UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

In the Matter of	§	
	§	
Quala Rail and Specialty, LLC	§	**Docket No. RCRA-06-2025-0948**
Pasadena, Texas	§	
	§	
Respondent.	§	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules") as codified at 40 C.F.R. Part 22.

2. The Administrator of the U.S. Environmental Protection Agency ("EPA") has delegated enforcement authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the Regional Administrator of EPA Region 6, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 6 ("Complainant").

3. Quala Rail and Specialty, LLC ("Quala" or "Respondent") is a limited liability company doing business in the State of Texas.

4. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

5. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement along with the corresponding Final Order, hereinafter known together as the "CAFO", without the adjudication of any issues of law or fact herein.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

II. JURISDICTION

7. This CAFO is entered into under Section 3008(a) of RCRA, as amended, 42 U.S.C. § 6928(a), and 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

8. Jurisdiction for this action is conferred upon EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. The Regional Judicial Officer is authorized to ratify this CAFO which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).

10. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. STATUTORY AND REGULATORY BACKGROUND

11. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976 to amend the Solid Waste Disposal Act ("SWDA"), and the Hazardous and Solid Waste Amendments ("HSWA") enacted by Congress in 1984 to further amend SWDA. RCRA establishes a "cradle-to-grave" program to be administered by the Administrator of EPA and authorized states for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. *See* 42 U.S.C. § 6901 *et seq*.

12. RCRA's Subchapter III (RCRA §§ 3001-3023, 42 U.S.C. §§ 6921-6940, known as "Subtitle C") required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 279, comprise EPA's RCRA hazardous waste program.

13. 40 C.F.R. Parts 260 through 279, govern generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924. These regulations prohibit land disposal of certain hazardous wastes and provide detailed requirements governing the activities of those who generate hazardous waste and those who are lawfully permitted to store, treat, and dispose of hazardous waste.

14. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), directed EPA to promulgate regulations requiring each person owning or operating a hazardous waste treatment, storage, or disposal facility to have a RCRA permit; this section of RCRA further provides in relevant part that the treatment, storage, or disposal of hazardous waste is prohibited except in accordance with a RCRA permit.

15. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of EPA may authorize a state to administer its own hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to and consistent with the federal program. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of

civil penalties[1] and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

16. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Texas final authorization to administer a state hazardous waste program in lieu of the federal RCRA program.[2]

17. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA may enforce the federally approved State of Texas' hazardous waste program. EPA also 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).

18. The Texas Commission on Environmental Quality ("TCEQ") codified the applicable RCRA authorized program at Texas Administrative Code ("Tex. Admin. Code"), Title 30, [40 C.F.R. Part 262, 265, and/or 270].

Definitions

19. 30 Tex. Admin. Code § 335.1(138), [40 C.F.R. § 261.2], defines a "solid waste" as any discarded material that is not otherwise excluded under § 335.1(138)(A)(i-iv), [40 C.F.R. § 261.4(a)], or that is not excluded by variance. A discarded material is any material which is

[1] The Administrator may assess an inflation-adjusted civil penalty per day for each violation of Subtitle C of RCRA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 19.4.

[2] On December 26, 1984, the State of Texas received final authorization for its base Hazardous Waste Management Program (49 Fed. Reg. 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by EPA. Except as otherwise provided, all citations found within this CAFO are to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated December 2015, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on April 10, 2020. (85 Fed. Reg. 20187, 20190; 40 C.F.R. § 272.2201: Texas State-Administered Program: Final Authorization). References and citations to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Texas's published version. For ease of reference, the corresponding C.F.R. citations will follow in brackets.

abandoned, recycled, inherently waste-like, or a military munition. Materials are solid waste, as defined in 30 Tex. Admin. Code § 335.1(138)(C), [40 C.F.R. § 261.2(b)], if they are abandoned by being disposed of, burned or incinerated, or accumulated, stored, or treated (but not recycled) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.

20. 30 Tex. Admin. Code § 335.1(69) defines a "hazardous waste" as any waste identified or listed as hazardous waste by the Administrator of EPA in accordance with the federal SWDA, as amended by RCRA, 42 U.S.C. §§ 6901 *et seq*. EPA defines a "hazardous waste" as a solid waste that is not excluded from regulation, and it exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. Part 261, Subpart C, or it is listed in Part 261, Subpart D, [40 C.F.R. § 261.3].

