nd Street, Suite 4400
New York, NY 10168

Michael Persico, President
John Fetterman
Cycle Chem, Inc.
550 Industrial Drive
Lewisberry, PA 17339

Date: 8/27/15

Natalie L. Katz
Senior Assistant Regional Counsel
EPA, Region III