

STATE OF CONNECTICUT

V.

M CUBED TECHNOLOGIES, INC.

CONSENT ORDER No. COWSWDH 19007

Date Issued: 6/17/2019

- A. With the agreement of M Cubed Technologies, Inc. (Respondent), the Commissioner of Energy and Environmental Protection (the Commissioner) finds:
1. Respondent is a Connecticut Corporation registered to do business with the Connecticut's Secretary of State with the business and mailing address of 31 Pecks Lane, Suite 8, Newtown, Connecticut with a manufacturing facility located at 921 Main Street in Monroe, Connecticut (Site).
 2. Respondent is or has been a generator of hazardous waste at the Site.
 3. Based on an inspection conducted by the Department of Energy and Environmental Protection (DEEP), Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division, on July 31, 2018 and August 15, 2018, Respondent:
 - a. **Failed to operate as a small quantity generator (SQG) of hazardous waste** as required by section 22a-449(c)-102(a)(1) of the Regulations of Connecticut State Agencies (RCSA), incorporating Title 40 of the Code of Federal Regulations (40 CFR) 262.34(d).
 - b. **Failure to operate as a SQG of hazardous waste** as required by section 22a-449(c)-102(a)(2)(O) of the RCSA, incorporating 40 CFR 262.34(d)(1) with specified changes.
 - c. **Failure to operate as a large quantity generator (LQG) of hazardous waste** as required by section 22a-449(c)-102(a)(1) of the RCSA, incorporating 40 CFR 262.34(a).
 - d. **Offered hazardous waste to a transporter that had not obtained a current, valid transporter permit issued by the Commissioner** pursuant to section 22a-449(c)-11 of the RCSA or section 22a-454 of the Connecticut General Statutes, as required by section 22a-449(c)-102(b)(1) of the RCSA.
 - e. **Failed to prepare and submit biennial hazardous waste reports for 2016 and 2018 (at least) that cover generator activities for the previous year** as required by section 22a-449(c)-102(a)(2)(AA) of the RCSA, incorporating 40 CFR 262.41(a) with specified changes.

- f. **Failed to include all required information in the weekly hazardous waste container storage area inspection log** as required by section 22a-449(c)-102(b)(2) of the RCSA, incorporating 40 CFR 265.15(d).
- g. **Failed to develop and maintain a complete written inspection schedule for the monthly inspection of all safety and emergency equipment** as required by section 22a-449(c)-102(b)(2) of the RCSA, incorporating 40 CFR 265.15.
- h. **Failed to submit a copy of the contingency plan and all revisions to the contingency plan to emergency services/ departments** as required by section 22a-449(c)-102(a)(2)(K) of the RCSA, incorporating 40 CFR 262.34(a)(4) with specified changes which requires compliance with 40 CFR 265.53.
- i. **Failed to designate an emergency coordinator and alternate emergency coordinator(s)** as required by section 22a-449(c)-102(a)(2)(K) of the RCSA, incorporating 40 CFR 262.34(a)(4) with specified changes, which requires compliance with 40 CFR 265.52(d) and 265.55.
- j. **Failed to list the addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinator or alternate emergency coordinator** as required by section 22a-449(c)-102(a)(2)(K) of the RCSA, incorporating 40 CFR 262.34(a)(4) with specified changes, which requires compliance with 40 CFR 265.52(d) and 265.55.
- k. **Failed to include a list of all emergency equipment at the facility including, but not necessarily limited to, fire extinguishing systems, spill control equipment, personal protective equipment, communications and alarm systems (internal and external), decontamination equipment, and first aid kits** as required by section 22a-449(c)-102(a)(2)(K) of the RCSA, incorporating 40 CFR 262.34(a)(4) with specified changes, which requires compliance with 40 CFR 265.52(d).
- l. **Failed to include the location of each item on the list of emergency equipment** as required by section 22a-449(c)-102(a)(2)(K) of the RCSA, incorporating 40 CFR 262.34(a)(4) with specified changes, which requires compliance with 40 CFR 265.52(d).
- m. **Failed to provide a physical description and an explanation of the capabilities of each item on the list of emergency equipment** as required by section 22a-449(c)-102(a)(2)(K) of the RCSA, incorporating 40 CFR 262.34(a)(4) with specified changes, which requires compliance with 40 CFR 265.52(d).
- n. **Failed to include an evacuation plan** as required by section 22a-449(c)-102(a)(2)(K) of the RCSA, incorporating 40 CFR 262.34(a)(4) with specified changes, which requires compliance with 40 CFR 265.52(d).
- o. **Failed to maintain aisle space** as required by section 22a-449(c)-102(a)(2)(K) of the RCSA, incorporating 40 CFR 262.34(a)(4) with specified changes, which requires compliance with 40 CFR 265.35.
- p. **Failed to mark all satellite accumulation containers with the words "Hazardous Waste" and other words that identify the contents** as required by section 22a-449(c)-102(a)(2)(N) of the RCSA, incorporating 40 CFR 262.34(c)(1)(ii) with specified changes.
- q. **Failed to ensure that satellite accumulation containers remain closed except when adding or removing hazardous waste** as required by section 22a-449(c)-102(a)(2)(M) of the RCSA,

incorporating 40 CFR 262.34(c)(1)(i) with specified changes, which requires compliance with 40 CFR 265.173(a).