21. 30 Tex. Admin. Code § 335.1 (152), [40 C.F.R. § 260.10] defines a "transfer facility" as any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste are held during the normal course of transportation.

22. Pursuant to 30 Tex. Admin. Code § 335.1(65), [40 C.F.R. § 260.10], a generator is any person whose act first causes a hazardous waste to become subject to regulation.

23. 30 Tex. Admin. Code § 335.112, [40 C.F.R. Parts 264 and/or 265] applies to owners and operators of facilities that treat, store and/or dispose of hazardous waste.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

24. Respondent owns and operates Quala Rail and Specialty, LLC #704 facility (Quala #704), a commercial cargo tank cleaning facility which provides washing services of bulk

transportation equipment. The facility is located at 5100 Underwood Rd., Pasadena, Texas 77507 (the "Facility").

25. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 30 Tex. Admin. Code § 3.2(25), [40 C.F.R. § 260.10].

26. The Facility is a "facility" within the meaning of 30 Tex. Admin. Code § 335.1(59), [40 C.F.R. § 260.10].

27. From June 26th-June 29th, 2023, EPA conducted a Compliance Evaluation Inspection and RCRA record review of the Facility's activities as a generator of hazardous waste (the "Inspection").

28. EPA discovered that Respondent, at a minimum, generated, and offered for transport, hazardous waste from multiple facilities that resulted in generation of multiple waste streams that include listed wastes as defined in 40 C.F.R. Part 261, Subpart D. Respondent is a registered transfer facility as defined by 30 Tex. Admin. Code § 335.1 (152), [40 C.F.R. § 260.10].

29. The waste streams identified above are "hazardous waste" as defined in 30 Tex. Admin. Code § 335.1(69), [40 C.F.R. § 261.21].

30. Based on its review, EPA determined that Respondent generated the hazardous waste above in quantities that exceeded the threshold amount of 1000 kilograms of hazardous waste and operated as a Large Quantity Generator ("LQG") in a calendar month under 30 Tex. Admin. Code, Chapter 335, Subchapter C, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.

31. Respondent is a "generator" of "hazardous waste" as those terms are defined in 30 Tex. Admin. Code §§ 335.1(65) and (69), [40 C.F.R. § 260.10].

32. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth in 30 Tex. Admin. Code Chapter 335, Subchapters C and F, [40 C.F.R. Part 262, 265, and/or 270].

V. ALLEGED VIOLATIONS

33. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

34. Complainant hereby states and alleges that Respondent has violated RCRA and federal and state regulations promulgated thereunder, as stated below.

Count 1. Failure to Close Containers During Accumulation of Hazardous Waste.

35. Under 30 Tex. Admin Code § 335.69, [40 C.F.R. § 262.17(a)(1)(iv)], a container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste. A container holding hazardous waste must not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

36. During the Inspection, EPA inspectors observed five (5) containers which were being used to accumulate hazardous waste that were not properly closed. The open hazardous waste containers that were observed during the Inspection were unattended and not being filled or emptied.

37. Accordingly, EPA alleges that, while operating the Facility as a LQG of hazardous waste, Respondent failed to ensure that five (5) containers of hazardous waste were properly closed during accumulation in violation of 30 Tex. Admin Code § 335.69, [40 C.F.R. § 262.17(a)(1)(iv)].

Count 2. Failure to Label and Date Containers During Accumulation of Hazardous Waste.

38. Under 30 Tex. Admin. Code § 335.69, [40 C.F.R. §§ 262.17(a)(5)(i) and 262.15(a)(5)], a LQG must mark or label its containers with the following: (A) the words "hazardous waste"; (b) an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 C.F.R. Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 C.F.R. 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704); and (c) the date upon which each period of accumulation begins clearly visible for inspection on each container.

39. During the Inspection, the EPA inspectors observed eighteen (18) containers being used to accumulate hazardous waste, but the containers were not marked with a hazardous waste label or accumulation start date. Also, the EPA inspectors observed one container used for the accumulation of used oil which was unlabeled.

