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BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:

**Norquay Technology Incorporated
P. O. Box 468
Chester, Pennsylvania 19016**

Respondent

**800 West Front Street
Chester, Pennsylvania 19013**

Facility

Docket No. RCRA-03-2015-0014

CONSENT AGREEMENT

**Proceeding under RCRA Section
3008(a)(1) and (g), 42 U.S.C.
§ 6928(a)(1) and (g)**

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 Norquay Technology Incorporated ("Respondent"), pursuant to Section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(1) 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.
2. The Consolidated Rules of Practice, 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 Norquay Technology Incorporated.

3. This CAFO addresses Respondent's violations of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939f, various regulations promulgated thereunder as set forth at 40 C.F.R. Parts 260-266, 268, and 270-73, and the authorized Pennsylvania Hazardous Waste Management Regulations, 25 Pa. Code Sections 260a - 266a, 266b, and 268a – 273a ("PaHWMR") that occurred at the Respondent's facility located at 800 West Front Street, Chester, Pennsylvania 19013 ("Facility").
4. 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. §§ 6921-6939f. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Management Regulations ("PaHWMR") were authorized by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The PaHWMR subsequently were revised, and thereafter re-authorized by EPA, on September 26, 2000, January 20, 2004, and April 29, 2009. Such authorized revised PaHWMR requirements and provisions became effective on November 27, 2000, March 22, 2004, and June 29, 2009, respectively. The PaHWMR 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 PaHWMR authorization, June 28, 2001 for the March 22, 2004 PaHWMR authorization, and October 12, 2005 for the April 29, 2009 PaHWMR authorization. The provisions of Pennsylvania's current authorized PaHWMR, 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 Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
5. Upon making a determination that any person has violated or is in violation of any requirement of RCRA Subtitle C and satisfying the notification requirements of RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2), Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), authorizes the Administrator of EPA to issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both.
6. Respondent is, hereby, notified of EPA's determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, the regulations promulgated thereunder at 40 C.F.R. Parts 260-266, 268, and 270-73, and the PaHWMR.
7. EPA has given the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PADEP"), prior notice of the commencement of this civil proceeding in accordance with RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2).

II. GENERAL PROVISIONS

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

9. Except as provided in Paragraph 8, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.
10. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
11. For purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter, consents to the issuance of this CAFO without adjudication, and waives its right to appeal the accompanying Final Order.
12. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
13. Respondent and Complainant shall bear their own costs and attorney's fees in connection with this proceeding.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges the following findings of fact and conclusions of law.
15. Respondent is a Pennsylvania corporation doing business in, and with offices and an operating facility located within, the Commonwealth of Pennsylvania, and is a "person" within the meaning of RCRA Section 1004(15), 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and 25 Pa. Code Section 260a.10.
16. Respondent is and has been, at all times relevant to this CAFO, the owner and operator of a facility, located at 800 West Front Street in Chester, Pennsylvania (the "Facility"), where the Respondent manufactures specialty chemicals.
17. On July 30, 2013, a duly authorized representative of EPA conducted a compliance evaluation inspection ("CEI") of the Facility to assess the Respondent's compliance with the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939f, the federal regulations promulgated thereunder, and the PaHWMR requirements at the Facility.
18. On November 8, 2013, EPA issued a formal information request letter to Respondent, pursuant to RCRA Section 3007(a), 42 U.S.C. § 6927(a). Respondent responded to this formal information request letter on December 11, 2013.
19. On March 25, 2014, EPA issued a request to show cause letter to Respondent advising it of EPA's findings in regards to potential violations of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939f, the federal regulations promulgated thereunder, and the PaHWMR requirements at the Facility, and offering the Respondent an opportunity to provide such additional information as it believed the EPA should review and consider before reaching any final conclusions as to the Respondent's compliance at the Facility. Respondent availed

itself of this opportunity and provided additional information in response this request to show cause letter.