- r. **Failed to label each container of hazardous waste with the words “Hazardous Waste” and other words that identify the contents of each container** as required by section 22a-449(c)-102(a)(2)(J) of the RCSA, incorporating 40 CFR 262.34(a)(3) with specified changes.
 4. By virtue of the above, Respondent has violated sections 22a-449(c)-100 through 119 and section 22a-449(c)-11 of the RCSA, incorporating 40 CFR Parts 260 through 279 and Chapter 446d of the Connecticut General Statutes (CGS).
 5. On September 20, 2018, DEEP issued Notice of Violation No. WSWDH18043 to Respondent to correct the violations corresponding to those cited in subparagraphs A.3.a. through A.3.r. of this consent order.
 6. On October 4th and 19th, and December 14th, 2018, DEEP received submittals in response to Notice of Violation No. WSWDH18043 in which the Respondent reported that all violations in paragraph A.3. were addressed.
- B. With the agreement of Respondent, the Commissioner, acting under sections 22a-6, and 22a-449 of the CGS, orders Respondent as follows:
1. Compliance. Respondent shall maintain its compliance with all applicable provisions of Connecticut’s hazardous waste management regulations, sections 22a-449(c)-100 through 119 and section 22a-449(c)-11 of the RCSA, and section 22a-454 of the CGS including but not limited to those regulations applicable to generators of hazardous waste identified in paragraph A.3. above. In particular:
 - a. On or before **forty five (45) days** after issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval, a plan detailing additional actions and/or operational changes it has undertaken or will undertake to ensure compliance with Connecticut’s hazardous waste management regulations, RCSA Sections 22a-449(c)-100, et. seq., including, but not limited to, those violations set forth in paragraph A.3. of this consent order. Within **five (5) days** after the Commissioner approves such plan, Respondent shall carry out the plan and maintain it in full effect thereafter.
 2. Full compliance. Respondent shall not be considered in full compliance with this consent order until all actions required by this consent order have been completed as approved and to the Commissioner’s satisfaction.
 3. Status of Notice of Violation No. WSWDH18043. This consent order supersedes Notice of Violation No. WSWDH18043.
 4. Civil penalty for violations. Respondent shall pay a civil penalty of **twenty seven thousand dollars (\$27,000)** as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraph A.3. of this consent order. Payment shall be made in two (2) equal installments of thirteen thousand five hundred dollars (\$13,500) in accordance with the provisions of paragraph B.5., according to the following schedule:
 - a. The first installment of **thirteen thousand five hundred dollars (\$13,500)** shall be due and payable on or before **fourteen (14) days** after the date of issuance of this consent order.

- b. The second installment of **thirteen thousand five hundred dollars (\$13,500)** shall be due and payable on or before **forty five (45) days** after the date of issuance of this consent order.
5. Payment of penalties. Payment of penalties under paragraph B.4. of this consent order shall be mailed or personally delivered to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to "Connecticut Department of Energy and Environmental Protection." The check shall state in the memo notation, "Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division civil penalty" and the consent order number identified at the top of page one of this consent order. Copies of the check and any transmittal letter shall also be sent to Ms. Julie Dutton in the Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division, at the same address.
6. Sampling and sample analyses. All sampling and sample analyses which, are required by this consent order and all reporting of such sample analyses shall be conducted by a laboratory certified by the Connecticut Department of Public Health to conduct such sampling and analyses. All sampling and sample analyses performed under this order shall be performed in accordance with procedures specified or approved in writing by the Commissioner, or, if no such procedures have been specified or approved, in accordance with EPA document SW-846. Unless otherwise specified by the Commissioner in writing, the value of each parameter shall be reported to the maximum level of precision and accuracy specified in the applicable protocol, and if no such level is specified, to the maximum level of precision and accuracy possible.
7. Approvals. Respondent shall use best efforts to submit to the Commissioner all documents required by this consent order in a complete and approvable form. If the Commissioner notifies Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within thirty (30) days of the Commissioner's notice of deficiencies. In approving any document or other action under this consent order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this consent order. Nothing in this paragraph shall excuse noncompliance or delay.
8. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner.
9. Dates. The date of "issuance" of this consent order is the date the consent order is deposited in the U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this consent order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this consent order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this consent order, the word "day" as used in this consent order means calendar day. Any document or action which is required by this consent order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.
10. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this consent order shall be signed by Respondent or, if Respondent is not an individual, by Respondent's chief executive officer or a duly authorized

representative of such officer, as those terms are defined in §22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and each such individual shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law."