40. Accordingly, EPA alleges that, while operating the Facility as a LQG of hazardous waste, Respondent failed to mark or label eighteen (18) containers of hazardous waste and one container of used oil in violation of 30 Tex. Admin. Code, Chapter 335.69, Subchapter C, [40 C.F.R. §§ 262.17(a)(5)(i) and 262.15(a)(5)].

Count 3. Failure to Inspect Daily or Weekly Containers of Hazardous Waste in the Central Accumulation Area.

41. Under 30 Tex. Admin. Code § 335.69 [40 C.F.R. § 262.17(a)(1)(v)], at least weekly, the LQG must inspect central accumulation areas. The large quantity generator must look for

leaking containers and for deterioration of containers caused by corrosion or other factors. See paragraph (a)(1)(ii) of this section for remedial action required if deterioration or leaks are detected. Under 30 Tex. Admin. Code § 335.53, [40 C.F.R. § 262.17(a)(2)], if the waste is placed in tanks, the LQG must comply with the applicable requirements of Subpart J (except §§ 265.197(c) and 265.200 of this subchapter) as well as the applicable requirements of 40 C.F.R. Part 265, Subparts AA through CC.

42. During the Inspection, EPA inspectors observed that the rail and specialty area at the Facility being used as a hazardous waste central accumulation area was not being inspected weekly. Additionally, the Facility was unable to provide documentation to show that the hazardous waste tank T1 ("Tank T1") was being inspected on a daily basis.

43. Accordingly, EPA alleges that, while operating the Facility as a LQG of hazardous waste, Respondent failed to conduct weekly inspections of one central accumulation area and daily inspections of Tank T1 in violation of 30 Tex. Admin. Code, § 335.69 [30 Tex. Admin. Code § 335.53 [40 C.F.R. §§ 262.17(a)(1)(v) and 262.17(a)(2)].

Count 4. Failure to Remove Accumulated Liquids from Secondary Containment

44. Pursuant to 30 Tex. Admin. Code § 335.69, [40 C.F.R. § 262.17(a)(2)], if the waste is placed in tanks, the LQG must comply with the applicable requirements of Subpart J (except §§ 265.197(c) and 265.200 of this subchapter) as well as the applicable requirements of 40 C.F.R. Part 265, Subparts AA through CC (*citing 40 C.F.R. § 265.195*).

45. Pursuant to 40 C.F.R. § 265.195, the owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection

equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

46. During the Inspection, the EPA inspectors observed accumulated rainwater in the secondary containment of Tank T1, which was removed from the secondary containment during the Inspection.

47. Accordingly, EPA alleges that, while operating the Facility as a LQG of hazardous waste, Respondent failed to remove accumulated rainwater from the secondary containment of Tank T1 in violation of Tex. Admin. Code § 335.69, [40 C.F.R. § 262.17(a)(2)] (citing 40 C.F.R. § 265.195).

Count 5. Failure to Maintain Records of Annual Inspections for Hazardous Waste Tanks Subject to Subpart CC

48. Pursuant to 30 Tex. Admin. Code § 335.112(a)(9), [40 C.F.R. § 262.17(a)(2)], if the waste is placed in tanks, the LQG must comply with the applicable requirements of Subpart J (except §§ 265.197(c) and 265.200 of this subchapter) as well as the applicable requirements of 40 C.F.R. Part 265, Subparts AA through CC (*citing 40 C.F.R. §§ 265.1085(c)(4) and 265.1090(b)(1)(ii)*).

49. Pursuant to 40 C.F.R. § 265.1085(c)(4), the owner or operator shall inspect the air emission control equipment in accordance with the following requirements: (i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access

covers, caps, or other closure devices; (ii) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except under the special conditions provided for in paragraph (l) of this section; (iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (k) of this section; (iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 265.1090(b) of this subpart.

50. Pursuant to 40 C.F.R. § 265.1090(b)(1)(ii), a record for each inspection required by § 265.1085 of this subpart that includes the following information: (A) Date inspection was conducted, and (B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 265.1085 of this subpart, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

51. During the EPA Inspection, Respondent was unable to provide any documentation to show that the roof an emission controls for Tank T1 were being inspected on an annual basis. The EPA inspectors determined that Tank T1 is subject to Level 1 emissions control standards.