COUNT I

(Operating a Hazardous Waste Storage Facility Without a Permit)

20. The allegations of Paragraphs 1 through 19 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.
21. RCRA Section 3005(a) and (e), 42 U.S.C. Section 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. Part 270, provide, in pertinent part, that a person owning and/or operating a facility used for the treatment, storage or disposal of hazardous waste is required to comply with the permitting requirements established by EPA or by a state with an authorized hazardous waste management program, or have interim status for such facility.
22. At all times relevant to this Consent Agreement, Respondent generated at the Facility “hazardous waste” (i.e. paint waste and solvents), as that term is defined by RCRA Section 1004(5), 42 U.S.C. § 6903(5), and 40 C.F.R. §§ 260.10 and 261.3, as incorporated by reference by 25 Pa. Code Sections 260a.1 and 261a.1. See also 25 Pa Code Section 261a.3.
23. The Facility was assigned the EPA Identification Number PAD982363889.
24. At all times relevant to this Consent Agreement, Respondent was a “generator” of “solid waste” and “hazardous waste” at the Facility as those terms are defined by 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code Section 260a.1.
25. At all times relevant to this Consent Agreement, hazardous waste was in “storage” in containers at Respondent’s “facility” as those terms are defined by RCRA Section 1004(33), 42 U.S.C. § 6903(33), and 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code Section 260a.1, and 25 Pa. Code Section 260a.10.
26. At all times relevant to this Consent Agreement, Respondent was the “owner” and “operator” of a hazardous waste storage facility as those terms are defined by 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code Section 260a.1.
27. A “container” is defined to mean “any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.” 40 C.F.R. § 260.10, as incorporated by reference by 25 Pa. Code Section 260a.1.
28. At all times relevant to this Consent Agreement, Respondent never possessed a permit or interim status authorizing the treatment, storage or disposal of hazardous waste at the Facility.
29. 40 C.F.R. § 262.34(a), which is incorporated by reference by 25 Pa. Code § 262a.10, provides, in pertinent part, that a generator of hazardous waste may accumulate hazardous

waste on-site for 90 days or less without a permit or interim status, provided the generator complies with a number of conditions concerning the management of the hazardous waste, including, but not limited to:

- A. Each container holding hazardous waste must remain closed during storage, except when it is necessary to add or remove waste, 40 C.F.R. § 262.34(a)(1)(i), incorporating 40 C.F.R. § 265.173(a);
 - B. When a container holding a hazardous waste is not in good condition, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, 40 C.F.R. § 262.34(a)(1)(i), incorporating 40 C.F.R. § 265.171;
 - C. The date upon which each period of accumulation of hazardous waste began in that container must be clearly marked and visible for inspection, 40 C.F.R. § 262.34(a)(2);
 - D. While being accumulated on-site, each container must be labeled or marked clearly with the words "Hazardous Waste," 40 C.F.R. § 262.34(a)(3);
 - E. Facility personnel are required to undergo initial hazardous waste training with annual refresher courses, 40 C.F.R. § 262.34(a)(4), incorporating 40 C.F.R. § 265.16(a), (b) and (c);
 - F. The Facility must maintain documentation of the job titles and description of each position related to hazardous waste management, the names of employees filling such jobs, a description of the type and amount of introductory and continuing training to be provided to such personnel, and records documenting the training taken by such personnel, 40 C.F.R. § 262.34(a)(4), incorporating 40 C.F.R. § 265.16(d); and
 - G. The contingency plan must list the names, addresses, and phone numbers of all persons qualified to act as emergency coordinators, 40 C.F.R. § 262.34(a)(4), incorporating 40 C.F.R. § 265.52(d).
30. 40 C.F.R. § 262.34(c), which is incorporated by reference by 25 Pa. Code § 262a.10, provides, in pertinent part, that a generator may accumulate as much as 55 gallons of hazardous waste 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 ("satellite accumulation area"); provided the generator complies with a number of conditions concerning the management of the hazardous waste, including, but not limited to:
- A. each container holding hazardous waste in a satellite accumulation area must remain closed during storage, except when it is necessary to add or remove waste, 40 C.F.R. § 262.34(c)(1)(i), incorporating 40 C.F.R. § 265.173(a); and

- B. while being stored in a satellite accumulation area, each container must be labeled with the words "Hazardous Waste" or with other words that identify the contents of the containers, 40 C.F.R. § 262.34(c)(1)(ii);
31. At the time of the July 30, 2013 CEI, Respondent failed to keep containers holding hazardous waste closed during storage, specifically the storage of hazardous waste in open containers in its warehouse.
32. At the time of the July 30, 2013 CEI, Respondent failed to mark each container of hazardous waste with the date upon which each period of accumulation began, including:
- A. the storage of two 55-gallon drums of hazardous mixed solvent waste (hazardous waste codes D001/F003/F005) in its utility room;
 - B. the storage of 16 drums of hazardous mixed solvent waste comprised of flammable liquids (hazardous waste codes D001/F003/F005) and flammable solid waste (hazardous waste codes F003/F005) in its warehouse; and
 - C. the storage of several drums of organic solvent filtrates and organic solvents (hazardous waste codes D001/F003/F005) in its warehouse.
33. At the time of the July 30, 2013 CEI, Respondent failed to label each container of hazardous waste with the word "Hazardous Waste," including:
- A. the storage of two 55-gallon drums of distilled solvent with the material from the previous batch in the reactor (hazardous waste codes D001/F003/F005) in its production room;
 - B. the storage of 7 drums of hazardous mixed solvent waste comprised of flammable liquids (hazardous waste codes D001/F003/F005) and flammable solid waste (hazardous waste codes F003/F005) in its warehouse; and
 - C. the storage of several drums of organic solvent filtrates and organic solvents (hazardous waste codes D001/F003/F005) in its warehouse.
34. At the time of the July 30, 2013 CEI, Respondent failed to store hazardous waste in containers at or near the point of generation, including:
- A. the storage of hazardous mixed solvent waste (hazardous waste codes D001/F003/F005) outside of the door of the R&D Lab when the waste is generated and stored in a 5-gallon container in a spill tray on the floor inside its research and development laboratory; and
 - B. the storage of a methanol/water hazardous waste (hazardous waste codes D001/F003/F005) which is generated by the HPLC machines in the quality control laboratory and stored in a 4-liter bottle under a chemical hood in the

quality control laboratory, then emptied once a week into waste drums in its utility room.

35. At the time of the July 30, 2013 CEI, Respondent failed to keep containers holding hazardous waste in a satellite accumulation area closed during storage, including:
- A. the storage of used gloves and other clean-up material in a metal can labeled as containing hazardous waste with the lid ajar in the doorway of its production room;
 - B. the storage of an aerosol can with a quick drying spray adhesive supplied from Uline (hazardous waste codes F003/F005) in an open, unlabeled 5-gallon bucket in its maintenance room; and
 - C. the storage of a methanol/water hazardous waste (hazardous waste codes D001/F003/F005) in a 4-liter bottle containing an open funnel under a chemical hood in its quality control laboratory.
36. At the time of the July 30, 2013 CEI, Respondent failed to label each container of hazardous waste in a satellite accumulation area with the words "Hazardous Waste" or with other words that identify the contents of the containers, specifically the storage of an aerosol can with a quick drying spray adhesive supplied from Uline (hazardous waste codes F003/F005) in an open, unlabeled 5-gallon bucket in its maintenance room.
37. At the time of the July 30, 2013 CEI, EPA determined that Respondent failed to conduct RCRA initial and annual refresher training, as set forth below, including:
- A. failing to provide an employee with RCRA initial training from at least October 1, 2012 to at least December 3, 2013;
 - B. failing to provide two employees with RCRA annual refresher training in 2010;
 - C. failing to provide three employees with RCRA annual refresher training in 2011; and
 - D. failing to provide three employees with RCRA annual refresher training in 2012.
38. At the time of the July 30, 2013 CEI, Respondent failed to maintain documentation of the job titles and description of each position related to hazardous waste management; the names of employees filling such jobs; a description of the type and amount of introductory and continuing training to be provided to such personnel; and records documenting the training taken by such personnel, including:
- A. failing to maintain a list of the documented job title and written job description for each position related to hazardous waste management;