11. Noncompliance. This consent order is a final order of the Commissioner with respect to the matters addressed herein, and is non-appealable and immediately enforceable. Failure to comply with this consent order may subject Respondent to an injunction and penalties.
12. False statements. Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
13. Notice of transfer; liability of Respondent. Until Respondent has fully complied with this consent order, Respondent shall notify the Commissioner in writing no later than fifteen (15) days after transferring all or any portion of the facility, the operations, the Site or the business which is the subject of this consent order or after obtaining a new mailing or location address. Respondent's obligations under this consent order shall not be affected by the passage of title to any property to any other person or municipality.
14. Commissioner's powers. Except as provided hereinabove with respect to payment of civil penalties pursuant to this consent order, nothing in this consent order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law not otherwise addressed by this consent order. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this consent order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.
15. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
16. No assurance by Commissioner. No provision of this consent order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent pursuant to this consent order will result in compliance or prevent or abate pollution.
17. Access to Site. Any representative of the Department of Energy and Environmental Protection may enter the Site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
18. No effect on rights of other persons. This consent order neither creates nor affects any rights of persons or municipalities that are not parties to this consent order.

19. Notice to Commissioner of changes. Within fifteen (15) days of the date Respondent becomes aware of a change in any information submitted to the Commissioner under this consent order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondent shall submit the correct or omitted information to the Commissioner.
20. Notification of noncompliance. In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this consent order or of any document required hereunder, Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
21. Submission of documents. Any document required to be submitted to the Commissioner under this consent order shall, unless otherwise specified in this consent order or in writing by the Commissioner, be directed to:

Ms. Michele DiNoia
Department of Energy and Environmental Protection
Bureau of Materials Management and Compliance Assurance
Waste Engineering and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

(This space intentionally left blank.)

Respondent consents to the issuance of this consent order without further notice. The undersigned certifies that he/she is fully authorized to enter into this consent order and to legally bind the Respondent to the terms and conditions of the consent order.

M Cubed Technologies, Inc.

BY:



(Signature of the individual with authority to bind Respondent to terms of consent order)

Mark Maibergen
Name (typed)

President, II-VI Performance Products
Title

June 6, 2019
Date

Issued as a final order of the Deputy Commissioner of Energy and Environmental Protection.


Betsey Wingfield
Deputy Commissioner

4/17/19
Date

Consent Order No. COWSWDH19007

M CUBED TECHNOLOGIES, INC.
UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS
June 5, 2019

In conformity with Section 2.10 of the Bylaws of M Cubed Technologies Inc., a Delaware corporation (the "Company") the undersigned, being the sole director of the Company, hereby consents to and adopts the following resolutions, and takes the following actions with the same force and effect as if duly adopted and duly taken at a meeting of the Board of Directors of the Company (the "Board"):

BACKGROUND

1. Section 141(f) of the Delaware General Corporation Law and Section 2.10 of the Bylaws of the Company (the "Bylaws"), provide that, unless otherwise restricted by the certificate of incorporation or Bylaws, any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if all members of the Board consent in writing, and the writing is filed with the minutes of the proceedings of the Board.

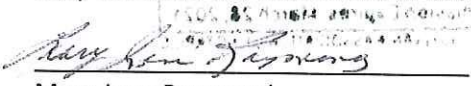
2. Section 3.03 of the Bylaws provides that has the power to execute deeds, bonds, mortgages, other contracts, agreements and instruments of the Company.

THEREFORE, IT IS RESOLVED that:

1. Mark Maiberger, President of the Company, is hereby authorized to enter into a certain administrative consent order between the State of Connecticut, Department of Energy and Environmental Protection, and the Company, on behalf of the Company, substantially in the form attached as Exhibit A; and

2. This Consent be filed with the Company's Secretary and inserted in the minute book of the Company.

Duly executed the date set forth above.



Mary Jane Raymond
Sole Director of the Company

The undersigned Secretary of the Company certifies that the above Consent has been duly adopted.



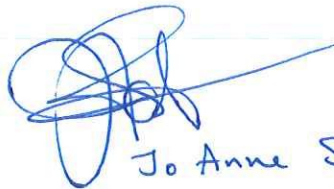
Jo Anne Schwendinger, Secretary

Corporate Certificate
M Cubed Technologies, Inc.

I, Jo Anne Schwendinger, Secretary of M Cubed Technologies, Inc. (the "Company"), do hereby certify that on June 4, 2019, Mark Maiberger, was and remains at this time the President of M Cubed Technologies, Inc.

I further certify that, as such, Mark Maiberger is duly authorized by Sections 3.03 and 5.02 of the Bylaws of the Company (true and correct copy attached) to execute, in the name of the Company, any and all contracts and other written obligations, including, but not limited to administrative consent orders with the Connecticut Department of Energy and Environmental Protection with respect to environmental matters. In addition, such Mark Maiberger, is duly authorized by Section 3.03 of the Bylaws of the Company to submit documents to the Department of Energy and Environmental Protection on behalf of the Company.

Date: June 7, 2019



Jo Anne Schwendinger

Subscribed and sworn to before me this ____ th day of June, 2019.

Notary Public

My Commission Expires:

