In the Matter of:

Fluorescent Recycling, Inc.
7260 Neville Avenue
Cleveland, Ohio 44102

Respondent

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Fluorescent Recycling, Inc. (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) § 3734.13.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facility shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734, and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is a “person” as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).

2. Respondent is the owner and operator of Fluorescent Recycling, Inc., a “universal waste lamp” (as described in OAC rule 3745-273-09(E)) handler facility located at 7260 Neville Avenue, Cleveland, Cuyahoga County, Ohio 44102 (Facility).

3. On September 11, 2012, Respondent notified Ohio EPA of its activities as a “large quantity handler of universal waste” (accumulates greater than 5,000 kilograms) as described in OAC rule 3745-273-09(F), collecting spent universal waste lamps from businesses and individuals. As a large quantity handler of
universal waste Respondent is subject to OAC rules 3745-273-30 through 3745-273-40, including but not limited to, managing the lamps in a manner to prevent breakage by storing in closed, compatible containers, immediately clean up and contain releases of broken lamps, demonstrate the length of time universal waste lamps have been stored at the Facility which does not exceed one year, and appropriately label containers holding the universal waste lamps.

4. At the Facility, Respondent generates “hazardous waste” as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. The hazardous wastes generated by Respondent at the Facility include broken fluorescent lamps (D009 – toxicity for mercury) as described in OAC rule 3745-51-24. Respondent is also storing universal waste batteries and cathode ray tube (CRT) televisions which can be hazardous for metals including but not limited to, lead (D008) as described in OAC rule 3745-51-24.

5. On January 29, 2016, Ohio EPA conducted a complaint investigation and compliance evaluation inspection at the Facility. Ohio EPA observed approximately 250, 55-gallon drums of broken spent fluorescent lamps including several open containers of broken lamps, several pallets of CRT televisions, a small amount of spent batteries, and an estimated two million to three million spent fluorescent lamps, many of which are uncontainerized and lying on the floor. During the inspection, an employee was cleaning up broken lamps with a broom. The building does not have heat or sprinklers and the lighting is limited. Respondent was not managing the lamps in a manner to prevent breakage and failed to immediately clean up and contain releases of broken lamps. Furthermore, Respondent had no documentation showing the lamps had been stored at the Facility for less than one year, and did not label containers holding the universal waste lamps.

6. Because Respondent was not complying with the rules for a large quantity handler of universal waste lamps as described in Finding No. 5. of these Orders, Respondent is subject to the requirements for generators of hazardous waste and was evaluated as such. Therefore, as a result of the inspection, Ohio EPA determined that Respondent, inter alia:

a. Established and operated a hazardous waste storage facility without a permit, in violation of ORC § 3734.02(E) and (F). Specifically, the large amounts of hazardous waste spent fluorescent lamps and 55-gallon drums of hazardous waste broken lamps being stored at the Facility were received from off-site generators, thereby establishing the Facility as a hazardous waste storage facility;
b. Failed to provide adequate security at the Facility to prevent unauthorized access, in violation of OAC rule 3745-54-14; and

c. Failed to operate the Facility in a manner to minimize the release of hazardous waste constituents which could threaten human health or the environment.

7. By letter dated February 16, 2016, Ohio EPA notified Respondent of the violations referenced in Finding No. 6. of these Orders.

8. By letter dated March 1, 2016, Respondent provided notice of building security to prevent unauthorized access and electronic records of all shipments of lamps from the Facility since 2011.

9. By letter dated March 2, 2016, Ohio EPA notified Respondent again of the need to evaluate the wastes at the Facility in order to resolve the violation of OAC rule 3745-52-11.

10. On March 28, 2016, Ohio EPA received documentation that Respondent had shipped 24 pallets of hazardous waste spent fluorescent lamps on February 1, 2016, and 18 pallets of hazardous waste spent fluorescent lamps on February 29, 2016, to be recycled.

11. On May 11, 2016, Ohio EPA received documentation that Respondent shipped an additional 21 pallets of hazardous waste spent fluorescent lamps for recycling on April 14, 2016.

12. On July 21, 2016, Ohio EPA received documentation that Respondent shipped additional assorted spent hazardous waste lamps and spent batteries to be recycled on June 13, 2016.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Within 30 days after the effective date of these Orders, Respondent submit documentation to Ohio EPA demonstrating that all hazardous waste lamps, batteries and CRTs have been removed from the Facility.

2. Within 30 days after the effective date of these Orders, Respondent shall comply with the following:
a) Respondent shall submit to Ohio EPA for review and approval a Closure Plan for the hazardous waste storage Facility as described in Finding No. 6.a. of these Orders. A copy of the Closure Plan shall be submitted in accordance with Section X. of these Orders and an additional copy submitted to Ohio EPA, Division of Environmental Response and Revitalization, Manager, Engineering Section, P.O. Box 1049, Columbus, Ohio 43216-1049;

b) This Closure Plan shall comply with the administrative requirements of OAC Chapters 3745-65 and 3745-66 and the substantive requirements of OAC Chapters 3745-54 and 3745-55, including but not limited to, the groundwater protection program in accordance with OAC rules 3745-54-90 through 54-100.

c) The Closure Plan is subject to approval by Ohio EPA. If Ohio EPA does not approve the Closure Plan and provides Respondent with a written statement of deficiencies, Respondent shall submit a revised Closure Plan for approval addressing the deficiencies within 30 days of receiving such written statement. If Ohio EPA modifies the Closure Plan, the modified Closure Plan becomes the approved plan. Upon Ohio EPA’s written approval of the Closure Plan, Respondent shall implement the approved Closure Plan in the manner and pursuant to the time frames set forth in the approved Closure Plan and OAC rules 3745-55-13/3745-66-13;

d) Within 30 days after approval of the Closure Plan pursuant to Order No. 2.c., Respondent shall submit a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for the areas of the Facility subject to closure, in accordance with OAC rules 3745-55-42 through 3745-55-47; and

e) Within 60 days after completion of closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rules 3745-55-15. Ohio EPA's acceptance of the closure certification shall abate the violations referenced in Finding No. 6. of these Orders.

VI. TERMINATION

Respondent’s obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the chief of Ohio EPA’s Division of Environmental Response and Revitalization acknowledges, in writing, the termination of
these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by Respondent.

VII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

VIII. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Environmental Response and Revitalization
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Hazardous Waste Program Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Manager, Hazardous Waste Compliance Assurance Section
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Environmental Response and Revitalization
P.O. Box 1049
Columbus, Ohio 43216-1049
IX. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3734, or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

X. APPEAL RIGHTS

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC § 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of $70.00, made payable to "Treasurer, State of Ohio," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:
XI. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Craig W. Butler
Director