- B. failing to maintain the name of each employee assigned to each job required to receive training;
 - C. failing to maintain a written description of the type and amount of both introductory and continuing training that will be given to each person assigned to a position related to hazardous waste management; and
 - D. failing to maintain documentation of an employee's attendance of refresher training in 2011 and 2012.
39. By virtue of these actions or failures to act, Respondent failed to satisfy the exemption conditions set forth in 25 Pa. Code § 262a.10, incorporating 40 C.F.R. § 262.34(a) and (c). Therefore, from at least August 6, 2010 to at least December 3, 2013, Respondent owned and/or operated a hazardous waste storage facility without a permit or interim status in violation of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1.
40. Respondent violated RCRA Section 3005(a) and (e), 42 U.S.C. Section 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), by owning and operating a hazardous waste storage facility without a permit or interim status.

COUNT II

(Failure to Make Hazardous Waste Determinations)

41. The allegations of Paragraphs 1 through 40 of this Consent Agreement are incorporated by reference as though fully set forth at length.
42. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, and 25 Pa. Code § 262a.11, provide that a person who generates a solid waste must determine whether that waste is a hazardous waste using the method set forth in 40 C.F.R. § 262.11 and 40 C.F.R. § 261.
43. Prior to the July 30, 2013 CEI, Respondent generated laboratory chemicals in small quantities from research and development which it stored in several small containers on a rolling wheeled cart. These laboratory chemicals were "solid wastes" as defined by 40 C.F.R. § 260.10, which is incorporated by reference by 25 Pa. Code Section 260a.1. At the time of the July 30, 2013 CEI, Respondent had not made hazardous waste determinations on the chemicals in these containers.
44. Prior to the July 30, 2013 CEI, Respondent generated and stored organic solvent filtrates and organic solvents used to clean equipment in several containers of various size and conditions next to the primary hazardous waste area in its warehouse. These organic solvent filtrates and organic solvents were "solid wastes" as defined by 40 C.F.R. § 260.10, which is incorporated by reference by 25 Pa. Code Section 260a.1. Respondent did not make hazardous waste determinations on these solid wastes until July 31, 2013,

when Respondent using sampling results identified the waste as D001, F003, and F005 characteristic hazardous wastes.

45. At the time of the July 30, 2013 CEI, Respondent violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, and 25 Pa. Code § 262a.11, by failing to make hazardous waste determinations for the solid wastes at the Facility identified in Paragraphs 43 and 44.
46. On July 30, 2013, Respondent violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, and 25 Pa. Code § 262a.11, by failing to make hazardous waste determinations for solid wastes Respondent generates at the Facility, namely the solid wastes identified in Paragraphs 43 and 44.

COUNT III
(Open Containers)

47. The allegations of Paragraphs 1 through 46 of this Consent Agreement are incorporated by reference as though fully set forth at length.
48. 40 C.F.R. § 264.173, as incorporated by reference by 25 Pa. Code Section 264a.1, provides that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
49. At the time of the July 30, 2013 CEI, Respondent stored hazardous waste, namely used gloves and other clean-up material, in a metal can labeled as containing "hazardous waste" with the lid ajar in the doorway of its production room.
50. At the time of the July 30, 2013 CEI, Respondent stored hazardous waste, namely a used aerosol can with a quick drying spray adhesive supplied from Uline (hazardous waste codes F003/F005), in an open 5-gallon bucket in its maintenance room.
51. At the time of the July 30, 2013 CEI, Respondent stored hazardous waste, namely a methanol/water hazardous waste (hazardous waste codes D001/F003/F005) generated by its HPLC machines, in a 4-liter bottle containing an open funnel in its quality control laboratory.
52. At the time of the July 30, 2013 CEI, Respondent had open containers of hazardous waste identified in Paragraphs 49, 50 and 51, above, at a time when it was not necessary to add or remove waste from the containers.
53. At the time of the July 30, 2013 CEI, Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.173, by maintaining open containers holding hazardous waste at the Facility at a time when it was not necessary to add or remove waste from the containers.

COUNT IV

(Failure to Maintain Hazardous Waste Training Records)

54. The allegations of Paragraphs 1 through 53 of this Consent Agreement are incorporated by reference as though fully set forth at length.
55. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(1)–(4), requires the owner and operator of a hazardous waste facility to maintain records which document (1) the job title for each position at the facility related to hazardous waste management and the name of the employee filling each job, (2) a written job description of each such position, (3) a written description of the type and amount of introductory and continuing training that will be given to each person filling such position, and (4) records that document the training and job experience given to and completed by facility personnel who perform hazardous waste management.
56. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(e), requires that training records on current employees be kept until closure of the facility and that training records on former employees be kept for at least three years from the date the former employee last worked at the facility.
57. At the time of the July 30, 2013 CEI, Respondent failed to maintain a list of the documented job title and written job description for each position related to hazardous waste management as required by 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(1)–(2).
58. At the time of the July 30, 2013 CEI, Respondent failed to maintain the name of each employee assigned to each job required to receive training as required by 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(1).
59. At the time of the July 30, 2013 CEI, Respondent failed to maintain a written description of the type and amount of both introductory and continuing training that will be given to each person assigned to a position related to hazardous waste management as required by 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(3).
60. At the time of the July 30, 2013 CEI, Respondent failed to maintain documentation of an employee's attendance of refresher training in 2011 and 2012 as required by 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(4).
61. At the time of the July 30, 2013 CEI, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(1)–(4), by failing to maintain a list of employees who require hazardous waste training, along with their job titles/descriptions, and a description of what type of RCRA training was necessary, provided and completed.

COUNT V

(Failure to Provide Hazardous Waste Training)

62. The allegations of Paragraphs 1 through 61 of this Consent Agreement are incorporated by reference as though fully set forth at length.
63. 40 C.F.R. § 264.16(a) - (c), which is incorporated by reference by 25 Pa. Code Section 264a.1, in pertinent part, requires that facility personnel must: (a) successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the hazardous waste requirements of 40 C.F.R. Part 264; (b) complete such program within six months after the date of employment or assignment to a facility; and (c) take part in an annual review of such initial training.
64. From at least October 1, 2012 to at least December 3, 2013, Respondent failed to provide an employee with initial classroom instruction or on-the-job training to teach him to perform his duties in a way that ensures the Facility's compliance with the hazardous waste requirements.
65. For the time period commencing on or about January 1, 2010 and continuing through on or about December 31, 2010, Respondent failed to provide an annual review to two employees of their initial training to ensure the facility's compliance with the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. Part 264.
66. For the time period commencing on or about January 1, 2011 and continuing through on or about December 31, 2011, Respondent failed to provide an annual review to three employees of their initial training to ensure the facility's compliance with the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. Part 264.
67. For the time period commencing on or about January 1, 2012 and continuing through on or about December 31, 2012, Respondent failed to provide an annual review to three employees of their initial training to ensure the facility's compliance with the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. Part 264.
68. For the time period commencing on or about January 1, 2010 and continuing through on or about December 3, 2013, Respondent violated 25 Pa. Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.16(a), (b) and (c), by failing to ensure that personnel of its Facility receive the required initial and annual hazardous waste personnel training review.

