

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY REGION II

_____	X	
In the Matter of	:	U.S. EPA Docket No.
	:	RCRA-02-2011-7101
Cycle Chem, Inc.	:	
201 S. First Street	:	ANSWER WITH REQUEST
Elizabeth, New Jersey 07206	:	FOR HEARING
	:	
	:	
Respondent.	:	
_____	X	

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION II
2011 AUG 15 P 12:32
REG. CLERK
HEARING

Respondent, above-named, by its attorney Mark C. Kelly, Esq., as and for its Answer to the Complaint, hereby states upon information and belief as follows:

1. Admits the allegations in paragraphs 2-14, 16,17, 19 and 37 of the Complaint.
2. Denies knowledge sufficient to form a belief as to the truth of the allegations in paragraphs 1, 2, 23-30, 31, 34, and 36 of the Complaint.
3. Denies the allegations of paragraphs 48, 50-54, 56-58 and 60-62 of the Complaint.

4. Denies knowledge sufficient to admit or deny allegations concerning the motivation of NJDEP, but admits the balance of paragraph 15 of the Complaint.

5. Pleads that paragraph 18 contains a legal conclusion, as to which no response is proper.

6. As to the allegations of paragraphs 20 of the Complaint, admits that it generates lab waste, but denies that it holds generator status for all purposes as to transshipped waste.

7. As to the allegations of paragraph 22 of the Complaint, admits that NJDEP began an inspection in April 2003, denies that NJDEP made the statement in the words alleged; admits that the topic of the classification of light bulbs crushed by others was discussed in the course of the inspection, avers that the status of such materials was unclear to the NJDEP inspector, admits that NJDEP suggested that NJDEP would prefer that bulbs crushed by others be treated as hazardous waste, whether such waste is in fact “hazardous” or not due to its status as waste or a recyclable.

8. Avers that each document referred to in paragraphs 35 and 38-42 of the Complaint speaks for itself and avers that the statements appearing as quotation are out of context.

9. Repeats and realleges the forgoing seven answering paragraphs to the extent the paragraphs of the Complaint mentioned therein are therefore repeated and realleged in the Complaint.

10. As and for a defense, alleges that no regulation provides that 'crushed lamps' are not universal waste. The definition at 40 CFR §273.9 of universal waste lamps does not exclude 'crushed lamps' from the definition of lamps covered under the universal waste regulations, and avers that lamps processed in part for recycling are universal waste.

11. EPA has admitted that 'crushed lamps' can be handled as universal waste as opposed to hazardous waste in a published answer to the question: 'Can broken mercury containing lamps be managed as universal waste pursuant to Part 273; answer: 'Broken lamps may be managed as a universal waste but are typically more expensive to recycle or dispose as compared to intact lamps. State regulation can be more stringent and may not allow management of broken lamps as universal waste.'

12. Universal wastes being recycled can be managed as either universal wastes or hazardous wastes while universal waste being disposed of must be managed as hazardous wastes.

13. Cycle Chem did not crush any of the lamps referenced in the Complaint and all 'crushed lamps' referred in the Complaint were recycled.

14. Certain states specifically allow management of crushed lamps as universal waste.

15. Transport and receipt of crushed lamps for recycling is not the transport and receipt of hazardous waste under Federal law.

16. Once notified on April 2008 of New Jersey's interpretation, respecting treatment of crushed lamps as a hazardous waste, Cycle Chem ceased handling crushed lamps being recycled as a universal waste.

17. In the alternative, the Potential for Harm should be minor not major. Crushed lamps are no different than intact lamps other than in the size of the pieces. Crushed lamps are shipped to lamp recyclers for the purposes of recycling along with intact lamps. The potential for harm is no different than intact lamp management.

18. The Extent of Deviation should be minor not major. Cycle Chem managed crushed lamps as universal waste in good faith, after due- and in no way constituted an admission that lamps crushed in the recycling process which are to be further processed for recycling constitute a hazardous waste.

19. The inclusion of a multi-count penalty is inappropriate. As detailed above all the items listed in Counts 1–4 result from Cycle Chem’s honest and researched belief that recycled ‘crushed lamps’ can be managed as universal waste. As such a multi-count penalty for the exact same issue is inappropriate. There should be but one violation as no economic benefit was derived from the multiple shipments, as admitted at page 20 of the documentation accompanying the Complaint.

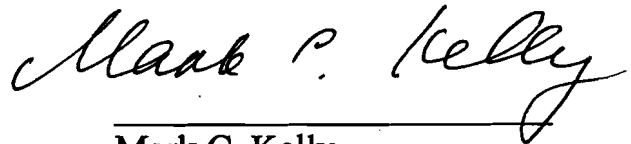
Compliance Order

20. Alleges that corrective action regarding Counts 1 – 4 have already been addressed in Cycle Chem’s December 2008 Response referred to in the Complaint.

**REQUSET FOR INFORMAL SETTLEMENT CONFERENCE AND
HEARING**

Respondent hereby requests an informal settlement conference and requests
an evidentiary hearing on all matters placed in issue by the pleadings.

Dated: August 11, 2011



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To:
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