



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

AUG 01 2017

**CERTIFIED MAIL RETURN RECEIPT**

Patricia I. Kovacevic  
General Counsel, Chief Compliance Officer  
NicoPure Labs LLC  
5909 NW 18th Drive  
Gainesville, Florida 32611

Re: NicoPure Labs LLC, EPA ID # FLD054061049  
Consent Agreement and Final Order, Docket No. RCRA-04-2017-4007(b)

Dear Ms. Kovacevic,

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk in the above-reference matter. Please note that payment of the civil penalty is due within thirty (30) days of the effective date of the CA/FO, which is the date the CA/FO is filed with the Regional Hearing Clerk.

Thank you for assistance in resolving this matter. If you have questions, please feel free to contact Paula Whiting at 404-562-9277 or by email at [whiting.paula@epa.gov](mailto:whiting.paula@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth  
Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	DOCKET NO.: RCRA-04-2017-4007(b)
	)	
NicoPure Labs LLC	)	
5909 NW 18th Drive	)	Proceeding Under Section 3008(a) of the
Gainesville, Florida 32611	)	Resource Conservation and Recovery Act,
EPA ID No.: FLD054061049	)	42 U.S.C. § 6928(a)
	)	
Respondent	)	
_____	)	

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of the Chapter 403 of the Florida Statutes (Fla. Stat.), Fla. Stat. § 403.702 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g], and the regulations promulgated pursuant thereto and set forth at Rule 62-730 *et seq.* of the Florida Administrative Code Annotated (Fla. Admin. Code Ann.) [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270]. This action seeks the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] and Fla. Admin. Code Ann. r. 62-730 *et seq.* [40 C.F.R. Parts 260 through 270, and 273].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

## II. THE PARTIES

4. Complainant is the Chief, Enforcement and Compliance Branch, Resource Conservation and Restoration Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is NicoPure Labs LLC, a corporation organized under the laws of Florida. Respondent is the owner and operator of a manufacturing and distribution facility for liquid solutions containing nicotine and ignitable flavored liquids that are used in electronic cigarettes, located at 5909 NW 18th Drive in Gainesville, Florida (the Facility).

## III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Florida (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. Florida has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. Section 403.721 of the Florida Statutes, Fla. Stat. § 403.721 [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at Fla. Admin. Code Ann. r. 62-730.160 [40 C.F.R. Part 262].
12. Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at Fla. Admin. Code Ann. r. 62-730.180(1) (permitted) and Fla. Admin.

- Code Ann. r. 62-730.180(2) (interim status)] [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].
13. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
  14. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.4(b)].
  15. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D043.
  16. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.3(a)(2)(ii) and 261.30], a solid waste is a listed “hazardous waste” if it is listed Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. Part 261, Subpart D].
  17. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.20 and 261.33], nicotine and salts that are discarded or intended to be discarded are acute hazardous wastes identified with the EPA Hazardous Waste Number P075.
  18. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
  19. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.”
  20. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], a “person” includes a corporation (including a government corporation).
  21. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
  22. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “storage” means the holding of a hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.
  23. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a large quantity generator (LQG) and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, as required by Section 403.722 of the Florida Statutes, Fla. Stat. §

403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34 (a)(1)-(4)] (hereinafter referred to as the “LQG Permit Exemption”).

24. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(1)(i)] and is a condition of the LQG Permit Exemption, a generator is required to, accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the waste is placed in containers and the generator complies with the applicable requirements of subparts I of 40 C.F.R. part 265.
25. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(1)(i)], which incorporates Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.173(a)], and is a condition of the LQG Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
26. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(2)], which is a condition of the LQG Permit Exemption, a generator is required to ensure that the date upon which each period of accumulation begins is clearly marked and visible on each container.
27. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(3)], which is a condition of the LQG Permit Exemption, a generator is required to label or clearly mark each container and tank accumulating hazardous waste on-site with the words: “Hazardous Waste.”
28. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)] which incorporates Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.31], and is a condition of the LQG Permit Exemption, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
29. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)], which incorporates Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.35], and is a condition of the LQG Permit Exemption, a generator is required to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.
30. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)], which incorporates Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.16(a)(1), (b) and (c)], and is a condition of the LQG Permit Exemption, (a) Facility personnel must 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 regulations; (b) Facility personnel must complete this training within six months of being hired; (c) Facility personnel must take part in an annual RCRA refresher training; and (d) the generator must maintain training records that include, among others: the job title, written description, and name of each employee filling the job for each position related to hazardous waste management; and documentation that the training required has been given to and completed by Facility personnel.

31. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)], which incorporates Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.52(d)], and is a condition of the LQG Permit Exemption, a generator is required to list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 265.55), and this list must be kept up to date.
32. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)], which incorporates Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.53(b)], and is a condition of the LQG Permit Exemption, a generator is required to submit a copy of the contingency plan and all revisions to the plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
33. Pursuant to Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(b)], an LQG who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of Rule 62-730 et seq. of the Fla. Admin. Code Ann. [40 C.F.R. Parts 264, 265, and 267] and the permit requirements of Fla. Admin. Code Ann. r. 62-730.220(1) [40 C.F.R. Part 270].
34. Pursuant to Fla. Admin. Code Ann. r. 62-730.185(1) [40 C.F.R. § 273.9], a “Small Quantity Handler of Universal Waste” (SQHUW) is a Universal Waste handler who does not accumulate 5,000 kilograms or more of Universal Waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.
35. Pursuant to Fla. Admin. Code Ann. r. 62-737.400(5) [40 C.F.R. § 273.13(d)(1)], a SQHUW must manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.
36. Pursuant to Fla. Admin. Code Ann. r. 62-737.400(5)(b)1. [40 C.F.R. § 273.14(e)], a SQHUW must label or mark each lamp or container of lamps clearly with one of the following phrases: “Universal Waste-Lamp(s),” or “Waste Lamp(s),” or “Used Lamps.”
37. Pursuant to Fla. Admin. Code Ann. r. 62-737.400(7) [40 C.F.R. § 273.15(a) and (c)], a SQHUW may accumulate universal waste no longer than one year and must to be able to demonstrate the length of time that the universal waste has accumulated from the date that it became a waste or was received.

#### **IV. EPA ALLEGATIONS AND DETERMINATIONS**

38. Respondent is a “person” as defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10].
39. Respondent is the “owner/operator” of a “facility” located in 5909 NW 18th Drive in Gainesville, Florida, as those terms are defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10].
40. Respondent is a “generator” of “hazardous waste” as those terms are defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10] and Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3].

41. Respondent is a manufacturer and distributor of liquid solutions containing nicotine and ignitable flavored liquids that are used in electronic cigarettes.
42. Respondent, as result of its practices and operations at the Facility, is a LQG, as that term is defined in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)], at all times relevant to this CA/FO.
43. On May 19, 2016, the EPA and the Florida Department of Environmental Protection (FDEP) conducted a compliance evaluation inspection (CEI) at the Respondent's Facility. The findings of the CEI were documented in a Report mailed to Respondent, dated November 1, 2016.
44. During the CEI, the EPA and FDEP observed several nicotine cartridges of Tribeca nicotine e-liquid, a P075 hazardous waste, on the ground, underneath two plastic pallets in the Fulfillment Area.
45. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(1)(i)], by not placing hazardous waste in containers and complying with the applicable requirements of subparts I.
46. Additionally, the EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)], by not complying with the maintenance and operation requirements of Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.31].
47. During the CEI, the EPA and FDEP observed a 250-gallon poly tote of waste rinsate, a P075 hazardous waste, that was marked with an accumulation start date of February 9, 2016, that had been accumulated 10 days over the 90-day storage limit.
48. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste in excess of 90 days without a permit or interim status, in violation of Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(b)].
49. During the CEI, the EPA and FDEP observed that there was no aisle space in the hazardous waste storage area (HWSA) between the pallets and rows of carboys, which contained waste residual nicotine liquid solution, a P075 hazardous waste.
50. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)], by not complying with the aisle space requirements of Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.35].

51. During the CEI, the EPA and FDEP observed the following containers of P075 hazardous waste that were not marked with an accumulation start date:
- a. One full, 55-gallon drum, located in the HWSA, of waste finished goods, which was a return and that was discarded; and,
  - b. Numerous carboys, located in the Clean Room for Mixing, of waste residual nicotine solution.
52. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the dating requirements of Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(2)].
53. During the CEI, the EPA and FDEP observed the following containers of P075 hazardous waste that were not labeled:
- a. Five pallets of carboys, each with 64 carboys, located in the HWSA, containing waste residual nicotine liquid solution, a P075 hazardous waste;
  - b. One full, 55-gallon drum of waste finished goods, which was a return/discarded product, thus a P075 acute hazardous waste; and
  - c. Numerous carboys, located in the Clean Room for Mixing, of waste residual nicotine solution.
54. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the labeling requirements of Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(3)].
55. During the CEI, the EPA and FDEP observed the following containers of P075 hazardous waste that were open:
- a. A red cart filled with open black trash bags of waste nicotine contaminated wipes and debris, and broken and leaking bottles of waste liquid nicotine, all P075 hazardous wastes; and
  - b. A push cart in the Retail and Wholesale Departments used for hazardous waste cleanup around the Facility with an open trash bag inside.
56. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(1)(i)], by failing to keep containers closed except when adding waste, in violation of Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.173(a)].
57. During the CEI, the EPA and FDEP reviewed the training records for Facility personnel and observed that 16 of the employees did not receive initial training within six months of being hired and three employees had never received initial or refresher training.



58. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)], by not complying with the personnel training requirements of Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. § 265.16(a)(1), (b) and (c)].
59. During the CEI, the EPA and FDEP reviewed the Facility's contingency plan and observed that the contingency plan did not contain the following:
- a. Documentation (i.e., green return receipt cards) that copies of the contingency plan were provided to the local emergency response agencies (i.e., fire, police, hospital); and,
  - b. A current emergency contact list, including contact home addresses.
60. The EPA therefore alleges Respondent violated Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Fla. Admin. Code Ann. r. 62-730.160(1) [40 C.F.R. § 262.34(a)(4)], by not complying with the contingency plan requirements of Fla. Admin. Code Ann. r. 62-730.180(2) [40 C.F.R. §§ 265.52(d) and 265.53(b)].
61. During the CEI, the EPA and FDEP observed two open, unlabeled and undated 4-foot boxes of universal waste lamps that were located in the HWSA.
62. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-737.400(5) [40 C.F.R. § 273.13(d)], by failing to manage spent universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.
63. The EPA therefore alleges that Respondent Fla. Admin. Code Ann. r. 62-737.400(5)(b)1. [40 C.F.R. § 273.14(e)], by failing to label or mark each lamp or container of lamps clearly with one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamps."
64. The EPA therefore alleges that Respondent violated Fla. Admin. Code Ann. r. 62-737.400(7) [40 C.F.R. § 273.15(a) and (c)], by failing to demonstrate the length of time that the Facility's universal waste had been accumulated from the date that the universal waste became a waste or was received.

## V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

65. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
66. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.

67. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
68. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*
69. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
70. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
71. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
72. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized State hazardous waste program.
73. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged and the facts stipulated to in this CA/FO.
74. Each party will pay its own costs and attorneys' fees.

## VI. PAYMENT OF CIVIL PENALTY

75. Respondent consents to the payment of a civil penalty in the amount of SIXTY-TWO THOUSAND SIX HUNDRED DOLLARS (\$62,600), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
76. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: John Schmid, (202) 874-7026  
REX (Remittance Express): 1-866-234-5681

77. Respondent shall submit a copy of the payment to the following individuals:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

And to:

Paula A. Whiting  
Environmental Engineer  
Hazardous Waste Compliance and Enforcement Section  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
US EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

78. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement or, if paying in installments, not paid in accordance with the installment schedule provided above. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
  - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
  - c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).
79. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

## VII. PARTIES BOUND

80. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
81. No change in ownership, partnership, corporate or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
82. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

## VIII. RESERVATION OF RIGHTS

83. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the

EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.

84. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
85. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's Facility.

#### **IX. OTHER APPLICABLE LAWS**

86. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### **X. SERVICE OF DOCUMENTS**

87. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Stephen P. Smith  
Associate Regional Counsel  
Office of RCRA/CERCLA Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9554

88. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Patricia I. Kovacevic  
General Counsel, Chief Compliance Officer  
NicoPure Labs LLC  
5909 NW 18th Drive  
Gainesville, Florida 32611

**XI. SEVERABILITY**

89. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.


**XII. EFFECTIVE DATE**

90. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

*In the matter of NicoPure Labs LLC, Docket No. RCRA-04-2017-4007(b):*


**AGREED AND CONSENTED TO:**

**NicoPure Labs LLC**

By:   
Jason Del Giudice  
Chief Technology Officer

Dated: 7/13/17

**United States Environmental Protection Agency**

By:   
Larry L. Lamberth, Chief  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Dated: 07/25/17

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: ) DOCKET NO.: RCRA-04-2017-4007(b)  
)  
NicoPure Labs LLC )  
5909 NW 18th Drive ) Proceeding Under Section 3008(a) of the  
Gainesville, Florida 32611 ) Resource Conservation and Recovery Act,  
EPA ID No.: FLD054061049 ) 42 U.S.C. § 6928(a)  
)  
Respondent )  
\_\_\_\_\_ )

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 27<sup>th</sup> day of July, 2017.

BY: Tanya Floyd  
Tanya Floyd  
Regional Judicial Officer  
EPA Region 4

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of NicoPure Labs, Docket Number: RCRA-04-2017-4007(b), and have served the parties listed below in the manner indicated:

Stephen P. Smith  
Associate Regional Counsel  
Office of RCRA/CERCLA Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Quantindra Smith  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

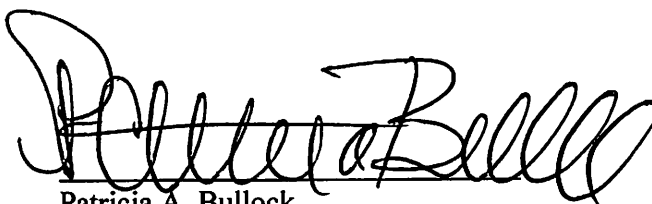
(Via EPA's electronic mail)

Patricia I. Kovacevic  
General Counsel, Chief Compliance Officer  
NicoPure Labs LLC  
5909 NW 18th Drive  
Gainesville, Florida 32611

(Via Certified Mail - Return Receipt  
Requested)

Date:

8-1-17



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511