COUNT VI
(Failure to Maintain LDR Forms)

69. The allegations of Paragraphs 1 through 68 of this Consent Agreement are incorporated by reference as though fully set forth at length.
70. 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a)(1), requires that a generator of hazardous waste must determine if the waste has to be treated before it can be land disposed by determining if its hazardous waste meets the treatment standards set forth in 40 C.F.R. §§ 268.40, 268.45 or 268.49.
71. 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a)(2), requires that if the waste does not meet applicable treatment standards, or if the generator chooses not to make the determination of whether its waste must be treated, then with the initial shipment of waste to each TSD facility, the generator must send a one-time written notice (“LDR Form”) to each TSD receiving the waste and place a copy in the generator’s facility file.
72. 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7(a)(8), requires that hazardous waste generators must retain on-site at their facilities all notices, certifications and waste analysis data for at least three years from the date that the waste subject to this documentation was last sent to on-site or off-site treatment, storage or disposal.
73. At the time of the July 30, 2013 CEI, Respondent failed to maintain one-time LDR Forms for various spent non-halogenated solvents designated as F003 and F005 hazardous waste, which did not meet the treatment standards set forth in 40 C.F.R. §§268.40, 268.45 or 268.49, which Respondent sent to Clean Harbors in El Dorado, Arkansas on multiple occasions in 2012.
74. Therefore, on July 30, 2013, Respondent violated 25 Pa. Code § 268a.1, which incorporates by reference 40 C.F.R. § 268.7 (a)(1), (2) and (8), by failing to maintain at the Facility LDR Forms for the above listed wastes identified in Paragraph 73.

COUNT VII
(Failure to Store Universal Waste Lamps in Closed Containers)

75. The allegations of Paragraphs 1 through 74 of this Consent Agreement are incorporated by reference as though fully set forth at length.
76. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), requires, among other things, that a small quantity handler of universal waste, specifically, universal waste “lamps”, as defined by 40 C.F.R. § 273.9 which is incorporated by reference by 25 Pa. Code § 266b.1, contain such lamps in structurally-sound containers or packages that remain closed and lack evidence of leakage, spillage,

or damage that could cause leakage under reasonably foreseeable conditions.

77. At the time of the July 30, 2013 CEI, Respondent was a “small quantity handler of universal waste” as that term is defined at 40 C.F.R. § 273.9, which is incorporated by reference by 25 Pa. Code § 266b.1.
78. At the time of the July 30, 2013 CEI, Respondent had three loose universal waste lamps and four open boxes of universal waste lamps in its warehouse.
79. At the time of the July 30, 2013 CEI, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), for failing to store universal waste lamps at the Facility in containers that were closed.

COUNT VIII

(Failure to Label Containers of Universal Waste Lamps)

80. The allegations of Paragraphs 1 through 79 of this Consent Agreement are incorporated by reference as though fully set forth at length.
81. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), requires that 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).”
82. 25 Pa. Code § 266b.12 requires that each mercury-containing device, or a container in which the device is contained, be labeled with one of the following phrases: “universal waste mercury-containing device(s),” or “waste mercury-containing device(s)” or “used mercury-containing device(s).”
83. At the time of the July 30, 2013 CEI, Respondent had three unlabeled loose universal waste lamps and four unlabeled boxes of universal waste lamps in its warehouse.
84. At the time of the July 30, 2013 CEI, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), and 25 Pa. Code § 266b.12 by failing to clearly mark or label universal waste lamps or universal waste lamp containers with one of the phrases identified in Paragraphs 81 and 82.

IV. SETTLEMENT

85. In view of EPA’s Findings of Fact and Conclusions of Law, set forth above, Complainant concludes that the Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939f, the federal regulations promulgated thereunder, and the authorized PaHWMR.
86. In view of EPA’s Findings of Fact and Conclusions of Law, set forth above, Complainant further concludes that the Respondent is liable to the United States for a civil penalty pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g).

87. Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), authorize, for violations of any requirement of RCRA Subtitle C, EPA's regulations promulgated thereunder, or any regulation of a state hazardous waste program authorized by EPA, the assessment of a civil penalty of up to \$25,000 per violation, with each day of violation constituting a separate violation. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (73 Fed. Reg. 75340-46 (December 11, 2008)), violations of RCRA Subtitle C, EPA's regulations promulgated thereunder, or any regulation of a state hazardous waste program authorized by EPA are subject to an increased statutory maximum penalty of \$37,500 per violation, with each day of violation constituting a separate violation.
88. In settlement of the violations alleged against Respondent in EPA's Findings of Fact and Conclusions of Law Section of this Consent Agreement, and in consideration of each provision of this CAFO, Respondent consents to the assessment of a civil penalty in the amount of THIRTY-FOUR THOUSAND DOLLARS (\$34,000.00). Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by all parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk. 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 this fully executed CAFO is mailed or hand-delivered to Respondent.
89. The aforesaid settlement amount, set forth above, is appropriate for the violations identified in this CAFO and is based on consideration of a number of factors, including, but not limited to: the statutory factors (i.e., seriousness of the violations and any good faith efforts to comply with applicable requirements) set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3); and the application of these criteria to the particular facts and circumstances of this case with specific reference to EPA's *RCRA Civil Penalty Policy* (October 1990 and June 2003), and the November 16, 2009 memorandum by EPA Waste and Chemical Enforcement Division Director Rosemarie A. Kelley, entitled *Adjusted Penalty Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule*.
90. Respondent shall pay the civil penalty amount referenced above, plus any interest, administrative fees, and late payment penalties owed, 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 Docket Number of this action, *i.e.*, RCRA-03-2015-0014;
 - b. All checks shall be made payable to the "**United States Treasury**";
 - c. All payments made by check and sent by regular mail shall be addressed to:

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

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

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

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

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- 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 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 Number: 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 Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

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

Contact: John Schmid, (202) 874-7026
Remittance Express (REX): (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>

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

T. Chris Minshall
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029, and

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

91. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including, interest, penalties and/or administrative costs of handling delinquent debts.

92. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a

true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the 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).

93. 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 – Case 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 additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
94. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
95. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Certification of Compliance

96. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Respondent's Facility referred to in this Consent Agreement is currently in compliance to the best of his or her knowledge with all applicable requirements of RCRA Subtitle C and the authorized PaHWMR.

Other Applicable Laws

97. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

98. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil penalties for the specific violations of RCRA Subtitle C and the authorized PaHWMR alleged herein. EPA reserves the right to commence action against any person, including 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, federal regulations or authorized state regulations for which EPA has jurisdiction, to

enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

99. This Settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for the specific violations alleged in this Consent Agreement. Compliance with the CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

100. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date

101. The effective date of this Consent Agreement and the accompanying Final Order is the dated on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

102. This Consent agreement and the accompanying Final Order constitute the entire agreement and understanding between the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

Date: 10/3/2014

By: Robert W. Heldt (Pres)
Robert W. Heldt, President
Norquay Technology Incorporated

For Complainant:

Date: 10/7/2014

By: T. Chris Minshall
T. Chris Minshall
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 10.9.14

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

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

RECEIVED

2014 OCT 23 PM 1:36

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:

Norquay Technology Incorporated
P. O. Box 468
Chester, Pennsylvania 19016

Docket No. RCRA-03-2015-0014

FINAL ORDER

Respondent

800 West Front Street
Chester, Pennsylvania 19013

Proceeding under RCRA Section
3008(a)(1) and (g), 42 U.S.C.
§ 6928(a)(1) and (g)

Facility

FINAL ORDER


Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Norquay Technology Incorporated, 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. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of the statutory factors set forth in RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3) and EPA's RCRA Civil Penalty Policy (October 1990 and June 2003).

NOW, THEREFORE, PURSUANT TO Section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(1) and (g), and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **THIRTY-FOUR THOUSAND DOLLARS (\$34,000.00)**, plus any applicable interest, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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

Date: 10-23-14



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

RECEIVED

In the Matter of:

Norquay Technology Incorporated

2014 OCT 23 PM 1:36

Docket No. RCRA-03-2015-0014

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October 2014, I sent a copy of the foregoing CONSENT AGREEMENT and FINAL ORDER by UPS, to the following person:

Robert W. Heldt
President
Norquay Technology Incorporated
800 West Front Street
Chester, PA 19013



T. Chris Minshall

Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III