52. During the EPA Inspection, the Respondent was unable to provide any documentation to show that Tank T1 was being inspected daily.

53. Accordingly, EPA alleges that, while operating the Facility as a LQG of hazardous waste, Respondent failed to inspect Tank T1 daily and failed to inspect Tank T1 at least annually, which is subject to Level 1 control standards for air emissions, in violation of 30 Tex. Admin. Code § 335.53, [40 CFR 262.17(a)(2) (citing 40 C.F.R. §§ 265.1085(c)(4) and 265.1090(b)(1)(ii)].

Count 6. Failure to Operate a Hazardous Waste Tank Fit for Use

54. Pursuant to 30 Tex. Admin. Code § 335.112(a)(9), [40 C.F.R. § 265.196] a tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements subsections (a) through (f).

55. During the EPA Inspection, the EPA inspectors observed holes in the roof of Tank T1 which were estimated to be larger than 10 inches in diameter. VOC measurements from these openings exceeded applicable background levels indicating that hazardous waste was being released into the air from Tank T1.

56. Accordingly, EPA alleges that, while operating the Facility as a LQG of hazardous waste, the Respondent failed to ensure that the operation of Tank T1 was for fit for use in violation of 30 Tex. Admin. Code § 335.112(a)(9), [40 C.F.R. § 265.196].

Count 7. Failure to Make a Hazardous Waste Determination

57. Pursuant 30 Tex. Admin. Code § 335.504, [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable RCRA regulations.

58. During the Inspection, EPA reviewed the Facility's hazardous waste tote records and identified several entries marked "unknown." The contents of these "unknown" containers were subsequently added to Tank T1.

59. Accordingly, EPA alleges that, while operating the Facility as a LQG of hazardous waste, the Respondent failed to make a hazardous waste determination for wastes added to Tank T1 in violation 30 Tex. Admin. Code § 335.504, [40 C.F.R. § 262.11].

VI. CONSENT AGREEMENT AND CIVIL PENALTY

General

60. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

a. admits the jurisdictional allegations set forth herein;

b. neither admits nor denies the specific factual allegations stated herein;

c. consents to the assessment of a civil penalty, as stated herein;

d. consents to the issuance of any specified compliance or corrective action order;

e. consents to any conditions specified herein;

f. consents to any stated Permit Action;

g. waives any right to contest the allegations set forth herein; and

h. waives its rights to appeal the Final Order accompanying this CAFO.

61. By signing this CAFO, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any

right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying this CAFO.

62. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty specified herein.

63. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Assessment and Collection

64. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of two hundred thousand, six hundred and seventy four dollars, $200,674.00 (the "EPA Penalty").

65. Respondent agrees to pay the EPA Penalty within thirty (30) days of the Effective Date of this CAFO.

66. Respondent shall pay the EPA Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: https://www.epa.gov/financial/makepayment. For additional instructions see: https://www.epa.gov/financial/additional-instructions-making-payments-epa.

67. When making a payment, Respondent shall:

68. Identify every payment with Respondent's name and the docket number of this CAFO, Docket No. RCRA-06-2025-0948:

a. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s) via electronic mail:

Fred Deppe
U.S. EPA Region 6
Deppe.fred@epa.gov

Region 6 Hearing Clerk
U.S. EPA Region 6
Vaughn.Lorena@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due.

69. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the EPA Penalty per this CAFO, EPA is authorized to recover, in addition to the amount of the unpaid EPA Penalty, the following amounts.

a. Interest. Interest begins to accrue from the Effective Date. If the EPA Penalty is paid in full within thirty (30) days, interest accrued is waived. If the EPA Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the EPA Penalty as well as any interest, penalties, and other charges are paid in

full. To protect the interests of the United States, the rate of interest is set at the Internal Revenue Service ("IRS") large corporate underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

b. Handling Charges. Respondent will be assessed a monthly charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the EPA Penalty in accordance with this CAFO, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Effective Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the EPA Penalty as well as any accrued interest, penalties, and other charges are paid in full.

c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the EPA Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Effective Date.

70. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the EPA Penalty, interest, or other charges and penalties per this CAFO, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14;

b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government

for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H;

c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17; and

d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

71. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding EPA Penalty amount.

72. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

Conditions of Settlement

73. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within sixty (60) calendar days of the Effective Date of this CAFO, Respondent shall provide in writing the following:

a. Respondent shall certify that it has assessed all of its solid waste streams at the Facility to determine its standard operating procedures ("SOPs") have been updated to prevent reoccurrence of the alleged violations identified in the CAFO.

b. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the Facility and within the prescribed time period.

c. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described above.

74. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Facility and shall include the following certification:

> "I certify under the penalty of law that this document and all of its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by this CAFO shall be sent electronically by email to:

Fred Deppe
U.S. EPA Region 6
Fred.deppe@epa.gov

Additional Terms of Settlement

75. The provisions of this CAFO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CAFO. Changes in ownership, real

property interest, or transfer of personal assets shall not alter Respondent's obligations under this CAFO. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate, or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.

76. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information ("CBI"). *See* 40 C.F.R. Part 2, Subpart B (Confidentiality of Business Information). Respondent retains the right to assert a CBI claim over any other information or documentation submitted to EPA by Respondent in accordance with or in relation to this CAFO.

77. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

78. By signing this CAFO, Respondent certifies that the Facility is presently in compliance with all requirements of RCRA and its implementing regulations.

79. By signing this CAFO, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party it represents to this CAFO.

80. Respondent and EPA agree to the use of electronic signatures for this matter. EPA and Respondent consent to service of this CAFO and Final Order by email at the following valid

email addresses: mcdonald.ashley@epa.gov (for EPA) and Meaghan.hembree@hklaw.com (for Respondent).

81. Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

82. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to annually send to the IRS, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable:

a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf.

b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN.

c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Division at chalifoux.jessica@epa.gov, on or before the date that Respondent's penalty payment is due pursuant to Section VI (penalty assessment and collection) of this CAFO, or within seven (7) days should the order become effective between December 15 and December 31 of the calendar year. EPA recommends encrypting IRS Form W-9 email correspondence.

d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

VII. EFFECT OF CONSENT AGREEMENT AND RESERVATION OF RIGHTS

83. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability, under Sections 3005(a) and 3008(a) of RCRA, 42 U.S.C. §§ 6925(a) and 6928(a), for federal civil penalties for the violations and facts alleged in Sections IV and V above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

84. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

85. Penalties paid pursuant to this CAFO shall not be deductible for purposes of Federal, State, and local taxes.

86. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with Section VI (Compliance Order) and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section VI (Compliance Order).

87. Any violation of the Final Order may result in a civil judicial action for an injunction or civil penalties as well as criminal sanctions. EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action related to enforcement of this CAFO.

88. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit. EPA does not, by its consent to the entry of this CAFO, warrant or aver in any manner that Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of RCRA, 42 U.S.C. § 6901 *et seq.,* or with any other provisions of federal, state, or local laws, regulations, or permits.

89. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

90. If, and to the extent EPA finds after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

VIII. EFFECTIVE DATE

91. Respondent and Complainant agree to the issuance of the Final Order. Upon filing, EPA will transmit a copy of the filed CAFO to Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk ("Effective Date"). Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such Effective Date.

The foregoing Consent Agreement In the Matter of Quala Rail and Specialty, LLC, Docket No. RCRA-06-2025-0948, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

QUALA RAIL AND SPECIALTY LLC

Date: 8/18/2025

Signature

Justin Kosta

Print Name

Sr. Director, Environmental

Title

FOR COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: August 19, 2025

Digitally signed by CHERYL SEAGER
Date: 2025.08.19 12:19:15 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 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 foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Quala Rail and Specialty, LLC is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), 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.

This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

Dated _____

THOMAS RUCKI
Digitally signed by THOMAS RUCKI
Date: 2025.08.20 09:39:31 -04'00'

Thomas Rucki
Regional Judicial Officer, Region 6

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was filed with me, the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the email addresses:

Copy via Email to Complainant:

Mcdonald.ashley@epa.gov

Copy via Email and U.S. Mail to Respondent:

Meaghan.Hembree@hklaw.com
Meaghan Colligan Hembree, Counsel for Respondent
Holland & Knight LLP
800 17th Street N.W.
Suite 1100
Washington, D.C. 20006

Regional Hearing Clerk
U.S. EPA, Region 6